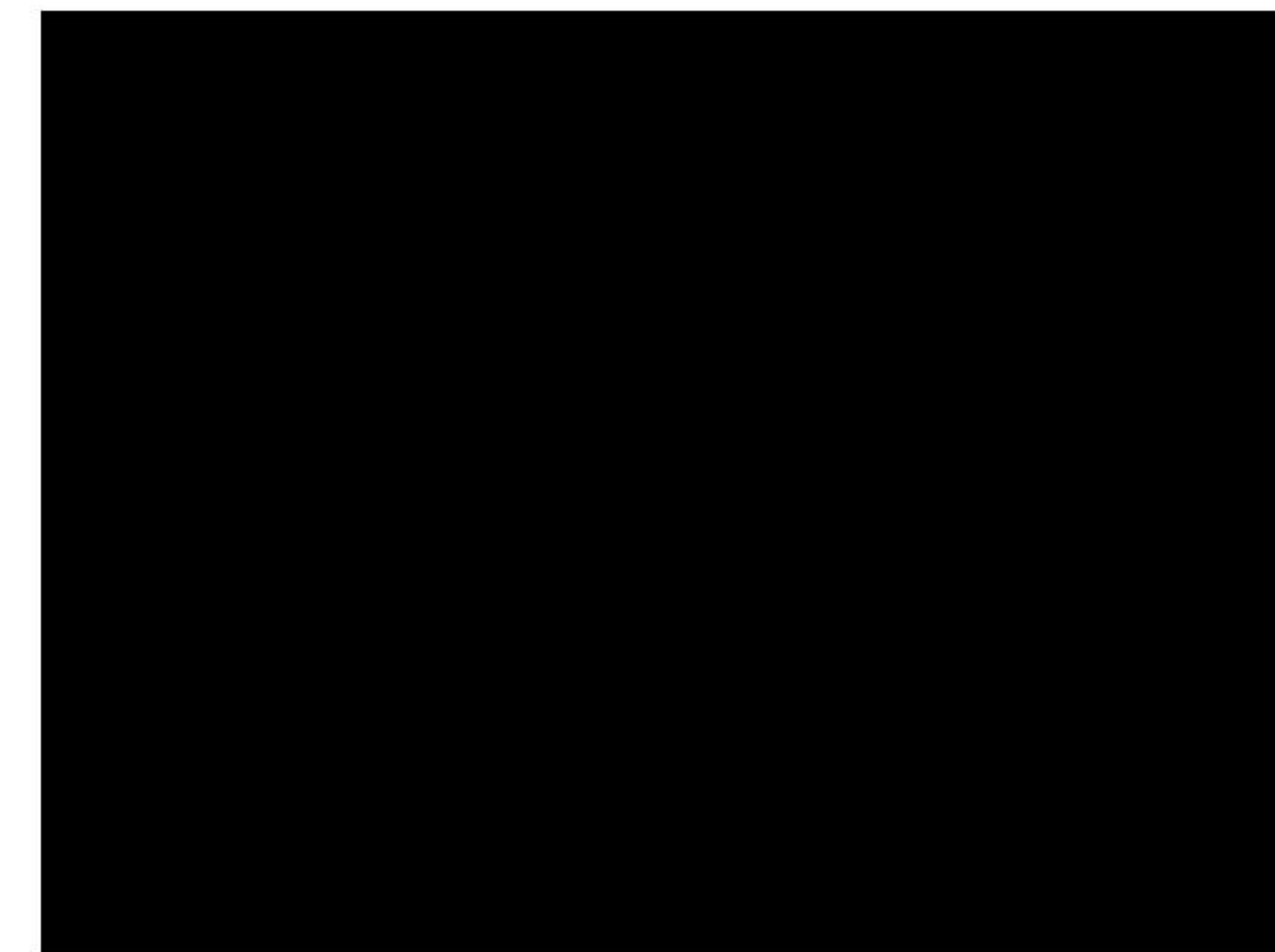




The countryside charity
Sussex



18 March 2025

Ms Joanne Fisher,
Planning Office, Mid Sussex District Council,
Oaklands Road,
Haywards Heath,
West Sussex, RH16 1SS

Sent by e-mail to: planninginfo@midsussex.gov.uk

Dear Ms Fisher,

Re Outline Planning application DM/25/0445 - Land At Colwell Farm Lewes Road Haywards Heath

I am writing to you on behalf of CPRE Sussex, the Sussex countryside charity. Our charitable mandate is to campaign on behalf of Sussex's unique and special countryside and its rural communities.

I am writing to say that we would support a decision by your Council to refuse planning permission for this proposed development. It is our considered view that the undoubted benefits that it offers the District in term of additional needed housing and temporary construction-period employment are nonetheless significantly and demonstrably outweighed by the cumulative effect of its locational, ecological, safety and car-dependant downsides when considered by reference to national planning policy, your District Plan and the Haywards Heath Neighbourhood Plan (**HHNP**). So this would not be a sustainable development.

1. Lewes Road Conservation Area

1.1 The three fields that comprise the application site back onto the southern edge of the Lewes Road Conservation Area, which was originally so designated back in the 1980s. The HHNP identifies the following features of as making a particular contribution to the character of the Lewes Road Conservation Area:

- the variety of age and style of the buildings, most of which are large properties set well back from the road within spacious grounds;
- presence of trees and hedges around and between the buildings;
- the presence of grass verges, hedges and 'fingers' of agricultural land between dwellings which contribute to the rural character of the Area; and
- the low density of development which creates a gradual transition from the countryside to the urban area.

1.2 Conservation Areas are heritage assets of high local significance and subject to protection which recognises that significance. Your District Plan policy DP35 requires new development to protect

the setting of conservation areas including views into and out of the conservation area. Your Council's SHELAA assessment of the application site (SHELAA ref 844) identifies development there as having a potential negative impact on the Conservation Area, ultimately resulting in a decision not to propose allocating the site for development under the draft 2021-2039 District Plan. The assessment of adjacent site ref 680 (which is further removed from the Conservation Area and not part of the application site) reaches the same negative impact conclusion.

- 1.3 We note that the applicant's Design & Access Statement acknowledges that the Conservation Area is one of high heritage significance and its acceptance of the potential for the Area to be affected by the proposed development (p.16).
- 1.4 Over the last 35+ years since its designation, Conservation Area status has worked well to protect this area and its purposes: over that period there has been little significant development within or adjacent to it. This will be the first notable challenge to the integrity of the area's designation.
- 1.5 The fields behind the Conservation Area play a significant role in creating the relative openness and rustic feel that are essential characteristics of the Area itself, as your Council's SHELAA assessments acknowledge. So large scale development of the application site, as proposed, coupled with the building of what would become a well-used new 8m wide access road through the Conservation Area (with a wider entrance splay) would have an inevitable negative impact on the setting of the Conservation Area. Whilst we accept that the degree of visibility of the proposed new housing from the Lewes Road is likely to be limited given the housing fronting the road if the new housing is no higher than the existing properties (though there is a suggestion that some new buildings, at 2 ½ stories high, may be taller than any existing properties), visibility is not the only criterion by which harm should be judged: the newness and density of the new estate and access road would change the overall character of the Conservation Area and the ruralness which is identified as one of its key characteristics. Moreover, the creation in the middle of the Area of a new wide entrance roadway/pavement into the estate with an estimated 350+ additional daily vehicle movements crossing into the Lewes Road would affect the quality of features that have preserved its designated purposes, not least by undermining the intended "gradual transition from the countryside to the urban area".
- 1.6 The fact of harm to the Conservation Area would involve incompatibility with your District Plan policy DP35 and the HHNP. Even if you take the view that the degree of that harm is less than significant in itself, it nonetheless has to be given weight given the high heritage significance of the Conservation Area, and taken into account as one of the negative impacts of the application proposal that cumulatively, in our view, outweigh its benefits to an overall significant degree.

2. Green Corridor

- 2.1 The applicant's Planning Statement refers to the site being a Local Gap. But in fact the fields comprising the proposed development site are designated as part of a green corridor in the HHNP - see Proposals Map Fig 4. That is significant. The HHNP defines the purpose of Green Corridors and other Green Infrastructure as providing "avenues for wildlife movement, often along streams, rivers, hedgerows or other natural features. They connect green spaces together, and often provide pleasant walks for the public away from main road". They have been created as part of a suite of policies in the Neighbourhood Plan whose purpose is stated to be to maintain the rural setting of the town, the protection of the important views from the town to the surrounding countryside and retention of key local gaps. (see para 4.4).

- 2.2 The creation, and the maintenance of the integrity of, green corridors is encouraged by NPPF para 192a) and by your District Plan's policy DP37 which supports the creation and maintenance of *"easily accessible green infrastructure, green corridors and spaces around and within the towns and villages to act as wildlife corridors"* and which requires that new development should *"not sever ecological corridors created by these assets"*.
- 2.3 Policy E1 of the HHNP provides that "Planning applications which would result in the loss of existing open spaces of public value will generally be resisted except where:
- They are supported by an open space assessment that demonstrates the open space is no longer needed or
 - Proposals for equivalent or better alternative provision are made in a suitable location or
 - There is a proven need for essential utility infrastructure where the benefits outweigh any harm or loss, and it can be demonstrated that there are no reasonable alternative sites available.
- 2.4 Being designated in the HHNP as part of a Green Corridor, the site is clearly an open space of continuing public value with the purposes of maintaining the rural setting of the town and acting as a wildlife corridor. None of the exceptions to the policy of resisting development in such open spaces applies. The three fields involved in this application form a key part of the Green Corridor – a corridor that would be severed and irretrievably lost if the development were to proceed. Allowing this development to proceed would therefore be contrary to District Plan policy DP37 and to HHNP's green infrastructure objectives and to its policy E1.
- 2.5 Whilst the site is technically just within the town administrative boundary such that your District may be argued that your District Plan policy DP12 does not apply to the site, nonetheless its designation and importance as part of a Green Corridor linking it to the immediately adjacent countryside effectively requires it to be treated as such and not as part of the developable part of Haywards Heath.
- 2.6 The designation of the site as part of Hayward Heath's Green Infrastructure is made all the more important by the high ecological and biodiversity value of the Green Corridor.

3. Ecology

- 3.1 The fields, pastoral land, ghyll stream and hedgerows bounded by woodland (including ancient woodland) together constitute a valuable natural capital asset has already been identified as having biodiversity importance by virtue of its designation in the HHNP as a green wildlife corridor within the town boundary.
- 3.2 This designation respects the policy requirement now incorporated in NPPF paras 180b) and d) that *"Planning policies and decisions should contribute to and enhance the natural and local environment by ...b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services and 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..."*
- 3.3 We would strongly encourage you to seek your own independent ecological impact advice, and not rely solely on the applicant's Ecological Impact Assessment (EIA) and its methodology. Even taking

that report at face value, the high significance of the location's ecological function is clear, as is the irreparable damage that disturbance and development of the site would cause.

3.4 For instance, the EIA identifies the location as being:

- of at least regional importance for bats (para 4.3.6). The site assessors identified 11 different bat species¹, 3 of which (Serotine, Leisler's and Nathusius Pipistrelle) they describe as "rare or restricted in distribution" and one of which (Barbastelle) is described both by the assessors and by the Bat Conservation Trust as "very rare" and declining.
- of county value for dormice. Para 4.7.4 concludes that their *"presence is highly likely to have been established within all areas of suitable habitat on site as well as within all connecting suitable habitat in the local area. Due to the presence of nests, it is considered likely there is a breeding population on-site."*

3.5 Foraging habits of bats require them to have not only tree lines but extensive grassland and wetland areas where the insects on which they depend can themselves live and breed. The extensive prevalence and variety of bats in the area demonstrates that the site fields provide exactly the habitats in which they can flourish. The habitats are inter-dependent. The EIA claims that the development works would have *"a moderate adverse impact at the regional level of significance"*. In our view that assessment may well understate the adverse impact, as it does not separately assess (i) the impact on the rarer species of bat that are present, (ii) the longer term impact on their foraging resulting from the loss of habitat for their prey, or (iii) whether any roosts used by any of the bats would be vulnerable to be destroyed or damaged by the development.

3.6 The EIA identifies the location as also having value for birds, reptiles, mammals (including legally protected badgers, which have an adjacent sett that is vulnerable to building and recreational disturbance) and, potentially, legally protected amphibians. The field pastures and bogland within them have not been ploughed or disturbed for many years making them rich in flower-species and insects that pollinate and feed other species (birds and bats); and they play a role in the drive to net zero by absorbing greenhouse gas emissions. As such, they are both economically and environmentally valuable natural capital assets in their own right: The value of these natural capital service roles would be significantly diminished if the site were to be developed as proposed, contrary to the above quoted NPPF para 180b).

3.7 It is a matter of concern that the continuous north/south hedgerow separating the first and second fields – a hedge line in which dormice nests were located - has already been broken through (without a Protected Species Licence?), destroying the connectivity which is essential to their local survival as dormice avoid moving from place to place along the ground (not least, we imagine a well-used road). As the applicant's plan depends on building both a road and a path through the hedge lines, that essential connectivity would be lost for ever and dormice would be likely to be forced out of this habitat site.

3.8 The fact that the site has no public access and has been left undisturbed for many years for nature to flourish there, as it has, adds to the ecological value and importance of the site. The site can play a genuine role in furthering the Government's agenda to conserve and enhance the country's

¹ The Sussex Biodiversity Record Centre has records of a further 4 species within 2km of the site.

biodiversity in its 30 x 30 nature recovery pledge; its loss as an ecologically significant area would impair the delivery of that pledge.

- 3.9 Against this background it is no surprise to us that the applicant's BNG analysis concludes that, notwithstanding its own proposed mitigation measures, the proposed development of the site would be unable to demonstrate the required 10% biodiversity net gain, indeed that there would be a 12+% net loss habitats value loss. This means, of course, that the development could not secure net gains across the three sustainability objectives, and hence falls outside the NPPF para 8 definition of sustainable development. No doubt you will satisfy yourselves that the applicant's BNG studies will conform to the new statutory methodology and other assessment requirements.
- 3.10 The applicant suggests that it can whitewash this habitats/biodiversity shortfall by a "last resort" scheme to buy statutory biodiversity credits from a third party supplier. This would be a wholly inappropriate "get-around" in this case where the biodiversity and green corridor value of the area in its present condition is so high, the development would be so destructive of that habitats value, and the acquired credits would do nothing to mitigate that harm. The effectiveness of the new system for the purchase of external provider biodiversity credits as a way to deliver equivalent gains elsewhere is itself unproven, and does nothing to avert the implications of the loss of foraging habitat for North Colwell Farm's rare bat species or its dormice. This is not a case where a "last resort" scheme is appropriate.
- 3.11 Not only would the development be incompatible with NPPF para 180, but it would flout your own District Plan biodiversity enhancement policy DP38 and HHNP policy E5.
- 3.12 If the environmental component of sustainable planning is to have any practical meaning, sites like this which have been set aside for their biodiversity role and value – as this site has as a green corridor – and that are established homes for rare, very rare and protected species really must be saved from commercial exploitation. It would make a mockery of the planning system's environmental objectives, and of your own District and Neighbourhood Plans, to approve this proposed outline application.

4. Transport sustainability

- 4.1 Active travel and modal shift to sustainable methods of transport in order to reduce car dependency is a key Governmental objective in the implementation of local planning policy and decision making, especially in determining where development will be deemed sustainable.
- 4.2 The Government's standing advice on this issue is Active Travel England's Standing Advice Note: Active Travel & Sustainable Development issued in June 2024². This guidance tells LPAs to use this guidance and its associated Planning Application Assessment Toolkit routinely in the assessment of all planning applications and to afford it due weight in deliberations: *"The guidance reflects ATE's status as a statutory consultee in the planning system. Notwithstanding, the overarching National Planning Policy Framework and national design guidance identified in paragraph 1.6 of this advice*

² <https://assets.publishing.service.gov.uk/media/667ace3fc7f64e234208ffb5/ate-travel-sustainable-development.pdf>

note provides a strong context for embedding active travel infrastructure and measures within the design of new development and should be considered as early as possible in the planning process.”

- 4.3 The document states that access to local amenities should be assessed according to the following criteria:

“Pedestrian access to local amenities

2.5 A mix of local amenities should be located within an 800m walking and wheeling distance (using well-designed routes) of all residential properties or staff entrances for workplace facilities. Trip lengths to key amenities should be derived from isochrone maps using an appropriate point within the application site, rather than straight-line distances from site boundaries or main access points.

2.6 Footpaths/ways to local amenities should conform to the National Design Guide standards of being safe, direct, convenient and accessible for people of all abilities, which includes but is not limited to routes that:

- have a minimum width of 2m, with limited pinch points no less than 1.5m;*
- are step-free;*
- have a smooth, even surface;*
- have seating at regular intervals;*
- are uncluttered;*
- have good natural surveillance and clear lines of sight;*
- have street lighting;*
- have wayfinding; and*
- have crossing points suitable for the speed and traffic flow of the road(s).*

Cycling accessibility

2.7 Off-site cycling infrastructure to a range of local amenities, and town centres, railway stations, employment areas and the National Cycle Network as appropriate, should be coherent, direct, safe, comfortable and attractive in line with the five core design principles and geometric requirements in LTN 1/20 (see Sections 4.2 and 5).

2.8 The development should not be reliant on shared use routes in full or intermittently, which conflicts with the government’s clear position in paragraph 1.6.1 (2) of LTN 1/20 that cycles must be treated as vehicles and not as pedestrians. Where on-road provision would be utilised, there should be sufficient protection from motor traffic in accordance with the suitability and segregation standards in LTN 1/20 (see Figure 4.1 and Section 6).

Access to public transport

2.9 Most buildings within the application site should be within 400m of a high-frequency bus stop or 800m of a rail/light station or tram stop, with appropriate facilities....”

- 4.4 We assume that this Planning Application Assessment Toolkit will be used in evaluating the transport sustainability of the application site and its outline development proposals. Without wishing to prejudge the outcome of that authoritative assessment, it is our view that the site and the applicant's sustainable transport proposals will leave the residents and their visitors very largely car dependent and that the application is not remotely sustainable in transport terms according to the Government's criteria.
- 4.5 The applicant has provided pedestrian distance measurements to local facilities in its Planning Statement. However, it has provided no information as to how the distances that it quotes have been calculated. We suspect that measurements may take no account of the need to walk from the site entrance to the proposed Birch Close pedestrian crossing and back on the other side of the road (a further 430m) or back to the entrance to the PROW (360m). It is not clear either whether all distances are measured from the centre of the site rather than the site entrance (a further 285m). If our suspicions are correct all pedestrian distances quoted in the Planning Statement are understatements by at least 360m and potentially over 520m. The applicant needs to clarify this.
- 4.6 To demonstrate that the site is unacceptably isolated from any and all local services and facilities, with no practical active travel or public transport service options to reduce car dependency, we note the following:

4.6.1 Walking

- Even using the applicant's figures, there are NO local facilities or services of any kind within (or anywhere close to) Active Travel England's 800m walking or wheeling distance criterion. Northlands Road, which has the closest bus routes (31 and 31A), a limited food outlet (Tesco Express) and a surgery is 1.9km walking distance away using the optimal paved, lit, route via the proposed Birch Close crossing. Distances far exceed those that widespread research evidences that most people are prepared (or, for many, are able) to walk, especially when a return journey is involved. They are incompatible with creating an inclusive community for all ages and abilities.
- The pedestrian footpath along the opposite side of Lewes Road is not built to modern standards. It is narrow and not separated by a grass verge from the main A272 highway. It does not meet Active Travel England's 2m wide standard.
- The only other pedestrian route relied on by the applicant is the Public Right of Way (29CU) that provides access into Walnut Park, Franklands Village, the nearest surgery, the main bus routes and their other amenities. The PROW is not hard surfaced throughout, it is narrow and unlit throughout its length. It is at best unsuitable for some pedestrians, and it is unsafe for all after dark. The PROW is not a cycle path.
- The Haywards Heath Orchard Road shopping centre is 2.4km away, and the Sainsburys and Waitrose supermarkets, and Haywards Heath Station are all over 3.5km distant. All well beyond acceptance walking distance standards.

4.6.2 Cycling

- There is no safe cycling option. The A272 is at best a hazardous road for cyclists. Cyclists would have to share the A272 with vehicular traffic as the pavement is neither wide enough nor suitably designed to allow mixed pedestrian and cycling on it. The A272 is a very busy, single lane, main highway on which cars are permitted to overtake and often travel at excess

speed. The hazards involved effectively preclude children from cycling to school, and make cycling unsuited for many as an option into the facilities of Haywards Heath or its station.

4.6.3 Buses

- The bus route information on p.12 of the applicant's Framework Travel Plan is incorrect and the claim that there is a *"bus service available providing access to the key destinations with approximately six buses per hour on weekdays and Saturdays then one bus per hour on Sundays"* is misleading. The bus routes listed in the Travel Plan operate from different bus stops, the closest one of which serves the 31 and 31A routes from Northlands Avenue. This stop is 1.8km away via lit, paved, paths.
- The 31 route (Lindfield - Uckfield)³ only operates every 2 hours from 6am until 7pm. The 31A (Uckfield – Cuckfield) also operates every 2 hours, but only 3 or 5 services daily depending on direction of travel. Neither route has any evening or Sunday service at all.
- All the other listed bus routes are even further away and so even less viable as an option. There are some bus routes operating from a stop at the A272/Bedales Hill junction, but there is no access footpath at all for 535m of the walking route there. Route 89 to/from Princess Royal Hospital⁴ only runs 4 daytime buses a day, and only on weekdays, so is not a solution for people working at the hospital.
- Bus routes 33A, 62, 149 and STP1/STP2 are listed in the applicant's Framework Travel Report are all once a day school bus services, not public buses. None of these school bus services is at a conveniently walkable distance from the application site.

4.6.4 Schools

- Information about nearest local authority schools in the applicant's Planning Statement are wrong (for example, the nearest applicant-named secondary school (Great Walstead) is an independent fee-charging school, not a local authority school. Significantly, children's travel safety to and from school has not been factored into the applicant's distance routing or measurements.
- No day nursery, primary, secondary or tertiary school exists within safe and accessible walking distance, or (because of the need to use the A272) in safe cycling distance. Nor are the nearest stops for any of the school bus services at a readily accessible distance.
- Using paved, lit paths, the closest primary school, Northlands Wood, is 1.7km away (the school is already fully subscribed); the nearest secondary school, Oathall Community College is 3.6km away on foot, and the closest tertiary college, Haywards Heath College, is 4.5km walk away. We note that Oathall College insists that pupils use sustainable travel modes to get to/from school (<https://www.oathall.org/parents/information-for-new-students/>) but query how that could be achieved from the application site.

³ <https://bustimes.org/services/31-lindfield-haywards-heath-uckfield> and <https://business.org/services/31a-uckfield-haywards-heath-cuckfield>

⁴ <https://bustimes.org/services/89-horsham-princess-royal-hospital-franklands>

- 4.7 We note the applicant's ambition to achieve a 10% reduction in vehicular trips (see Framework Travel Plan, para 4.2.1) from an assumed (but completely unevidenced) 371 daily trips to 334 trips as part of its case that the development would be sustainable from a transport standpoint with periodic post completion monitoring against that assumed baseline.
- 4.8 Delivery of a 10% vehicle usage reduction is, in CPRE's experience, extremely unlikely to be achieved, especially given the demonstrated absence of viable public or alternative travel modes. In another local planning application that we are monitoring the applicant's ambition has been to achieve a 5% reduction, and that case (unlike this one) is based on the creation of a dedicated on-site bus service and car pool as well as on site retail facilities and new cycling routes direct to the nearest schools and town. The applicant proposes no new active initiatives to support the use of sustainable methods of travel or to achieve its 10% vehicle use reduction target.
- 4.9 In this case there are no convenient or readily accessible bus or other public transport alternatives, no services or facilities or schools within ready walking distance, no safe cycling routes to any schools, shops or facilities, only a narrow footpath along the busy A272 on the wrong side of the road and whose only access would be via an inconvenient and arguably unsafe new uncontrolled crossing opposite Birch Close. After the event monitoring will not change any of these facts or enable effective travel pattern changes.
- 4.10 No evidence is provided that the measures identified in paras 5.3.3 to 5.4.10 of the Framework Travel Plan to drive the aimed-for reduction in vehicle use will have any identifiable effect at all given the absence of any viable active travel alternatives. There is substantial evidence⁵ that developments allowed at developer-led locations isolated from key facilities and services and from convenient public transport are creating car-dependent estates, and that car-based suburban sprawl is now the default model of development. That is exactly what would happen here, contrary to all principles of inclusive and sustainable planning.
- 4.11 The only possible conclusion that we can reach is that this development proposal cannot meet national (e.g. NPPF paras 115-117) or local (DP21) sustainable travel policy requirements for sustainable development at this site. As the next section demonstrates there are also real safety issues as well.

5. Safety

- 5.1 The location of a large estate development off the A272 raises a number of serious human and traffic safety concerns given the nature of the road as a major national highway that is heavily used, with permitted speeds at the relevant point of up to 40mph along a straight, narrow single carriageway on which overtaking is permitted.
- The wide spacing of lampposts results in intermittent lighting of the A272 in this area, which would be inadequate to assure safety of after-dark pedestrians on the footpath or using the suggested new uncontrolled crossing, or for the proposed new vehicular access road

⁵ See for example <https://www.transportfornewhomes.org.uk/jigsaw-puzzle-developments-are-creating-car-dependent-estates/> (February 2025) and <https://www.transportfornewhomes.org.uk/wp-content/uploads/2020/06/garden-village-visions.pdf> (2020)

- Whilst any active travel policy promotes walking, access to the only footpath along the A272, which is on the far side of the road, requires crossing the road on foot. So does access to PROW 29CU. Currently there is no pedestrian crossing point near the site.
- The applicant proposes a new pedestrian crossing at Birch Close. Because this is at some distance from the site entrance and from the PROW – an extra 360m walk - there will inevitably be a temptation for some to try and run across the A272 at the site entrance rather than using the pedestrian crossing. That could have lethal consequences. At present there is no footpath between the proposed site entrance and the crossing point.
- It is proposed that the pedestrian crossing should be uncontrolled. It is a crossing that will be used by young children, potentially unchaperoned. That is an inherently unsafe option for such a stretch of busy road with a 40mph speed limit on which overtaking is permitted and where, inevitably, some cars will exceed the speed limit⁶. The safety hazard is exacerbated by the inadequate lighting levels along this section of the A272. The only safe crossing over the A272 would be a traffic light-controlled crossing.
- The footpath along the A272 is narrow and unprotected from the road. Its maintenance depends in part on all residents regularly and adequately cutting “their” section of the hedge abutting the path, and that does not always happen, further narrowing the path. The footpath fails to meet current safety standards.
- Whilst we gather that there is some possibility of the speed limit along part of the A272 being reduced from 40mph to 30mph, para 5.3.2 of the Framework Travel Plan implies that this reduction remains uncertain and that if it happens, it appears that the speed reduction would only be introduced to the east of the proposed crossing and of the site entrance, leaving a 40mph speed limit at the key points of hazard.
- There is no off-road cycling option along the A272. The fact that the road is narrow single carriageway highway, heavily used by articulated lorries and other fast moving vehicles, precludes the creation of a segregated cycling track and means that cycling along the A272 would be dangerous, especially for young and inexperienced cyclists. For many, cycling to Haywards Heath or to school etc would not be a safe option.
- The PROW 29CU is narrow, totally unlit and is not hard surfaced. It is seen by the applicant as an essential route to a number of key services and facilities, but it would be an unsafe route to use after dark or in wet weather. The likelihood of it being used by cyclists despite its unsuitability for that purpose creates additional hazard.
- The applicant expects between an average of between 334 and 371 vehicle trips per day into and out of the estate. Many of those trips will be when the A272 will be at its busiest. All those vehicles will have to turn across the A272’s oncoming traffic either to enter or exit the estate. That is itself a significant safety hazard; and is also liable to add to the clogging up of the road at rush hour times.

5.2 We cannot see how most of these safety issues are capable of adequate avoidance/mitigation. These hazards are real and could well cause fatalities. The scheme as it stands is incompatible with your District Plan DP21 policy requiring the protection of the safety of road users and pedestrians, and

⁶ The applicant’s acknowledges that cars exceed the speed limit: Para 4.6.6 of their Transport Assessment quotes 85th percentile speeds of 40.1- 42.5mph indicating that many cars exceed even that speed.

represent a serious disbenefit incompatible with the social objective required of sustainable development.

- 5.3 We note that Sussex Police, in their comments on this application, make it very clear that their ability to provide appropriate policing and safety services to residents of the new estate would depend on a significant s.106 contribution from the applicant.

6. The tilted planning balance

- 6.1 CPRESx is not in a position to question your Council's concession that it currently lacks a five year housing land supply, that hence that your decision in this case must be decided based on the tilted balance whereby housing development applications should be refused only if the downsides of the scheme significantly and demonstrably outweigh its benefits taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.(NPPF para 11(d)(ii), December 2024 version).
- 6.2 We recognise that the delivery of new homes, especially affordable homes, and the (temporary) employment jobs that their construction offers, are really important benefits, especially given that your Council has a housing land supply shortfall; and that it may sometimes be necessary to allow development on sites that have not been allocated for development within your District Plan in order to meet the Council's housing delivery obligations.
- 6.3 However, when addressing the application of the presumption of sustainable development, it does not follow that more housing will always and necessarily represent a winning trump card, or that your non-housing Plan policies should be given anything other than full weight in the planning balance. Each case must be considered on its individual merits.
- 6.4 The environmental component of sustainable development as defined in NPPF para 8 is not subordinate to its economic or social objectives. All three objectives need to be met for a development to be sustainable. Nothing in NPPF para 11 changes that fact.
- 6.5 There are numerous planning appeal and court decisions involving out of date local plans and local planning authorities with an insufficient housing land supply in which the developer's application or appeal was nonetheless refused: cases where, on their facts, the application of the tilted balance was found to be insufficient to justify the proposed development because the proposal's adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 6.6 There is a very pertinent Court of Appeal case, *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government and Corby Borough Council and Uttlesford District Council Ref: [2021] EWCA Civ 104*. In this case Gladman unsuccessfully appealed to the courts against two separate planning appeal decisions in both of which the Planning Inspectors upheld decisions by two separate Local Planning Authorities to refuse planning permission for unconnected Gladman development schemes, notwithstanding the application of the tilted balance in both cases. The legal principles explained in this court decisions are, of course, binding on this tribunal.
- 6.7 The developer argued that decision-makers must only assess proposals against relevant policies in the NPPF and that policies with an out-of-date local plan have no relevance. The Court of Appeal

rejected this argument from the developer and ruled that even where development plan policies are rendered out of date by housing land shortfalls, those policies remain relevant to the application of the tilted balance, and decision-makers should not disregard policies of the development plan when applying the tilted balance unless they are incompatible with the NPPF read as a whole.

- 6.8 Indeed, as the whole structure of the planning system is based on plan-led decision making. The statutory responsibility of decision makers involves their determining applications in accordance with the local plan unless material considerations indicate otherwise (Planning and Compulsory Planning Act 2004 s.38(6)). Local plan policies that are material to the planning decision should be taken into account except to the extent that they are in conflict with the NPPF. The incompatibility of a proposed development scheme with a plan policy will be an adverse impact to be considered by the planning authority in the exercise of its planning judgement, giving that impact the degree of weight that reflects (a) its degree of compatibility with the NPPF taken as a whole and (b) its significance in terms of the Local Plan.
- 6.9 This Court of Appeal decision has been followed by planning inspectors in numerous planning appeal cases in addition to those of Corby and Uttlesford (the two LPAs involved in the Gladman Court of Appeal decision), including, recently, more local ones in Wealden and Horsham, two other Sussex authorities without a 5 year housing land supply. These examples are mentioned further at paras 6.15 to 6.17.
- 6.10 In the case of 2018 Mid Sussex District Plan, as updated by the Sites Allocation DPD 2002, it is fundamental to its spatial planning policies that new development should only take place within existing community boundaries, or on allocated sites outside those boundaries which have been assessed as sustainable locations for new development, or in countryside locations in very limited circumstances set out in policies DP12, DP15 and DP16. The current application does not fall into any of these limited Plan policy exceptions to the Plan's overall objective of directing new development primarily into existing town and village communities, avoiding new developments in isolated locations, and protecting the countryside and conservation areas from new unallocated greenfield development.
- 6.11 These policy provisions are entirely consistent with the NPPF, which strongly encourages plan makers to develop clear overall strategic policies as to where new development should be focussed, and where and how the countryside and natural environment are to be conserved and enhanced (NPPF para 20 and chapter 15), which is what MSDC's District Plan does. There is no reason in principle therefore why your Council should not give full weight to these District Plan policies and treat this application as having a significant adverse impact on the fulfilment of the Plan's strategic development location objectives.
- 6.12 So, whilst we do not challenge that the building of new homes would provide a significant benefit in helping to meet the overall District's housing needs, we ask you to consider just how significant a benefit that is in reality given its incompatibility with The District Plan's overall spatial strategy requiring sustainable development and with a number of your other District Plan's strategic policies.
- 6.13 This is not a case of an application to develop an unallocated site. Rather it is a case of an application to develop an isolated rural site that has been deliberately selected through a robust planning process (the adoption of the HHHNP) as an area that must be safeguarded and NOT built on because of its environmental importance as a green wildlife corridor: a process and designation that is supported and encouraged by national policy (See NPPF para 192(a), by your District Plan

policies DP37 and DP38, and by HHNP policies E1 and E5. Policy at all levels clearly requires this ecologically important site to be safeguarded. The significance of doing so is all the more important when the applicant accepts in its BNG habitats study that the development would cause on-site biodiversity net loss, not the legally required 10% biodiversity net habitats gain.

6.14 There are multiple examples where the adverse environmental impacts of a development have been accepted as significantly and demonstrably outweighing its benefits, and in very similar circumstances to this case. The Court of Appeal decision in the Gladman case provides two such examples.

6.15 More locally, this application has similarities with that of a situation in Ninfield in Wealden district⁷. Wealden had a 3.8 year housing land supply, but nonetheless rejected an application to build 72 energy-efficient homes (26 affordable) on a greenfield site on the basis that its adverse impact would significantly and demonstrably outweigh its benefits. The developer lost an appeal against the Council's determination. The Planning Inspector concluded as follows:

"36. The Council cannot demonstrate either a 4 or 5 year supply of deliverable housing sites, and the main parties agree that, for the purposes of this appeal, the Council can demonstrate a 3.83 year supply. Therefore paragraph 11(d) of the Framework is engaged which requires that planning permission be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development, when assessed against the policies within the Framework taken as a whole. Therefore, the policies that are the most important for the determination of the application are deemed to be out of date. However, this does not mean they do not apply and overall, the proposal conflicts with the development plan as a whole.

37. There is an under delivery of housing and affordable housing in Wealden. The proposed development would provide up to 72 new homes which would be accessible or adaptable and, 35% of which would be affordable housing. This would contribute to the government's target to significantly boost the supply of homes and to address the needs of groups with specific housing requirements. The proposed development would also bring the associated economic benefits of up to 72 dwellings, such as construction expenditure and jobs and spend in the local area from future occupants. It is also put to me that the development would be energy efficient and I have considered the benefits set out above of biodiversity, open space provision and self build housing. Due to the scale of the appeal scheme the proposed development would result in a moderate contribution towards these matters. Nevertheless, together these are important considerations and I afford significant weight to them.

38. However, the proposed development would be outside the settlement boundary and, moreover, would result in substantial and permanent harm to the character and appearance of the area. The proposed development would therefore not create a high quality, beautiful and sustainable place which is fundamental to what the planning process should achieve. Therefore, overall, the proposed development would result in substantial harm.

39. Consequently, the harm I have identified would have a serious harmful effect on the character and appearance of the area, which would lead me to conclude that these substantial adverse effects attract greater weight that significantly and demonstrably outweighs the benefits set out

⁷ Planning Inspectorate case reference APP/C1435/W/23/3331659

above. Therefore, the presumption in favour of sustainable development would not apply in this case.

40. The proposal would not accord with the development plan and there are no other considerations to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that this appeal should be dismissed."

- 6.16 Note that this decision to refuse permission was arrived at solely on the basis of the harmful impact on the character and appearance of the area alone, whereas in this present case that factor, whilst important in itself, is only one of a series of harmful impacts that have to be weighed in the balance. Both the Ninfield site and this one at Colwell Farm involve greenfield sites, albeit that Colwell Farm lies just inside the neighbourhood plan boundary, and within a conservation area, rather than just outside it.
- 6.17 We also draw to your attention another local appeal case, this time in Pulborough in Horsham District⁸ – another district with an out of date plan and a housing supply shortfall, where the Planning Inspector agreed with the Council's refusal of a planning application on the ground that the proposed development would not be in a suitable location having regard to the spatial strategy for the District, and that, overall, it would be contrary to the out of date Horsham development plan.
- 6.18 This North Colwell Farm application is another of those cases where the disbenefits should be accepted as significantly and demonstrably outweighing the new housing benefit by reason of its patent and serious incompatibility with Local Plan and strategic locational and national ecology/biodiversity policies, potential serious safety and health hazards, possible harm to the purposes of the statutory Lewes Road Conservation Area and issues involving transport sustainability.

7. Other matters

- 7.1 Given the slope of the land, we urge you to satisfy yourselves that the proposed SUDS would not result in a risk of a change the water table beneath any adjacent ancient woodland or otherwise adversely impact its soil; and that no construction works would be liable to result in the pollution of the ghyll stream on the lower edge of the site.
- 7.2 In CPRE's experience, new developments on rural sites are notably more vulnerable to late claims by developers that meeting critical minimum affordable homes' targets is not viable. How confident is your Council that this would not happen in this case?
- 7.3 In the time available, we have not been able to consider whether the application will adversely impact nearby built heritage assets; but no doubt you will do so.
- 7.4 We reserve our comments (if any) on the proposed estate's design, layout, housing mix and all reserved matters until reserved matters relating to this application proceeds further.

⁸ Planning Inspectorate reference APP/Z3825/W/21/3281657

8 Conclusion

8.1 We urge you to consider whether the admittedly important benefit that allowing development at North Colwell Farm would have in terms of assisting the Council to meet its housing supply shortfall is in this instance outweighed significantly by its disbenefits, including

- its inconsistency with your District Plan's national policy-compliant spatial development strategy;
- the irretrievable ecological damage it would do to a location of significant biodiversity value and its admitted inability to meet on-site net biodiversity gain requirements contrary to national and local planning policy;
- its adverse impact on the Lewes Road Conservation Area and local Green Corridor, contrary to District Plan policy DP37 and Haywards Heath's Neighbourhood Plan;
- the remoteness of the location from any local services, its incompatibility with the Government's Active Travel & Sustainable Development strategy, and the non-deliverability of material sustainable travel options, and hence its inability to deliver an inclusive community; and
- the numerous serious health and safety issues that allowing the development would create.

8.2 It is our opinion that this is not a site that can be developed sustainably, and any attempt to do so would be seriously damaging to its important ecology and its planned environmental purpose. The proposed development application itself fails both the social and environmental objectives required by the NPPF. It is for these reasons that we would support a decision by your Council to reject this application.

Yours sincerely

