



Appeal Decision

Site visit made on 15 December 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2021

Appeal Ref: APP/C1435/W/20/3257830

Land South of South Street, East Hoathly, East Sussex

Grid Ref Easting: 551934, Grid Ref Northing: 115558

- 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 Prime Crest Homes Limited against the decision of Wealden District Council.
 - The application Ref WD/2019/1674/MAO, dated 30 July 2019, was refused by notice dated 27 May 2020.
 - The development proposed is a residential development of up to 55 residential dwellings.
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Decision

1. The appeal is allowed and outline planning permission with all matters reserved except for access is granted for residential development of up to 55 dwellings at Land South of South Street, East Hoathly, East Sussex in accordance with the terms of application, Ref: WD/2019/1674/MAO, dated 30 July 2019, subject to the schedule of conditions attached to this decision.

Application for costs

2. An application for costs was made by Prime Crest Homes Limited against Wealden District Council. This application will be the subject of a separate Decision.

Procedural Matters

3. Outline planning permission is sought with all matters reserved except for access. In determining this appeal, I have had regard to the site and location plans and the land use plan but have regarded all elements of these drawings as indicative apart from the details of the proposed access.
4. The appellant submitted amended plans and an updated planning application form with an amended description of development part way through the determination of the outline application. The amended documents reduced the extent of residential development from up to 74 dwellings to up to 55 dwellings. For the avoidance of doubt, I have determined the appeal on the basis of the amended plans.
5. For this reason, I have used the description of development from the appeal form within the banner heading above and my decision, as this more accurately and precisely describes the proposal.

6. The amended site plan¹ and land use plan² show a proposed layout of 59 dwellings. However, this is an indicative layout which shows how the site could be developed. As set out above, I have dealt with this appeal on the basis of the amended description of development, which limits the extent of the proposed residential development to up to 55 dwellings.
7. The National Planning Policy Framework ('the Framework') was revised in July 2021. In terms of the main issues in this appeal, the revisions to the Framework have not changed the thrust of national planning policy. For the avoidance of doubt, I have taken the Framework into account as part of the determination of this appeal.

Background

8. The current proposal follows on from a previous application³ and appeal⁴, which sought outline planning permission with all matters reserved except for access for residential development of up to 74 residential dwellings at the appeal site.
9. In dismissing the appeal in November 2019, the Inspector found that the proposal would be located outside of the adopted settlement boundary of East Hoathly, and, thus the principle of residential development would conflict with the development plan.
10. He also found that the overall quantum of development proposed would likely result in the loss of important biodiversity features, including an existing area of woodland at the appeal site, which supports protected species. Therefore, he concluded that the indicative plans failed to provide a demonstration of site capacity for up to 74 dwellings.
11. In addition, based on the evidence before him, the Inspector determined that it was not possible for him to conclude that there would not be likely significant effects on the Ashdown Forest, designated as Special Protection Area (SPA) and Special Area of Conservation (SAC), and Lewes Downs SAC from the proposal in combination with other plans and projects.
12. In the absence of a suitable legal agreement, the Inspector was unable to conclude that the proposed mitigation would ensure effective avoidance and mitigation as required. Therefore, having regard to the precautionary principle, it was assumed that likely significant effects would occur.
13. In determining the current proposal, the Council undertook a screening assessment and concluded that proposal would not have a likely significant effect in view of the conservation objectives of the Ashdown Forest SPA and SAC and the Lewes Down SAC, alone or in combination with other plans and projects. Therefore, the Council concluded that an appropriate assessment⁵ was not required. I return to this matter later in my Decision.

¹ Dwg No: 28576/P.05 REV:G

² Dwg No: 28516/P.06 REV:D

³ Council Ref: WD/2018/1508/MAO

⁴ Appeal Ref: APP/C1435/W/19/3223599

⁵ See Regulation 63 of the Conservation of Habitats and Species Regulations 2017

Main Issues

14. The main issues are:

- whether the proposed development would provide a suitable and accessible location for housing related development;
- the effect of the development upon the character and appearance of the area; and
- if harm arises, whether this is outweighed by other material considerations.

Reasons

Location of development

15. It is proposed to construct up to 55 dwellings at the site, which would be served by a new vehicular access adjoining the eastern side of South Street. The development would provide a mix of market housing, affordable housing and serviced plots for custom and self-build units. The affordable housing and serviced plots for custom and self-build units would be secured through a legal agreement.
16. As part of the proposed development, off-site highway improvements would be undertaken, which would include the installation of a 30mph 'gateway feature' and traffic calming infrastructure on South Street. In addition, new bus shelters would be constructed on either side of the road, whilst the existing pavement network on the eastern side of South Street would be widened to 1.5m to provide better access to and from the centre of the village.
17. Policy GD2 of the Wealden Local Plan (1998) (the 'WLP') explains that outside of development boundaries, development will be resisted unless it is in accordance with specific policies in the Plan.
18. Policy DC17 of the WLP states that housing development will not be allowed outside of development boundaries unless it conforms with other policies in the Plan.
19. Paragraph 5.91 of the WLP, which forms part of the supporting text to Policy DC17 sets out a list of exceptions where housing development in rural locations outside of development boundaries may be permitted, such as rural workers dwellings and the conversion/alteration of existing buildings. The parties agree that the proposal does not meet any of the exceptions listed.
20. Policy WCS6 of the Wealden District Local Plan Core Strategy (2013) (the 'CS') sets out the Council's spatial strategy for new housing development within the District's rural settlements. The settlement classification categorises the District's rural settlements as either a 'service centre', 'local service centre', 'neighbourhood centre' or 'unclassified settlement'.
21. As part of the spatial strategy, development boundaries set within the WLP for various rural settlements throughout the District were removed. This included the removal of the former settlement boundary at East Hoathly. The Council explain that the development boundary was removed to restrict further growth in East Hoathly.

22. Policy WCS6 makes provision for at least 455 new dwellings within settlements classified as service centres, local services centres and neighbourhood centres. To meet the housing requirement, Policy WCS6 makes allocations for additional housing at 13 of the District's rural settlements. There is no allocation for additional housing within East Hoathly.
23. The appeal site is located outside of any defined development boundary and the proposal does not meet any of the exceptions for new housing development in such locations as set out by Paragraph 5.91 of the WLP. Consequently, the proposal would not accord with Policies GD2 and DC17 of the WLP. Moreover, the proposal would conflict with the Council's spatial strategy for new housing development within the District's rural settlements as set out by Policy WCS6 of the CS.
24. Planning law⁶, as noted by paragraph 12 of the Framework, dictates that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions.
25. Chapter 5 of the Framework relates to the delivery of a sufficient supply of homes. Paragraph 60 states "to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay".
26. Paragraph 73 of the Framework explains that "the supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes)".
27. In respect of rural housing, paragraph 78 of the Framework states that "in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs".
28. Paragraph 79 goes on to state "to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby".
29. Chapter 9 of the Framework promotes sustainable transport. In this context, paragraph 105 of the Framework states "the planning system should actively manage patterns of growth in support of these objectives. 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. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making".

⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004

30. In this instance, it is not disputed by the Council that they cannot demonstrate a five-year supply of deliverable housing sites as required by the Framework. Moreover, the Council explain⁷ that there is a shortage of affordable housing within the settlement of East Hoathly. Therefore, the proposed development would meet local needs.
31. The appeal site is well located on the edge of an existing settlement, which benefits from a small range of local services including a primary school, church, village shop and a public house. These services would be accessible on foot from the appeal site via the existing pavement network along South Street, which would be upgraded as part of the development.
32. In addition, the site is located within close proximity of an existing bus service which provides access to settlements of Uckfield, Hailsham and Eastbourne, which collectively offer a range of services. The appellant explains that the service runs on an hourly basis on weekdays and Saturdays⁸.
33. As part of the proposed development, new bus shelters would be constructed on either side of South Street, which would improve the existing waiting experience for users, especially during inclement weather. This would be consistent with the objectives of paragraph 105 of the Framework.
34. Given the close proximity of local services with East Hoathly, which are accessible on foot, and the accessibility to public transport links, which would provide access to a range of services in nearby settlements, I consider that occupiers of the proposed development would have a genuine choice of transport modes to access local services and employment opportunities.
35. Nevertheless, owing to the site's rural location, the small number of local services available within East Hoathly and the limitations of the bus service, I am cognisant that occupiers of the proposed development would be reliant upon the use of a private motor vehicle for some journeys, particularly on Sundays when there is no bus service. Whilst this would be the case, the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
36. In conclusion, the proposed development would meet identified local housing needs by delivering housing on a site, which is on the edge of an existing settlement and well related to local services in East Hoathly. In addition, I have found that occupiers of the development would have a genuine choice of transport modes to access local services and employment opportunities. This would include accessing employment opportunities outside of East Hoathly by bus.
37. The Framework advises that the supply of large numbers of new homes can often be best achieved through larger scale development in such locations. Whilst I recognise that occupiers of the proposed development would be reliant upon the use of a private motor vehicle for some journeys, the Framework recognises that where there are groups of smaller settlements, that development in one village may support services in a village nearby.

⁷ Consultation response from Mark Bawden, Housing Development Officer dated 5 September 2019

⁸ Paragraph 2.4.5 of the Transport Assessment prepared by RGP dated July 2018

38. For the reasons given, and, having regard to paragraphs 60, 73, 78, 79 and 105 of the Framework, I conclude that the proposed development would provide a suitable and accessible location for housing related development. This is a material consideration which weighs in favour of the proposal. Therefore, I afford the identified conflict with Policies GD2 and DC17 of the WLP and Policy WCS6 of the CS limited weight.
39. A local steering group has drawn my attention to several appeal decisions for residential development within the settlements of Horam⁹, Halland¹⁰ and Buxted¹¹ and a decision by the Council for residential development at Ninfield¹². The respective appeals were dismissed, and the Council refused planning permission for the proposed development at Ninfield. The local steering group argue that the findings of the previous Inspectors and the Council are relevant to the current proposal. However, I am not aware of the particular circumstances in relation to these cases, and, in any event, I must consider the appeal proposal on its own individual planning merits.

Character and appearance

40. The appeal site is a large area of undeveloped land to the east of South Street. The site predominately comprises of agricultural fields with areas of woodland to the north and east site boundaries. There is an extensive area of mature woodland to the south of the appeal site, which forms the backdrop to an adjoining agricultural field that lies outside of the boundary of the appeal site.
41. Immediately to the west of the site there is a long row of residential dwellings, which are laid out in a ribbon pattern facing onto South Street. The rear gardens of the northernmost properties directly back onto the appeal site, whilst the southernmost properties are separated from the site by a paddock.
42. East Hoathly is a large village accessible via the A22 road. The village has a linear form with ribbon development located along either side of the main route¹³ through the settlement. The historic core of the village is centred along this route and falls within the East Hoathly Conservation Area (the 'CA').
43. From the historic ribbon development, the village has grown outwards on either side along the High Street/South Street. The Council explain the settlement expansion dates from the post-war period. The post-war developments are predominately low to medium density residential housing estates laid out around cul-de-sacs, which are accessed via the High Street/South Street. The post-war developments contribute to the overall settlement pattern of East Hoathly and the local distinctiveness of the area.
44. In addition to the existing post-war housing developments, the appellant explains that in July 2020 the Council's Planning Committee motioned to grant outline planning permission¹⁴ for up to 205 dwellings on land off Ailes Lane, East Hoathly, subject to the completion of a section 106 legal agreement to secure planning obligations and off-site works. It is unclear whether outline planning permission has now been granted by the Council for the residential development. Nevertheless, if the development were to go ahead, it would act

⁹ Appeal Ref: APP/C1435/W/19/3235754

¹⁰ Appeal Ref: APP/C1435/W/19/3226973

¹¹ Appeal Ref: APP/C1435/W/18/3214340

¹² Council Ref: WD/2020/1166/MAJ

¹³ Waldron Road, High Street and South Street

¹⁴ Council Ref: WD/2016/2796/MAO

to expand the northern part of the village outwards in a westerly direction from the historic ribbon development located along the High Street.

45. Overall, the village of East Hoathly has a semi-rural character which is complimented by mature trees, grass verges and high hedges and the fragmented pattern of generally modest and well-proportioned historic properties located along the main route, with significant areas of low to medium density post-war development located either side of the High Street/South Street, which are set against a backdrop of open countryside and extensive woodland.
46. The row existing dwellings located immediately to the side of the appeal site, mark the southern edge of East Hoathly. However, the dwellings are separated from the other properties on South Street by intervening open land, and, thus part of the village has a more rural character. The undeveloped nature of the appeal site contributes positively to the rural landscape which surrounds this part of East Hoathly.
47. The proposed development would introduce residential development to the rear of the existing dwellings on South Street. The overall extent of the development would be significant and it would substantially erode the rural character of the immediate area.
48. However, the appeal site is visually well contained due to its topography, which slopes downwards away from South Street to the eastern side boundary, and the extent of existing landscape features, including the areas of woodland situated along the north and east site boundaries and the extensive area of mature woodland to the south of the appeal site.
49. The indicative site layout shows that the existing woodland areas to the north and east site boundaries would be largely retained as part of the development, with replacement trees planted to mitigate against the tree loss required to facilitate the access road, whilst a 15 metre wide 'habitat buffer zone' would also be provided which would separate the proposed dwellings from the eastern woodland and northern side boundary.
50. Whilst the proposed layout is an indicative example of how the proposed development could be undertaken, it demonstrates that the overall quantum of residential development proposed at the site could be accommodated at the appeal site without the loss of the existing woodland areas, which are an important landscape feature within the local area and provide habitat for protected species. The long-term maintenance of the woodland areas and other communal landscape areas within the appeal site can be controlled by a planning condition.
51. The Council argue that the proposal would have significant impact on the settlement pattern of East Hoathly by changing a small stretch of ribbon development comprised of loosely knit dwellings in large plots, physically separate and distinct from the main village, into a significant incursion into the open countryside that does not reflect the character or grain of the adjoining development.
52. The intervening land, which separates the dwellings adjacent to the appeal site to the other dwellings on South Street, is not of such significant proportions as to result in the row of the existing dwellings located immediately to the side of

the appeal site appearing isolated and outside of the settlement of East Hoathly. Indeed, I observed on my site visit that the existing post war development to the east of South Street, such as the housing on Juziers Drive, is readily visible from the appeal site. Therefore, I do not share the Council's position that the dwellings located adjacent to the appeal site are a distinct group of buildings separate from the main village.

53. To this regard, the location and overall density of the proposed development would appear well related to the other existing post-war developments within East Hoathly, which comprise of low to medium density housing developments to the rear of the historic ribbon development along the High Street/South Street. Therefore, the proposal would respond to the local distinctiveness of the area and it would represent a logical extension to East Hoathly.
54. In conclusion, the proposed development would significantly erode the rural character of the immediate area by developing within open countryside. This loss of open countryside would be particularly apparent from South Street and from a public footpath which runs parallel with the southern boundary of the site. Therefore, the proposed development would result in harm to the character and appearance of the area. As such, the proposal would conflict with Policy GD2 of the WLP, which seeks to prevent development outside of development boundaries, particularly fringe areas on the periphery of towns and villages, to protect the rural character of the area.
55. Accordingly, the proposal would be inconsistent with paragraph 174(b) of the Framework which states that "planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside".
56. However, notwithstanding the above, I have found that the appeal site is visually well contained and that the overall quantum of the development could be accommodated at the site without the loss of important landscape features. In addition, the use of the land for residential development would respect the settlement pattern of East Hoathly.
57. To this regard, the proposed development would accord with Policy EN27 of the WLP, which, amongst other things, states that proposals for development will be permitted where the scale, form, site coverage, density and design of development respects the character of adjoining development, and, where appropriate local distinctiveness. For this reason, I afford the identified harm to the character and appearance of the area and conflict with Policy GD2 of the WLP moderate weight.
58. Interested parties argue that the proposal would conflict with an emerging Neighbourhood Plan (the 'NP') for East Hoathly. However, I have not been provided with any detailed information about the NP and the evidence before me from the Council suggests that the emerging plan has not been examined, nor has it been through the referendum process. Consequently, I attribute the plan and policies very limited weight as a material planning consideration.

Other Considerations

SPA and SACs

59. The appeal site lies about 12 kilometres from the Ashdown Forest SPA and SAC and approximately 9 kilometres to Lewes Downs SAC.

60. The Planning Practice Guidance (the 'PPG') advises that "All plans and projects which are not directly connected with, or necessary for, the conservation management of a habitat site, require consideration of whether the plan or project is likely to have significant effects on that site. This consideration – typically referred to as the 'Habitats Regulations Assessment screening' – should take into account the potential effects both of the plan/project itself and in combination with other plans or projects. Where the potential for likely significant effects cannot be excluded, a competent authority must make an appropriate assessment of the implications of the plan or project for that site, in view of the site's conservation objectives"¹⁵.
61. The proposed development is not directly connected with, or necessary for, the conservation management of a habitat site. Therefore, as the competent authority, I am required to consider whether the plan or project is likely to have significant effects on the habitat sites.
62. The PPG goes on to state that "the conservation objectives relate to each of the habitats and species for which the site was designated and will be provided in more detail by Natural England. A competent authority must consult Natural England for the purposes of the assessment and must have regard to any representations that Natural England may wish to make within a reasonable time (as specified by the competent authority). Natural England's formal advice on conservation objectives is publicly available¹⁶ for both European terrestrial sites and European marine sites"¹⁷.
63. The evidence before me demonstrates that the Council consulted Natural England before determining the planning application. Natural England did not provide any detailed comments, nor did they object to the proposed development. Instead, they referred the Council to their standing advice.
64. The Ashdown Forest SPA is designated because of the important habitat it provides the Dartford Warbler and the European Nightjar, both of which are nationally important species of ground nesting birds. The conservation objectives¹⁸ for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site continues to support the population and habitat of the Dartford Warbler and the European Nightjar.
65. The qualifying features underpinning the Ashdown Forest SAC designation are the presence of North Atlantic wet heaths, European dry heaths and great crested newts. The conservation objectives¹⁹ for the Ashdown Forest SAC can be summarised as ensuring the favourable conservation status of its qualifying features by, amongst other things, maintaining or restoring the extent, distribution, structure and function of the qualifying natural habitats and the habitats of the qualifying species.
66. The Lewes Downs SAC is designated due to its important grassland and scrubland habitats on chalk/limestone, which includes a nationally rare species

¹⁵ PPG Paragraph: 001 - Reference ID: 65-001-20190722 (Revision date: 22 July 2019)

¹⁶ See <http://publications.naturalengland.org.uk/category/6490068894089216>

¹⁷ PPG Paragraph: 002 - Reference ID: 65-002-20190722 (Revision date: 22 July 2019)

¹⁸ European Site Conservation Objectives for Ashdown Forest Special Protection Area – Site Code: UK9012181 (Natural England, 2019)

¹⁹ European Site Conservation Objectives for Ashdown Forest Special Area of Conservation – Site Code: UK0030080 (Natural England, 2018)

- of orchid. The conservation objectives²⁰ for the SAC aim to ensure that integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the favourable conservation status of its qualifying features, by maintaining or restoring the extent, distribution, structure, function of the qualifying natural habitats and the supporting processes.
67. The ground nesting birds within the Ashdown Forest SPA are particularly susceptible to disturbance from recreation and dog walking, which can include damage to the bird habitats through trampling and erosion.
68. The proposed development would facilitate a permanent increase in the number of people living within a reasonable driving distance of the SPA. Research by the Council identified that it is residents living within 7 kilometres of Ashdown Forest that are likely to visit it for recreational purposes. As set out above, the appeal site is located 12 kilometres from Ashdown Forest, which is well over the 7 kilometres radius identified by the Council. Therefore, I share the Council's position that the proposed development would not provide a pathway for recreational disturbance to the SPA, and, thus the proposal would not undermine the site's conservation objectives.
69. Both SACs are vulnerable to habitat deterioration because of the effects of air pollution on air quality. The exceedance of critical values for air pollutants, such as atmospheric nitrogen, can change the chemical substrate of the soil, which may accelerate or damage plant growth, altering the vegetation structure and composition of the protected habitats. Emissions from motor vehicles within the vicinity of the habitat sites can provide a pathway for the deposition of air pollutants within the soil.
70. Supporting technical documentation²¹ provided by the appellant explains that approximately 15% (46 trips) of the daily vehicle trips generated by the development are likely to route along the A22 past the Ashdown Forest. Whilst about 29% (84 trips) of the daily vehicle trips generated by the development are likely to route along the B2192, which may reach the stretch of the road adjacent to Lewes Downs. However, these figures were calculated in relation to original proposal, which sought outline permission for up to 74 dwellings.
71. In any event, the Council explain that Natural England were satisfied that development proposed under the recently withdrawn local plan, which sought to deliver approximately 14000 homes and 22,500 square metres of business floorspace, would not adversely affect the integrity of Ashdown Forest SAC, Lewes Downs SAC and Pevensy Levels SAC and Ramsar from air quality impacts. Whilst the local plan has now been withdrawn, the recent findings of Natural England with regards to air quality, which includes atmospheric nitrogen, remains a material consideration.
72. In addition to the above, the Natural England's respective supplementary advice documents on conserving and restoring site features of the Ashdown Forest SAC and Lewes Downs SAC explain that an assessment of improvements in vehicular technology and in particular Euro6/VI standards that all vehicles are currently being manufactured to, will outweigh impacts from new development. The improvements will be marginally retarded by additional

²⁰ European Site Conservation Objectives for Lewes Down Special Area of Conservation – Site Code: UK0012832 (Natural England, 2018)

²¹ Report to Inform a Habitats Regulation Assessment – Prepared by Aspect Ecology (Ref: 1005444 HRA dv1/DM)

development but future nitrogen deposition and concentration will continue to decline with the existing trend. Additionally, modelling has identified that the habitat mostly affected by increases in nitrogen, oxides of nitrogen and ammonia from vehicular impacts is woodland, which is not a designated feature of the SACs.

73. For the reasons given, based on the evidence before me, when considered on its own or in combination with other projects and plans, I conclude that the potential for likely significant effects on the integrity of the Ashdown Forest SPA and SAC and the Lewes Downs SAC in view the respective site's conservation objectives can be excluded. Therefore, I agree with the Council's position that an appropriate assessment is not required.
74. I am cognisant that my findings are different to the previous Inspector. However, I am unaware of the full circumstances of the previous appeal. Moreover, my findings are based on the evidence before me in respect of the current proposal.

Planning obligations

75. The appellant has submitted a completed section 106 legal agreement during the appeal process. The legal agreement is a completed unilateral undertaking and makes provisions for 35% of the dwellings of the proposed development to be provided as affordable housing. Given that all matters except for access are reserved at this stage, the type, tenure, mix and location of the affordable housing units will be agreed with the Council at a later date as part of an affordable housing scheme.
76. The affordable housing provisions accord with the requirements of Policy AFH1 of the Wealden District Council: Affordable Housing Delivery Local Plan (2016) which requires new housing development of 5 dwellings or more to provide 35% of the number of dwellings as affordable housing units.
77. The legal agreement also makes provisions for 5% of the dwellings of the proposed development to be made available as serviced plots for custom and self-build units. I have not been directed to any development plan policies related to custom and self-build housing. Nevertheless, the Council have a legal duty²² to grant planning permission for enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. In this instance, the Council explain that they have a shortage of suitable serviced plots to meet the demand for self-build and custom housebuilding within the District. This has not been disputed by the appellant.
78. In addition to the above, the legal agreement makes provisions for a travel plan and for a financial contribution towards the provision, installation and maintenance of off-site youth and adult recreation space.
79. The travel plan information pack seeks to promote a modal shift away from the use of private motor vehicles, which accords with the environmental objectives of sustainable development as set out within Policy WCS14 of the CS and Policies EN1 and EN2 of the WLP.
80. The financial contribution towards the provision, installation and maintenance of off-site youth and adult recreation space is calculated using a formula based

²² Section 2 of the Housing and Planning Act of 2016

on the number of bedrooms provided by the development. The contributions arise from Policies LR3 and LR5 of the WLP.

81. Having regard to Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and paragraph 57 of the Framework, I am satisfied, that the planning obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.

Other Matters

82. No substantive evidence has been put forward which demonstrates the proposal would place harmful pressure on local infrastructure, including school places and the doctor's surgery. Nevertheless, the Council explain that the development would be liable for a CIL payment, which can be used by the Council to deliver infrastructure improvements.
83. Concerns have been expressed by local residents about the management of surface water and the impact of the development on an existing water course which runs through the appeal site. The Lead Local Flood Authority have raised no objection to the proposal and suggest that detailed drainage matters are dealt with by planning conditions. I see no reason why it would be inappropriate to follow this course of action in this appeal; especially as substantive evidence has not been provided to demonstrate the scheme could not address current policy expectations.
84. Concerns have been raised with regards to the capacity of existing utilities serving the area including electricity, gas, foul drainage and broadband. However, I note that the providers of such utilities and services have not raised any concerns or objections on this basis. Moreover, I have not been presented with any compelling evidence that such utilities would not be able to cope or be unable to be upgraded in order to meet the greater demands placed on their services by the proposed development. Accordingly, I see no reason why it would be inappropriate to impose conditions relating to the provision of foul water drainage as suggested by the Council.
85. The Local Highway Authority (the 'LHA') have assessed the proposal and raised no objection. I have no reason to disagree with the LHA in respect of this matter and I am satisfied that the drawings demonstrate the proposal would not be prejudicial to highway and pedestrian safety.
86. Several Ecological Appraisals^{23,24,25} were submitted as part of the application which collectively set out the mitigation and enhancement measures that are to be undertaken as part of the development. This includes the retention of the existing areas of woodland, which support protected species. Substantive evidence is not before me that demonstrates I should not rely on the conclusions of the report, which was prepared by a suitably qualified ecologist and reviewed by the Council.
87. The appeal site is located near to an existing water treatment works. An odour assessment was submitted by the appellant as part of the planning application.

²³ Bat, Great Crested Newt and Reptile Survery Report – Prepared by D F Clark Bionomique Ltd (Ref: DFCP 3990)

²⁴ Extended Phase 1 Habitat Survey Report – Prepared by D F Clark Bionomique Ltd (Ref: DFCP 3990-01)

²⁵ Ecology Addendum Report: European Protected Species Surveys - Bats and Hazel Dormouse Assessment. Scoping Exercise as part of an Appropriate and Proportionate Assessment – Prepared by D F Clark Bionomique Ltd (Ref: DFCP WD/2018/1508)

The report demonstrates that odours emitted from the treatment works are expected to be below the relevant odour nuisance thresholds across the majority of the application site. On that basis, the Council have concluded that future residents of the proposed development are not expected to be exposed to unacceptable odour concentrations. Given that the report was prepared by a suitably qualified person, and, that no contrary technical evidence is before me, I have no reason to disagree with the Council's assessment. Moreover, consultation can be undertaken with the relevant statutory undertaker at reserved matters stage when the precise layout of the development is known.

88. The appeal site falls outside of the CA, which lies to the north-east of the appeal site and includes the historic core of the village. In determining the application, the Council concluded that the proposal would preserve the setting of the CA. Based on my site visit, which also included a consideration of the separation distance between the site and the CA and the quantum of the development proposed, I have no reason to disagree with the Council in respect of this matter.
89. Nearby residents contend that the proposed development would result in overlooking of their properties, which would cause an unacceptable loss of privacy. Whilst the layout of the proposed development is a reserved matter at this stage, I am satisfied that appropriate separation distances between the proposed dwellings and neighbouring properties can be achieved at the site. Therefore, I agree with the Council's position that the quantum of development proposed can be delivered at the site without causing harm to the living conditions of the neighbouring occupiers.
90. Local residents state that there was a lack of community engagement by the appellant prior to the submission of the planning application. Whilst this may or may not be the case, I have considered this appeal proposal on its individual planning merits only and have concluded that it would be acceptable for the reasons set out above.
91. Concerns have been raised by local residents about the impact of the proposed development upon air quality within the local area. However, no such concerns were raised by the Council. Moreover, no substantive evidence has been put forward which demonstrates the proposal would put existing development at unacceptable risk from unacceptable levels of air pollution.

Planning Balance and Conclusion

92. I have found that the location of the proposed development would conflict with Policies GD2 and DC17 of the WLP and Policy WCS6 of the CS. Moreover, I have concluded that the proposed development would cause moderate harm to the character and appearance of the area, and, as a result the proposal would conflict with Policy GD2 of the WLP. Consequently, the proposal would conflict with the development plan as a whole.
93. As the Council is unable to demonstrate a five-year supply of deliverable housing sites, the tilted balance contained in paragraph 11(d) of the Framework is engaged. For decision making this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

94. The proposal would deliver up to 55 dwellings, which would make a sizeable contribution to the current shortfall. Of those new homes, 35% would be affordable housing, whilst 5% would be made available as custom and self-build plots. Given the extent of the Council's housing shortfall, the lack of suitable serviced plots to meet the demand for self-build and custom housebuilding within the District and the local need for affordable housing within East Hoathly, I afford these benefits significant weight in the planning balance.
95. In addition, off-site highway improvements would be undertaken as part of the proposal, which would benefit the wider community of East Hoathly by providing improved road conditions and bus stop infrastructure at the southern end of the settlement.
96. There would also be some limited benefits to the construction industry and the vitality and viability of local services within East Hoathly and nearby settlements from the spend of future occupiers, as such the proposal would have social and economic benefits. These matters attract limited weight in the planning balance.
97. The proposed development would minimise impacts on and provide net gains for biodiversity, as set out with the ecological appraisals submitted with the planning application. The mitigation and enhancement measures that are to be undertaken as part of the development could be secured by a planning condition. Given that the development would be undertaken on undeveloped land within the open countryside, this matter attracts limited weight in the planning balance.
98. The provision of a financial contribution and commitments towards the provision, installation and maintenance of off-site youth and adult recreation space and a travel plan are required to mitigate the effects of the development and to meet minimum policy requirements. Accordingly, these matters attract neutral weight.
99. On the other hand, the proposal would cause harm to the character and appearance of the area and the loss of agricultural land. However, for the reasons given above, I have found that the degree of harm caused to the character and appearance of the area would be moderate. Moreover, the loss of agricultural land would not be significant in the context of the surrounding rural area. Harm is also caused by the proposal's conflict with the Council's spatial strategy for new housing development within the District's rural settlements, which results in conflict with Policies GD2 and DC17 of the WLP and Policy WCS6 of the CS. Nevertheless, for the reasons given above, and when having regard to paragraphs 60, 73, 78, 79 and 105 of the Framework, I afford this collective harm limited weight.
100. Overall, I conclude that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is a material consideration which indicates that planning permission should be granted.
101. I afford this matter significant weight in the overall planning balance and find that it outweighs the conflict with the aforementioned development plan policies. Accordingly, planning permission should be granted for the proposed development.

Conditions

102. The Council have suggested 24 conditions which I have considered against the tests as laid out in paragraph 56 of the Framework. In the interests of consistency and precision, I have amended the wording of some of the conditions.
103. Outline planning permission is granted subject to the conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty. I have not included the indicative plans within this list.
104. The County Archaeologist indicates that the site has low to moderate potential to contain evidence related to medieval farming practices, and a high potential to contain evidence related to post-medieval farming. To mitigate the risk of damage to archaeology, I have imposed conditions relating to the implementation of a programme of archaeological works, which includes a post investigation assessment.
105. Due to the scale of the development and the proximity of neighbouring residents, it is necessary to impose a condition requiring a Code of Construction Practice to be agreed with the Council and the development constructed accordingly. The Council have suggested a separate condition relating to the control of noise and dust. However, I see no reason why these details cannot be incorporated into the Code of Construction Practice. To ensure that the interests of neighbouring residents are safeguarded during the entire construction period, it is necessary for the details of the Code of Construction Practice to be agreed prior to the commencement of development.
106. Similarly, it is necessary to impose a condition to restrict the hours of construction and deliveries, in order to limit noise disturbance in the evenings and at weekends.
107. Due to the presence of made ground at the appeal site, it is necessary to impose a condition relating to the investigation, and if required, the remediation of contaminated land. To ensure that such risks are appropriately managed, it is necessary for these details to be agreed prior to the commencement of development. In the interest of precision, I have amended the Council's suggested wording.
108. To protect the living conditions of adjoining occupiers, it is necessary to impose a condition requiring the development is undertaken in accordance with the measures set out within the Air Quality Assessment.
109. In the interest of ecology and biodiversity, it is necessary to impose conditions to secure the recommended biodiversity enhancement and mitigation in respect of protected species, which includes the details of the 15 metre wide habitat buffer zone, a wildlife management plan and details of native planting along the western boundary. To safeguard protected species, it is necessary for the details to be agreed prior to the commencement of development.
110. The Council have suggested a condition to prevent the installation and operation of all types of external illumination of the appeal site. The reason given for the condition is to preserve the rural character, residential amenities and protect the habitat for bats. I consider that this approach, which would

prevent the installation of all types of external illumination throughout the entire appeal site to be unreasonable because it would prevent instances where limited external illumination may be acceptable. Therefore, I have amended the wording of the condition to allow for applications for external lighting to be considered on a case by case basis.

111. The Council have suggested a condition relating to the submission of a landscape management plan. However, landscaping is a reserved matter at this stage. Accordingly, I have not imposed this condition because such matters can be agreed at reserved matters stage.
112. In the interests of highway safety, it is necessary to impose conditions relating to the construction of the new vehicular access onto South Street and the new estate roads within the development. In addition to the above, I have imposed a Grampian condition relating to the delivery of the off-site highway improvement works. This approach has been recommended by the LHA and I am satisfied that all of the actions in question can be performed within the time-limit imposed by the permission.
113. This approach is consistent with the PPG which states that "It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990. In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation"²⁶.
114. As set out within the other matters, I have imposed conditions relating to foul and surface water drainage.
115. To safeguard trees and other landscape features at the appeal site, it is necessary to impose a condition which prevents the felling, topping, lopping or destruction of existing trees and/or hedgerows without the written consent of the Council. Similarly, I have imposed a condition which requires a full arboricultural method statement to be submitted with the reserved matters application.

Conclusion

116. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Christopher Miell

INSPECTOR

²⁶ PPG Paragraph: 011 - Reference ID: 21a-011-20140306 (Revision date: 6 March 2014)

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Number: PP04 (Red Line Boundary); Drawing Number: 28516/P.07 REV:D (Topographical Survey); Drawing Number: PJC/4359/17/A REV:01 (Tree Constraints Plan); Drawing Number: 2016/3336/007 REV:B (Proposed Off-Site Works); Drawing Number: 28516/P.06 REV:D (Site Plan – Land Use); and Drawing Number: 2016/3336/001 REV:F (Access Visibility Splays and Swept Path Analysis).
- 5) No development shall commence until a Code of Construction Practice has been submitted to and approved in writing by the local planning authority. The Code of Construction Practice shall include:
 - details of good practice measures for site working to mitigate potential impacts from construction including protection of retained features and surface water bodies on or adjacent to the site, control of run-off, application of design controls for construction equipment and construction vehicles;
 - vehicle routing including the anticipated number, frequency and types of vehicles used during construction;
 - the method of access and egress of vehicles during construction, including temporary access and turning provision;
 - parking of vehicles by site operatives and visitors;
 - the loading and unloading of plant, materials and waste, wheel washing facilities, sheeting of lorries during transportation of construction materials and any other works required to mitigate the impact of construction upon the public highway;
 - provision of water sprays during delivery and dumping of sand and gravel;
 - the storage of plant and materials used in construction of the development;
 - the erection and maintenance of security hoarding;
 - mixing and batching on wet rather than dry aggregate materials;
 - minimum drop heights to be used for continuous and batch drop activities and waste disposal; and
 - a scheme for the control of noise and dust

The relevant works shall be carried out in accordance with the approved details throughout the entire construction period.

- 6) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 28 days of the report being completed and approved in writing by the local planning authority.
- 7) Notwithstanding the off-site works shown on approved drawing number: 2016/3336/007 REV:B, no development shall commence until such time as a technically accepted scheme for off-site highway works, which shall include a 30 mph speed limit gateway feature, traffic calming features, footway enhancements and bus stop infrastructure, and, details incorporating the recommendations given in a Stage 2 Road Safety Audit and accepted in the Designers Response, have been submitted to and approved in writing by the local planning authority. The off-site highway works shall be carried out in accordance with the approved details and no dwelling hereby permitted shall be occupied until the works have been completed in accordance with the approved details.
- 8) No development shall take place until a scheme for the enhancement of the site for biodiversity purposes, which shall include the provision of a 15 metre buffer to the ecological corridor feature including supplementary native species tree, shrub and seeding/planting; maximising the retention of wet grassland habitat to the northwest of development, minimising encroachment of the access road and development in the northern part of the site with no built development provided to the north and north west of the proposed access road, and the provision of timescales for implementation and future management, has been submitted to and approved in writing by the local planning authority. The approved scheme of enhancements shall be implemented in accordance with the approved details.

All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others

of similar size and species, unless the local planning authority gives written consent to any variation.

- 9) No development shall take place until a wildlife management plan, which shall include as appropriate detailed proposals for the protection of dormice, bats, birds, reptiles, great crested newts and badgers, and, measures for the mitigation of any harm to them likely to be caused by the development, has been submitted 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 detailed proposals for the planting of native trees, hedges and/or shrubs for screening of not less than 3 metre depth along the western boundary of the site have been submitted to and approved in writing by the local planning authority, and such trees or shrubs as approved shall comprise primarily native species.

All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

- 11) Demolition or construction works shall take place only between 08:00 and 18:00 on Mondays to Friday, 08:00 to 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 12) Deliveries shall take place only between 08:00 and 18:00 on Mondays to Friday, and shall not take place at any time on Saturdays, Sundays or on Bank or Public Holidays.
- 13) No works below ground level shall take place until the implementation of a programme of archaeological works has been secured in accordance with a written scheme of investigation, including a timetable for the investigation, which has been submitted to and approved in writing by the local planning authority. The works shall be undertaken in accordance with the approved details. A written record of any archaeological works undertaken shall be submitted to the local planning authority within three months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is first agreed in writing with the local planning authority.
- 14) The development hereby permitted shall not be brought into use until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Condition No 13 and that provision for analysis, publication and dissemination of the results and archive deposition has been secured.

- 15) The development hereby permitted shall not be brought into use until details of all operational phase air quality mitigation measures has been submitted to and approved in writing by the local planning authority. The mitigation shall be equal to a value identified in the emissions mitigation assessment contained within the Air Quality Assessment (17 July 2018) prepared by Phlorum Limited (Document Ref: 7876A AQ fnl.docx).
- 16) No works below ground level shall take place until a scheme for the provision and implementation of foul drainage works has been submitted and approved in writing by the local planning authority. The scheme shall include details of any requirement to upgrade existing infrastructure sufficiently to provide capacity for the new development. No dwelling hereby permitted shall be occupied until the approved foul drainage works have been completed in accordance with the approved details.
- 17) No works below ground level shall take place until full details of surface water drainage and a programme for its implementation, which shall follow the principles of sustainable drainage has been submitted to and approved in writing by the local planning authority.

The surface water drainage details shall include:

- a) surface water runoff from the proposed development shall be limited to the greenfield runoff rates for rainfall events with an annual probability of occurring greater than 1 in 2.33 and 14.7 l/s (Qbar) for rainfall events with an annual probability of occurrence less than 1 in 2.33, including those with a 1 in 100 (plus climate change) annual probability of occurrence. Evidence of this (in the form of hydraulic calculations) shall be submitted with the detailed drainage drawings. The hydraulic calculations should take into account the connectivity of the different surface water drainage features;
- b) the details of the outfall of the proposed attenuation pond and how it connects into the watercourse/sewer/drain shall be submitted as part of a detailed design including cross sections and invert levels;
- c) the detailed design of the attenuation pond shall be informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1 metre unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. In the event this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system shall be provided; and
- d) details of the measures proposed to manage exceedance flows shall be submitted to the Local Planning Authority. This should also include details of how the existing overland surface water flows have been retained.

Evidence (including photographs) shall be submitted to the local planning authority showing that the drainage system has been constructed as per the final agreed detailed drainage designs.

No dwelling hereby permitted shall be occupied until the approved surface water drainage works have been completed in accordance with the approved details.

- 18) Prior to the construction of the outfall, a survey of the condition of the ditch/ordinary watercourse which will take surface water runoff from the development shall be investigated. Results of the survey including any required improvements to the condition of the watercourse shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to acceptance of the surface water from the development.
- 19) Details for the long term maintenance arrangements for any parts of the drainage system which will not be adopted (including ponds, ditches, swales, permeable paving, land drains) shall be submitted and approved in writing by the local planning authority prior to the first occupation of any of the dwellings hereby permitted. The submitted details should specify the responsibilities of each party for the implementation of the drainage scheme, a timetable for implementation, provide a management plan and maintenance plan for the lifetime of the development which should include arrangements for adoption by any public authority or statutory undertaker and any other arrangement to secure the operation of the scheme throughout its life time. The management and maintenance arrangements shall be carried out in accordance with the approved details and thereafter remain in place for the lifetime of the development.
- 20) There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways. Prior to being discharged into any watercourse, surface water sewer or soakaways system, all surface water drainage from the parking areas and hardstandings shall be passed through trapped gullies and silt traps with an overall capacity compatible with the site being drained and shall be retained thereafter.
- 21) If external lighting is to be used within the development or during any part construction phase, prior to installation and operation, full details of the external lighting shall be submitted to and approved in writing by the local planning authority. Any such development shall be carried out in accordance with the approved details.
- 22) No development shall commence above ground level until details of the access road to the site from South Street, to include new kerbs, alterations to the existing footway and surfacing material, have been submitted to and approved in writing by the local planning authority. The position of the access shall be in the position shown on the approved plan: 2016/3336/01 REV:F. The access shall be provided in accordance with the approved details prior to the first occupation of the development hereby permitted.

Before preparation of ground levels for the development approved by this permission, detailed plans, including levels, sections and constructional details

of the proposed roads, surface water drainage, foul sewers, outfall disposal and street lighting to be provided, shall be submitted to the local planning authority and be subject to its approval. Any such development shall be carried out in accordance with the approved details and retained as such thereafter.

No development shall take place above slab level until details of the standards to which the new estate roads serving the development are to be constructed have been submitted to and approved in writing by the local planning authority. The details shall include the timing of the construction of the estate roads and its phasing in relation to the occupancy of the approved housing.

The estate roads shall be constructed in accordance with the approved details, and the works shall be carried out before the development [or relevant phase of development] is occupied.

- 23) No trees and/or hedgerows on the site, unless dead or dangerous, shall be felled, topped, lopped or destroyed without the consent in writing of the local planning authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the local planning authority:-
- (i) Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
 - (ii) No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
 - (iii) No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
 - (iv) No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction - Recommendations.
 - (v) No vehicles shall be driven over the area within the approved protection zone of the tree or hedgerow.
 - (vi) No materials or equipment shall be stored within the approved protection zone of the tree or hedgerow as per the requirements of British Standard 5837:2009 'Trees in Relation to Construction'.
- 24) An Arboricultural Method Statement shall be submitted with the reserved matters application and shall include numbering and detailing of trees, confirming root protection areas, routing of service trenches, overhead services and carriageway positions and any details of no dig techniques along with associated use of geotextiles and an indication of the methodology for necessary ground treatments to deal with compacted areas of soil. The works shall be implemented in accordance with the approved details.

*****End of Conditions*****