



Mid Sussex District Council
Oaklands Road
Haywards Heath
RH16 1SS

25 March 2025

Re: Outline application for Land at Colwell Farm Lewes Road under reference DM/25/0445

Dear Ms Fisher,

I write in connection with the above planning application. My family live in one of the properties close to the site.

By way of background, I have worked with a number of community organisations in Sussex and Hertfordshire providing support and technical advice in relation to planning. I have made successful representations on planning policy that have resulted in changes of policy at district and national level.

I have a particular interest in development that has an impact on residential amenity, the natural environment, and heritage assets. In 2018, I won a Judicial Review case against Welwyn Hatfield Council on development matters in relation to the preservation of heritage assets.

I write to object to the application by Miller Homes on the basis that the proposal is incompatible with the applicable local and national plan policies. I appreciate that Miller Homes has tried to reduce the impact of their scheme and have made some changes based on feedback from families living nearby. Unfortunately these changes are not sufficient to mitigate the harms that the development will cause. Should the developer be willing to make further adjustments, this could make the scheme more acceptable - both to local families, and in respect of planning policy.

I ask officers to consider the key facts about this development. These facts are all relevant to planning and they are not disputed by the applicant. As such, they are matters that must be given significant weight in any planning decision impacting the site.

1. The site is not allocated for housing in the adopted Mid Sussex District Plan 2014-2031.
2. The site is not allocated for housing in the adopted Haywards Heath Neighbourhood Plan 2016.
3. The site was promoted for inclusion in the adopted Site Allocations Development Plan 2022, but was not selected as other sites were deemed more suitable.
4. The site was promoted for inclusion in the emerging Draft Mid Sussex District Plan 2021-2039. It was not selected for inclusion as other sites were deemed more suitable.
5. The site has extremely high ecological value. It contains a number of rare, endangered and priority species. A number of these species are protected in law - these include:
 - a) Hazel Dormice - a European Protected Species (EPS) species protected under the Conservation of Habitats and Species Regulations 2017. It is also protected under the

Wildlife and Countryside Act 1981 and is listed as a rare and most threatened species under Section 41 of the Natural Environment and Rural Communities Act (2006)

- b) Grass Snakes - protected in the UK under the Wildlife and Countryside Act 1981 and a Priority Species under the UK Post-2010 Biodiversity Framework
- c) Barbastelle bats – the bats and their habitat are safeguarded under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017
- d) Badgers - protected under the Protection of Badgers Act 1992

6. The primary benefit of the development is contribution to housing numbers. But due to ecology constraints the maximum number of houses has reduced to 80 or less. This is significantly less than when the site was evaluated as part of the SHELAA (150 houses.) The site benefit at 150 houses were not sufficient to warrant selection, and the benefit has now reduced substantially.

7. Development of the site will cause harm to the Lewes Road Conservation Area.

8. Development of the site will require the loss of at least 20 mature trees, including several in the Conservation Area. A number of these trees may be considered 'veteran' trees and as such have status in the NPPF. The majestic tree in the garden of North Colwell Farmhouse is one example. Removal of this volume of trees is unprecedented and would not normally be allowed.

9. Requests for tree removal in this Conservation Area have previously been refused with exceptions being granted only where trees have died or pose a danger. Officers have previously noted the amenity and wildlife value that such trees provide. An example of this is case DM/16/0430.

10. The development will cause harm to heritage assets adjacent to the site, specifically Colwell House (grade 2 listed) and North Colwell Barn.

11. The site has poor connectivity for walking and cycling. Walking routes proposed by the developer include un-made, unlit footpaths. Trips made on foot would involve crossing a 40mph road, where traffic data collected as part of the campaign to install speed signs show that 40% cars travel 10% over the speed limit, with speeds of 53mph recorded in the 30mph zone.

12. The site is distant from services. The nearest bus stop, school and shops are over 1km away. This combined with the poor quality footpaths will lead to nearly all journeys being made by car contrary to local plan and NPPF policies (recently cited in the Wellhouse Lane appeal.)

13. The developer will be required to gain a licence from Natural England for their proposal given the impact on European Protected Species, and has not yet done so. It is uncertain whether such a licence will be granted and this fact is a material consideration which officers must consider. I ask officers to consider Judicial Review case CO/5712/2014 J Patterson ref R Westerleigh v Aylesbury Vale DC which is a marquee judgement in this area.

14. Mid Sussex has a 5-year land supply. This was recently confirmed in appeal case APP/D3830/W/24/3344963. Further, Mid Sussex has allocated several thousand homes in the emerging District Plan which carries significant weight having passed the Regulation 19 stage.

15. The site is neither Brownfield or Grey-field.

16. The site is outside the built up area boundary and is classed as a countryside.

17. The site has previously been identified in planning policy as contributing to the Local Gap and preventing coalescence of towns.

18. A similar application to develop on adjacent land at North Colwell Barn (DM/23/1860) was refused. Previous applications for development at this site were refused and this has been upheld on appeal.

19. The local primary school which the promoter refers to is full as confirmed by consultee response already filed. There is no agreed provision for primary age children who might live at the proposed site.

20. Travel on foot to and from the site to any nearby amenity will be lengthy (> 1km) and difficult requiring two crossings of a major road, one a 40 mph stretch, and use of poorly made or un-made paths throughout.

21. There is no public or political support for this development. It is opposed by local residents and local councilors at both Town and District level.

22. All public responses to date have been to object to the development.

Further to this, there appear to be errors and omissions in the materials submitted in support of the application, some examples:

1. The ecology report has a number of gaps and omissions as noted in responses filed by other parties.
2. The transport assessment has a number of errors and assumptions, for example incorrect walking distances, selective approach to speeding data, and arbitrary selection of recent accident data. I understand a further detailed transport study is being submitted by residents on this point.

For these reasons, the proposed is contrary wholly or in part with the following planning policies:

1. Adopted District Plan

- a) Policy DP35 which relates to development in the countryside outside the build-up area boundary
- b) Policy DP34 which relates to protection of the rural character of the area
- c) Policies DP21 and DP32 that promote safe and active travel

2. Haywards Heath Neighbourhood Plan

- a) Policy E9 of the Neighbourhood plan - which pertains to development outside the urban area boundary
- b) Policy E5 - which restricts development in the Local Gap - noting that the subject site is clearly designated in the associated map which forms part of the adopted policy
- c) Policy E5 - which requires that development does not “unduly erode the landscape character of the area of its ecology”

I note that there have been several objections to the application which include; a thoughtful analysis of the application by CPRE; a detailed ecological study which correct omissions in the applicants submission; and a detailed transport assessment which corrects a number of errors and omissions in the transport proposal.

I urge officers to give these representations full consideration and to re-consult with the appropriate experts where needed. I note that planning procedure requires all representations to be given equal consideration, irrespective of who provides them.

In addition to the good and valid points raised by others, I also ask officers to consider a number of matters which are detailed on the following pages. In particular I ask officers to consider the recent planning appeal judgement for Wellhouse Lane in Burgess Hill, and one Judicial Review case relating to the actions planning officers need to take with regard to protected species.

In the spirit of collaboration, I would like to offer two suggestions to the developer that would dramatically improve their proposal.

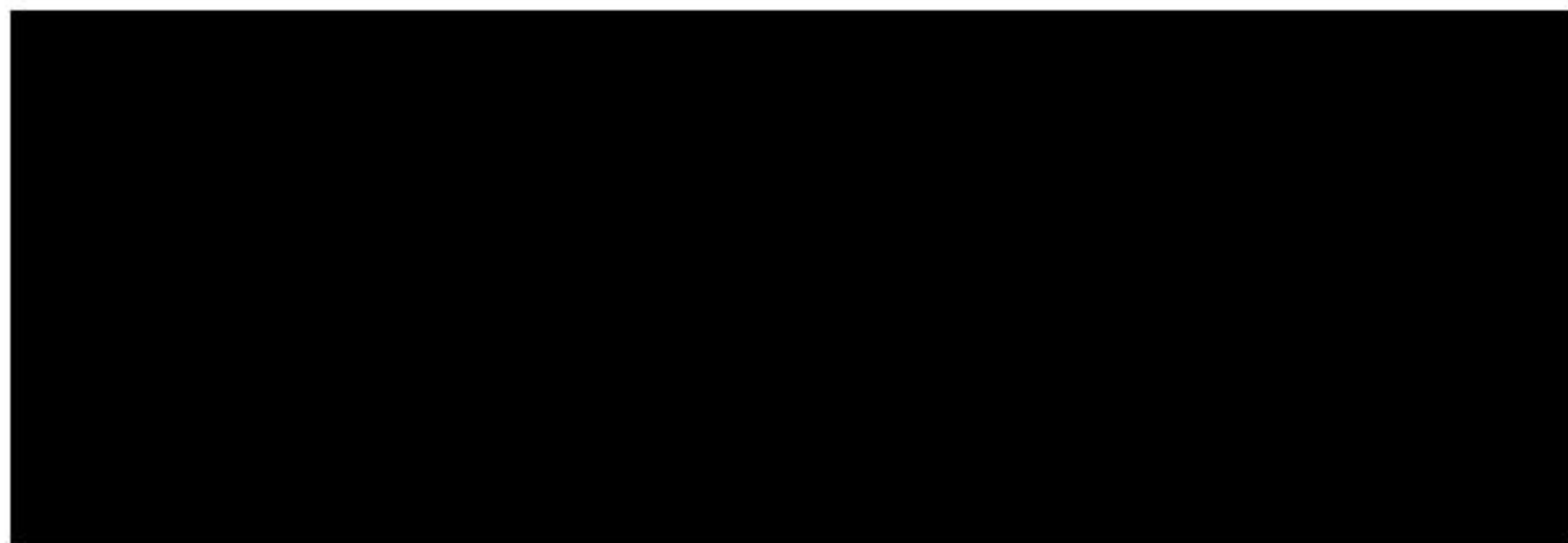
First, Miller Homes should work with local bus operators to bring back into use the bus stop further East on Lewes Road near to 108 Lewes Road (Colwell House).

Second, the land currently marked as public space and allocated for a playground should be turned instead into a local Nature Reserve. A fenced off space that provides a safe haven for the protected species found at the site. Information boards located around the site could provide a useful educational resource for use by local schools.

The above suggestions would command support from the local community, and the creation of a nature reserve would offer something genuinely different to enrich the lives of the children of our community. If the developer wishes to modify their application as such, I know there are local community groups who would be happy to partner on creating and maintaining the nature reserve.

However in its current form, it appears to me that this application conflicts with several policies in both local and national plans. Should officers be minded to approve the site I encourage them to implement conditions that will: protect the amenity of local residents; preserve the rare and important wildlife at the site, and ensure that the location of the playground and planting provided for in the indicative plans is respected and cannot be diminished in future applications.

Yours faithfully

A solid black rectangular box used to redact the signature and name of the sender.

Recent Appeal at Wellhouse Lane reference APP/D3820/W/24/3344963

In the recent appeal at Wellhouse Lane Burgess Hill reference APP/D3820/W/24/3344963 the inspector confirms that Mid Sussex has a five-year-land-supply.

Further the Inspector notes that the adopted plan is not out-of-date and thus concludes that paragraph 11(d) of the NPPF does not apply.

Officers should give due regard to this appeal decision as it is very recent and covers matters that are directly relevant to the Colwell Farm site.

Consistency of the Adopted plans with the NPPF

Miller Homes argue that the adopted plan policies are in conflict with the NPPF. The evidence does not support this point.

The Site Allocations Plan - which provided updates to the adopted plan - was reviewed by the Inspector in 2022. The Inspector found no conflict with the NPPF with the exception of elderly persons housing; a matter that was addressed by way of a material modification.

In the recent appeal at Wellhouse Lane the Inspector confirmed that the the adopted plans are consistent with the NPPF adding weight to the view that the adopted plan policies are up to date.

This is relevant to the application for Colwell Farm because the policies that were relevant at Wellhouse Lane - specifically those restricting development in countryside sites - are the same ones that need to be considered in the application by Miller Homes.

It would be perverse for officers to support the applicants view that the same policies are in conflict with the NPPF when the Inspector found no conflict as recently as Feb 2025.

In addition, the emerging plan updates a number of policies to align with the latest version of the NPPF. In updating the plan, the emerging plan policies on countryside development remain consistent with the current adopted plan and have been updated to reflect the required due to changes in the NPPF.

Reference should also be made to the application for development at North Colwell Barn. This scheme was recently refused, and previous refusals were upheld on appeal. This again adds weight to the position that the current plan policies should carry full weight in any decision.

For the above reasons, the argument that the current adopted plan policies are in conflict with the NPPF is false. It follows that such arguments should be afforded low weight in the planning decision for this site.

Weight Given to Plan Consultation Documents

The applicant argues that weight should be given to the fact that the site made it to stage three of the site selection process.

However, the applicant also wishes to set aside the conclusions of the same selection process whereby the site was not selected.

These arguments cannot be given any weight in the planning decision for five reasons:

First, such cherry picking is not consistent. A Local Plan exists as a whole document and the Regulation 19 text must be considered as a whole. It may be convenient for an applicant to select the parts of any plan that support their view, and discard those that do not, but this is not the correct basis for decision making.

Second, the consultation was made on data that is now shown to be incorrect. The data provided in respect of transport distances is incorrect and the correct distances would lead to a lower score in selection. Of greater importance, is the fact that BNG cannot be achieved at the site. Had this been disclosed during the selection process then the site score would also have been lower. Both factors would have resulted in the site not making it to stage 3.

Third, the yield of the site was stated in excess of 100 houses in the allocation exercise (originally 150.) This has now been reduced to 80 or less. Thus the value of the site to achieve the District annual housing target is diminished and so the site is less attractive in respect of meeting the housing need. This change may have impacted the decision to proceed to stage 3 and certainly makes the site less attractive in terms of the overall policy aims.

Fourth, the site selection method and consultation documents do not form part of the adopted plan, or the emerging plan document. Consultation documents do not have a formal status in planning and carry very limited (perhaps zero) weight.

Fifth, the stage three selection is contested. It is contested by the site promoter who believes the site should have been selected. It is also contested by residents who have made equal arguments that the site should not have proceeded to stage three, for some of the reasons noted above. Planning guidance makes clear that where a position is conflicted it must be given low weight in the decision making process.

Weight Given to Emerging Plan Policies

The NPPF provides guidance on the weight to be given to emerging plans in para 49:

“Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);
- and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)”

In practice, emerging plans that have passed Regulation 19 are considered to be advanced. Such plans qualify as a material consideration and the policies contained within them can be given significant weight in planning decisions.

In respect of the subject site, the planning policy in the emerging plan is consistent with the current adopted plan and there is no conflict with respect to the current NPPF. This consistency of the policy adds weight to the emerging plan policy.

In respect of the position of this site in the emerging plan:

The Colwell Farm site is *not* included in the emerging plan - which is consistent with the adopted plan, and the adopted allocations document. However the emerging plan *does* allocate sites for several thousand homes utilizing sites that were considered more suitable. These matters have been subject to three rounds of consultation and the position has not changed.

The above facts support a decision to refuse permission for this application. Further, they confirm that the LPA will be able to extend land supply to ensure that the 5Y requirement will be met in future.

NPPF on Natural Environment

Officers will need to consider the NPPF guidance on the Natural Environment.

Paras 187(d), 192(b), 193(c) outline requirements in relation to bio-diversity. They require that significant weight is given to protection of rare ecological features and protected species. Officers should consider whether the application at Colwell Farm passes the below tests.

187. Planning policies and decisions should contribute to and enhance the natural and local environment by:

...

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs;

192. To protect and enhance biodiversity and geodiversity, plans should:

...

b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

193. When determining planning applications, local planning authorities should apply the following principles:

...

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reason and a suitable compensation strategy exists; and

...

Government guidance on Biodiversity Gain Hierarchy

Given the ecology implications of development at Colwell Farm, officers will need to carefully consider how to apply the Government guidance on Biodiversity Net Gain.

<https://www.gov.uk/guidance/biodiversity-net-gain>

“The Biodiversity Gain Hierarchy is distinct from the mitigation hierarchy set out in paragraph 186(a) of the National Planning Policy Framework which states that a planning application should be refused if significant harm to biodiversity resulting from the development cannot be avoided (**through locating on an alternative site with less harmful impacts**), adequately mitigated, or, as a last resort, compensated for. How biodiversity net gain will be secured for

a development may be relevant to consideration of the policy in the Framework, especially in relation to adequate mitigation and compensation. “

The NPPF and Government guidance make clear that where BNG cannot easily be achieved then other sites should be considered.

As demonstrated through the site selection process that has occurred for the emerging plan, there are many other sites available in Mid Sussex for housing.

The applicant has presented no evidence to show that alternative sites have been considered. This matter may be material to the decision for the Colwell Farm application.

Planning Considerations in Respect of Protected Species Legislation

Government guidance notes that:

Biodiversity net gain, however, is not just a post-permission matter. To ensure the biodiversity gain objective is met and the condition can be discharged successfully, it is important biodiversity net gain is considered throughout the planning process. The National Planning Policy Framework emphasises that plans should identify and pursue opportunities for securing measurable net gains for biodiversity, and plans and decisions should minimise impacts and provide net gains for biodiversity.

In determining what weight to put on ecological matters, officers should consider the Judicial Review case J Patterson in Westerleigh v Aylesbury Vale DC.

<https://landmarkchambers.co.uk/wp-content/uploads/2018/05/R-Westerleigh-v-Aylesbury-Vale-DC-FINAL.doc>

Para 87 to 95 outline the approach that the judge expected the Local Planning Authority (LPA) to make in respect of assessing an application where a license would be required due to the presence of protected species at a site.

This judgement makes clear that the LPA must consider whether alternative sites are available.

The LPA must also assess the application against the guidance from Natural England. The judgement notes that a license will not normally be granted if alternative sites are available and that permission should be refused in this case.

Natural England Guidance: <https://publications.naturalengland.org.uk/publication/113030>

Several considerations follow from this judgement that are relevant to the subject application:

1. That the LPA must have regard to section 12(1) of the Habitats Act.
2. It is not sufficient for the LPA to condition the application on grant of a license, as they are required to “have regard” to the Habitats Act in making their recommendation.
3. The LPA must consider whether alternative sites are available for development - as this is one of the key criteria outlined by Natural England.
4. If a license is unlikely to be granted, permission should be refused.

In respect of alternative sites, it is a matter of fact that there are many alternative sites for housing in the District. These have been promoted in the call-for-sites exercise and several sites have been selected - these are contained in the adopted plan, the site allocations document, and in the emerging local plan. These sites have also been assessed against BNG criteria during the site selection.

Officers do not have to look far to find alternative sites. The sites at Cuckfield-Ansty and Lindfield Golf Course are more progressed and in both cases there is sufficient land to mitigate the BNG challenge entirely on-site (as evidenced in those applications.)

Given the above facts, and the abundance of Protected Species' at this site, we can say that there is a high probability there are alternative sites in the District that can be developed for housing without creating the same level of harm. For this reason, it will be difficult for the applicant to pass the Natural England test on alternative sites.

The Judicial Review case indicates that these matters must be given significant weight in decision making. The case also makes clear that the above matter is sufficient grounds for refusal.

This position is further supported in BNG guidance issued by Government.

Guidance 002 Reference ID: 74-002-20240214 states that achieving BNG is a not a matter simply for conditions. The guidance states that the feasibility of achieving BNG is a matter that may impact whether a scheme is approved at all.

Given the number and value of Protected Species' at the site, it is at best uncertain whether Natural England will grant a licence for this development. It thus follows that a condition requiring such a licence may be incapable of being met.

The above position is supported by the protected species checklist, published by Government.

<https://assets.publishing.service.gov.uk/media/5fb24388d3bf7f37d86328ca/protected-species-decision-checklist.pdf>

Attention is drawn to question (8) which covers the key procedure relating to Protected Species. Of note, officers must consider the 3 tests outlined by Natural England and consider whether a licence is likely to be granted. This guidance is consistent with the Judicial Review finding noted above.

In conclusion:

The LPA must give consideration to the negative impact to the Protected Species' at the site and consider whether it is likely that acceptable mitigation can be achieved.

Officers may wish to consider refusing the scheme on the basis that it is unlikely that suitable mitigation can be achieved.

However, if officers determine not to refuse on ecology policy grounds, the above matters should be given significant weight in the planning balance - as is required by national and local policy, and by legislation including the Conservation of Habitats and Species Regulations. And it may be that this matter supports the decision to refuse on other policy grounds.

Weight Given to Site Accessibility

Officers will wish to consider whether the site is accessible - noting that this is a key requirement of the NPPF in respect of sustainable development.

Attention is drawn to the relevant paragraphs of the NPPF, and to the appeal at Wellhouse Lane in Burgess Hill which has been noted above.

The appeal covered accessibility matters and the site at Wellhouse Lane is very similar in terms of location and access to the Colwell Farm site.

The NPPF states:

117. Within this context, applications for development should: a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use; b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport; c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards; d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

In the Wellhouse Lane appeal ref APP/D3820/W/24/3344963:

The Inspector concluded that the site was inaccessible and this was sufficient to warrant refusal under policies DP21 and DP32. The Inspector also concluded that the proposal was “contrary to the environmental lib of sustainability” in the NPPF.

In the Wellhouse Lane case the applicant argued that residents will be able to utilize narrow pavements and un-made footpaths to access services. The Inspector notes that he does not consider this suggestion to be realistic and considers that the vast majority of journeys will instead be made by car.

For the Colwell Farm site, similar arguments are made by the applicant.

It is a matter of fact that the walking route to services from the Colwell Farm site are long and fragmented. The routes proposed for pedestrians comprise narrow, convoluted routes with no lighting, un-made footpaths and steps. Distances are in excess of all relevant guidance. Further, all journeys from the site require a number of road crossings.

On the matter of pavements, it is noted that the County Council did not support the proposed pavement development on the south side of Lewes Road. Further, the Council does not support the installation of traffic light controlled pedestrian crossings. As a result the developer has proposed a fallback position where foot journeys will requiring two road crossings, and where all pedestrians will have to cross a 40mph road with no protection.

Officers will want to consider whether this situation is plausible in respect of the projected foot journeys. Is it realistic for elderly residents, or parents with prams, to cross the Lewes Road twice on their way to a bus stop, or other amenities?

The Transport Assessment filed with the application contains a number of errors. These have been summarized in the Transport Analysis submitted by another resident.

In respect of the distance from the site to amenities:

<https://www.activetravelengland.gov.uk/planning-active-places/bus-stops>

https://www.ciht.org.uk/media/4459/buses_ua_tp_full_version_v5.pdf

https://www.ciht.org.uk/media/4465/planning_for_walking_-_long_-_april_2015.pdf

<https://www.local.gov.uk/publications/path-inclusive-footways>

The pedestrian routes proposed for the site fail to meet the above standards in regards to the quality of pavements and lighting. Officers are invited to walk the route proposed by the applicant to see for themselves the challenges of using the existing paths.

Further, the site is distant from bus and rail connections. Guidance is for bus stops to be no more than 800m (0.8km) from housing - in this case the minimum distance is 1.4km which is the Princess Royal bus-stop. The applicant proposes another bus-stop but this stop has limited service, and in the morning period is only used for school buses.

Guidance suggests walking distance to a rail-station should be no more than 1.6km - in this case the distance from the Colwell Farm site is 3.2km.

The distance to the nearest shop and school is in excess of 800m, which is outside the desirable distance for such amenities and makes those services inaccessible to those who may not have cars, including the elderly. If residents are unable to use the un-made footpaths (likely true for the elderly and those with prams or wheelchairs) then the distance is in excess of 1km in all cases.

In conclusion, the development at Colwell Farm suffers the same challenges as the one at Wellhouse Lane. At Wellhouse Lane, the Inspector concluded that permission could be refused where the location and connectivity of a site results in the majority of journeys being made by car.

Given the constraints, it is likely that more than 95% of journeys from the Colwell Farm site will be made by car. As such officers may thus wish to consider whether refusal under policies DP21 and DP32 and NPPF para 117 is appropriate - consistent with the Inspector conclusion at the Wellhouse Lane site.