IN THE MATTER OF

THE TOWN AND COUNTRY PLANNING ACT 1990

AND IN THE MATTER OF

LAND SOUTH OF

HENFIELD ROAD,

ALBOURNE,

MID SUSSEX.

CLOSING SUBMISSIONS

ON BEHALF OF

THE APPELLANT

Introduction:

1. These Closing Submissions are made on behalf of the Appellant in respect of an appeal against the decision of Mid Sussex District Council ['the Council'] to refuse outline permission (all matters reserved except access) for up to 120 dwellings (including 30% affordable housing), public open space, community facilities and associated development ['the scheme'] on land south of Henfield Road, Albourne ['the site'].

2. The site lies outside but immediately adjacent to the (out of date) adopted settlement boundary of Albourne, a 'Medium Sized Village' in the Mid Sussex District Plan (2018)[1], in a location acknowledged by the Council to be sustainably located for access

[1] CDE.1

to services and facilities for residential development. It lies adjacent to the Albourne CofE Primary School, which will benefit from the provision of additional land for expansion as well as improved parking drop/off arrangements. It provides a community facility (including retail) in addition to access to other facilities by non-car means. It does not lie in any landscape or ecological designations and is not vulnerable to flood risk.

3. Despite the above, the Council chose to refuse planning permission for four reasons for refusal[2], which may be summarised as:

   (1) An in-principle objection to developing outside the settlement boundary while the Council can demonstrate a 5-year housing land supply (coupled with an allegation of harm to landscape character);

   (2) Harm to the views from footpaths 12_1Al and 15_1Al;

   (3) Harm to the setting (sic) of Albourne Conservation Area and six named listed buildings;

   (4) Absence of a s.106 obligation securing infrastructure and affordable housing contributions.

4. Reason 4 has been addressed by the bi-lateral s.106 obligation, as discussed at the s.106/conditions round table session.

5. In the light of the above, at the CMC and at the start of the inquiry, the Inspector identified four Main Issues, set out below:

   (1) The effect of the proposals on landscape character;
   (2) The effect of the proposals on the significance of designated heritage assets;
   (3) Whether the Council can demonstrate the required 5-year housing land supply; and
   (4) Whether the proposals make adequate contribution to the required infrastructure.

6. These submissions address those Main Issues, starting with an overview in terms of the planning policy framework for decision-making.

[2] See CDD.1

The Policy framework:

7. For material purposes[3], the s.38(6) 'development plan' consists of:

   The Mid Sussex Local Plan (2018)[4];
   The Mid Sussex Site Allocations DPD (2022)[5]; and
   The Albourne Neighbourhood Plan (2016)[6].

8. The Neighbourhood Plan, necessarily, pre-dates the Local Plan. The SA DPD is a 'daughter document' to the Local Plan and seeks to deliver the Local Plan housing figures, albeit with a 907 dwelling surplus[7].

9. Local Plan DP4 sets out the housing requirement which underpins the spatial strategy of the development plan. It identifies an OAN and adds to it a figure representing 'unmet need' from Crawley. It is common ground that the 2018 adopted OAN (876 dpa) is not compliant with the figure that would be generated by the Standard Method (1090 dpa) as required by para. 61 of the current NPPF, to which unmet need would then need to be added. The evidence from Crawley's submitted Local Plan document of 31st July 2023 is that this has only increased since 2018[8]. It is common ground that the adopted assessment of development needs is out of date[9].

10. There is a dispute between Mr S Brown and Ms O'Neill as to whether DP4 is, itself, one of the 'most important policies for determining the application'. However, that is somewhat academic as it is common ground that LP policies DP6, DP12 and NP policies ALC1 and AlH1 are 'most important policies'. These, it was agreed[10], derive their spatial application from the adopted settlement boundaries established pursuant to

[3] No objection being pursued in respect of Minerals [O'Neill ix, Day 3]
[4] CDE.1
[5] CDE.2
[6] CDE.3
[7] See SA10 of CDE.3
[8] ID11, see para. 12.36 identifying a figure in excess of 7,000 dwellings
[9] O'Neill xx CBKC, Day 3
[10] ibid

policy SA10 of the SADPD, which was, in turn, derived from the assessment of development needs in LP policy DP4 (plus a 907 dwelling margin).

11. As to Reason 1, therefore, the starting point is that the Council's development plan (including the settlement boundaries within it and the spatial application of its restrictive polices) is agreed[11] to be out-of-date irrespective of the land supply position. This is because it was formulated in a pre-2021 NPPF era and does not reflect the current NPPF 'standard method +' requirements of para. 61.

12. As the spatial strategy is predicated on meeting out-of-date assessments of housing needs, the adopted settlement boundaries can be considered to be out of date and accorded reduced weight, in line with the judgement of Lord Carnwath in *Hopkins Homes* (see para 63)[12].

13. In addition, it should not be overlooked that the Council's own claims of a 5-year supply demonstrate that it relies on development *outside* (ie in breach of) the settlement boundaries[13] in order to secure its (fragile) 47 unit surplus (a 5.04 year's supply). Without so relying, on the Council's own figures, it would not be able to comply with para 74 of the NPPF.

14. Further and in any event, as covered in Main Issue 3, below, the true position, the Appellant says, on the evidence, is that the Council *cannot* demonstrate a 5-year housing land supply. Mr S Brown identifies a deliverable supply of only 4.3 years (an 806 unit shortfall)[14].

15. Lastly, moving away from strategic, locational policies, to 'DM' policies on landscape and heritage, it was accepted[15] that LP policy DP12 failed to reflect the conceptual structure and policy tests of NPPF para's 174(a) and (b), while LP policies DP34 and DP35 failed to reflect the conceptual structure and policy tests of para's 201 and 202 of the NPPF.

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[11] ibid
[12] CDH.2
[1313] Hazeldene (83 dwellings) and an indeterminate share of the 76 dwellings at Hurst Farm outside the allocation (see OR 13.7 and 13.8) [S Brown at HLS RTS, Day 3]
[14] ID10
[15] O'Neill xx CBKC, Day 3

16. Thus, the basic premise of Reason for Refusal 1 is mis-founded; the development plan is not up to date (regardless of, but also by reference to the 5-year housing land supply position). The fact that it is out of date is not somehow excused or overcome even were the Inspector to find that the Council could demonstrate a 5-year land supply; as Lord Carnwath held, out of date assessments of development needs renders the resultant settlement boundaries out of date in any event.

17. Importantly, Lord Gill's observation in *Hopkins Homes* should not be overlooked: if local planning authorities who have failed to demonstrate a 5-year housing supply were to apply their restrictive polies with full rigour, the aims of the NPPF could be frustrated. For this reason, development outside settlement boundaries (in a location accepted to be 'sustainable' for access to services and facilities[16]) is a development plan conflict of reduced weight. It should not, in and of itself, it is submitted, be allowed to stand in the way of granting an otherwise desirable (ie sustainable) development.

18. The allegation of 'landscape character harm' is explored under Main Issue 1, below, but as may be seen from the foregoing, Reason for Refusal 1 wholly fails to recognise that the development plan is out of date. In addition, and equally egregiously, it also entirely fails to reflect the many benefits of the scheme in addition to the provision of much needed housing – in particular, affordable housing where there is an acute need, significant open space provision and an improvement in access to the countryside and recreational resource and the community benefit of additional land to the school, additional car parking/drop off arrangements, an extension to the 'Millenium Garden', enhanced bio-diversity and the provision of a community facility (including a shop) adjacent to the school, serving new and existing residents.

19. Indeed, even at the end of the inquiry, it is respectfully submitted that the planning evidence for Council continued to fail properly to account for these factors in the planning balance.

[16] Planning SoCG, para. 6.1

Main Issue 1: effect on landscape character:

20. Reason for Refusal 1 alleged an in-principle objection to development outside the settlement boundary and also an allegation of harm to landscape character.

21. It is axiomatic that for an undeveloped site adjacent to an existing settlement, there will be some site-level landscape character harm. As a result, this cannot be an objection to such sites *per se,* or no such site would be acceptable in landscape terms. As Mr Browne for the Council accepted, no part of the NPPF seeks to prevent greenfield development unless there is *no* landscape harm. The question is one of degree of harm and harm to what.

22. All this was thoroughly explored in the inquiry and what the evidence showed was that there will be extensive landscape benefits as well as the very localised harm to landscape as a resource. Despite proximity to the South Downs NP, no allegation of harm to that protected landscape is alleged. The site itself is agreed not to lie within a 'valued landscape' for the purposes of para. 174(a) of the NPPF and thus it is para. 174(b) which is in play. This is a landscape 'off the bottom of the scale' in terms of the hierarchy in para. 175 of the NPPF.

23. As Miss Ritson's evidence explained – and no challenge to that was mounted - the scheme has been landscape-led throughout its formulation. One consequence is that it proposes development on less than half of the red-line area (the 'central field'). The 'northern field', adjacent to Henfield Road, is given over to community orchard, the western edge is given over to additional planting and public access, while the 'southern field' is improved in landscape terms from an intensive arable field to a more natural character, mixing bosky, wooded areas with managed meadow grassland and providing extensive new opportunities for public access to attractive countryside, adjacent to the settlement and with impressive views of the South Downs to the south.

24. The Council (wilfully or mistakenly) sought to characterise this as some sort of formalised public park alien to the locale. Nothing could be further from the truth. As the Appellant's evidence sought to make clear, the intention is to create something

significantly more lovely than an arable field – and to give public access to it, thereby increasing the recreational resource of the countryside for both future and existing residents. Ultimately, the precise treatment of the southern field (and indeed the western margin and the northern orchard) remains under the control of the Council, through the discharge of reserved matters and conditions.

25. As such, it would be wrong not to recognise that the treatment of the southern field amounts to a landscape benefit – as indeed would the western edge and the northern orchard.

26. Accordingly, Miss Ritson sensibly divided the appeal red-line site into its three constituent parcels in order, properly, to reflect in her LVIA findings the different effects of the development on each. Mr Browne, by contrast, lumped all three together, creating a more crude, less 'granular' assessment. So long as the differing landscape 'receptors' are recognised and defined, the apparently differing results are easy to understand and assimilate.

27. Ultimately, Mr Browne found a 'substantial' adverse impact on the red-line site area itself, and a 'moderate' adverse impact on the immediately adjoining section of settlement edge. The Appellant observes that, on his definition of landscape receptors, that is unsurprising and, if that is as high as the Council's landscape character impact case is put (which it is), then for this 'non-para.174(a)' landscape that is a pretty clear endorsement that landscape character is not a matter which justifies withholding permission.

28. As to visual impact, Reason for Refusal 2 is limited to two visual receptors: users of two footpaths that cross the site, FP 15_1Al and FP 12_1Al. Thus, while the landscape evidence considered a far wider (and agreed) array of visual receptors, it is important to note that only two visual receptors were alleged to be caused harm sufficient to warrant a reason for refusal.

29. Again, this was explored in evidence, but it is noteworthy that at Year 15, even the Council's evidence is that there will only be *moderate* visual impact on users of footpath 12_1Al which runs through the southern field, adjacent to the boundary of the Conservation Area; substantial impact is only predicted for the footpath 15_1Al, which

runs immediately adjacent to the edge of the development parcel. Again, this result from the Council can hardly be surprising. It is indicative, though, of just how limited and localised the residual visual impacts will be.

30. By contrast, as far as users of footpath 15_1Al are concerned, the Appellant's evidence is that there will be a substantial *enhancement* of the users' experience, and in particular opportunities to enjoy the views across the site to the South Downs and the edge of the village and Conservation Area. This is because, although there will be development on the central field, the really valued views are to the south, over the southern field, to the South Downs. In addition to improving the nature of the foreground to these views, the appeal scheme will provide additional access to land not currently available to the public, not least the localised high-point in the southern field that affords particularly fine views of Wolstonbury Hill and the sweep of the South Downs ridgeline running westwards.

31. As such, the allegation of harm to landscape character in Reason for Refusal 1, and the narrow allegation of visual impact in Reason for Refusal 2 are not well-founded. Main Issue 1, it is respectfully submitted, is not a matter which justifies the withholding of permission.

Main Issue 2: Effect on designated heritage assets:

32. Turning, then, to heritage matters, no designated heritage asset is directly affected by the scheme. All that is alleged is a harmful effect by developing in the setting of certain identified heritage assets. In this, it is important to note that 'setting' is not a heritage asset itself, rather it is a factor that may go to contribute to the significance of the asset in question[17]. The allegation in the Reason for Refusal of 'harm to the setting' is, therefore, in policy terms, misconceived.

33. As to harm to the significance of the heritage assets in question, there is (very properly) no allegation of anything other than 'less than substantial' harm – which is a matter

[17] Agreed Wade xx CBKC, Day 2

which then engages the planning test in para. 202 of the NPPF. Moreover, Miss Wade had moderated downwards her assessment of harm between her consultation response and her proof of evidence, which means that the officers' report assessment of the para. 202 balance which informed the reason for refusal was made on an assessment of harm which Miss Wade, professionally, can no longer support.

34. Mr (Steven) Brown undertook the para. 202 test in his evidence and found (even on the Council's over-egged assessment of heritage harm now presented in its evidence) that it is passed. As such, para. 11(d)(i) of the NPPF is not engaged, as there is no 'clear' reason for refusal by reference to any of the matters set out in Footnote 7.

35. However, Mr Copp's expert heritage evidence is that the Council (even now) has over-stated by some margin the true heritage 'harm', failing to reflect on actual nature of the scheme proposals, which sees the southern field (ie that bordering the Conservation Area and five of the six identified listed buildings) not lost to development but, rather, retained as a rural backdrop and, indeed, improved in terms of its landscape character.

36. Thus, there is a dispute as to the degree of 'less than substantial' harm to two heritage assets (the Conservation Area and Finches) and a dispute as to whether any other assets will be harmed (the Council alleges another five – albeit at a lower level of harm).

37. Inholmes Cottage stands to one side in this debate as it is alleged to be affected by the northern part of the site. The true position is that this outlier of the former settlement of Albourne Green is much more directly affected by the modern housing opposite and the industrial estate behind it. The nearest part of the appeal proposal is actually the Green at the entrance, beyond which is the community orchard – none of which had any historical functional connection with Inholmes Cottage which, necessarily, remains untouched as to fabric, curtilage or immediate setting. Mr Copp, for the Appellant, rightly identifies 'no' harm to the significance of this listed building. The fact that Ms Wade attributed a 'moderate' harm (ie half way to total vitiation of interest) is, with respect, a useful yardstick to measure the calibration of her judgements on other assets.

38. The Conservation Area and the five listed buildings alleged to be harmed within it may usefully be grouped together. The former is significantly linked in its historic interest to the latter (and to other listed buildings not alleged to be harmed). All are said to

derive some part of their historic interest from their rural hinterland, including the appeal site.

39. This is where the Council's wilful or otherwise mischaracterisation of the appeal scheme was most readily seen. Little was said about the development area itself, situated as it is to the north of the CA, and separated by 20th C development and the school complex. Rather – and bizarrely – the focus of Ms Wade's objection was on the treatment of the (undeveloped) southern field.

40. It is plain from Ms Wade's initial approach that she was picturing some highly managed 'public park' character. This is a million miles away from what the Appellant had in mind – and, let us not forget, the ultimate character of the management is entirely under the control of the Council.

41. Thus, eschewing during cross examination the need for the field to continue in arable use, Ms Wade ultimately had to accept that it need not be in any agricultural use at all – but she wanted it to have the 'character' of an agricultural use. She became uncomfortable with wildflower meadows and scrub and tree planting once people were introduced[18].

42. Public access to the countryside is a desideratum of national policy. The southern field is and would remain countryside, but would be managed to be a more attractive piece of countryside than an intensively farmed arable field, currently bearing a a poor crop of beans and with no public access.

43. With the proposals in place, the southern field would remain undeveloped, rural and open. It would be managed for biodiversity and landscape interest in whatever manner the Council prefers *and* have the benefits of public access. If benches and interpretation panels are so offensive to Miss Wade, they can be omitted; the Appellant considers they actually add to the public appreciation of the locale, but no part of the appeal scheme turns on their provision.

[18] This para: Wade xx CBKC, Day 2

44. Importantly, though, the 'attractive countryside views to the South and West' noted as an aspect of the CA[19] and – by extension – the westward listed building therein, would be not lost, but retained and – the Appellant says – actually enhanced. Certainly, by the POS passing into public use they would be protected in perpetuity – a matter which might just explain the muted level of public opposition at the inquiry even from the five listed buildings overlooking the site. In the future, they will overlook managed public open space, in perpetuity.

45. The truth is that these listed buildings derive their principal interest from their age, fabric and materials (none of which will change), their group value *inter se* (which will not change), their relationship with The Street (which will not change) and the immediate setting of their own and adjoining curtilages (which will not change). The appeal site only forms one compass point (out of four) in their wider setting and visually, at the very least, it will be *enhanced.*

46. In any event, any such harm (whatever the degree and be it to two or to seven heritage assets) is to be weighed in the 'public interest' test in para. 202 of the NPPF. Mr S Brown considers it passed even on the Council's mistaken characterisation of the harm. As such, the proposal *accords* with national policy to protect heritage assets.

47. It is respectfully submitted, therefore, that even were the Council correct in its characterisation of harm (which it, plainly, is not), Reason for Refusal 3 is not made out and Main Issue 2 is not a matter which stands in the way of granting permission.

Main Issue 3: whether the Council can demonstrate the required 5-year housing land supply:

48. The Council's most up to date 5-year HLS assessment (start date 1st April 2023)[20] purported to show a 98-unit surplus over its minimum housing requirement and a 'marginal' supply of 5.09 years. Even this has been revised downwards by the Council's

[19] CDF.10
[20] CDE.25

evidence to this inquiry to a mere 47-unit surplus, amounting to an even more marginal supply of 5.04 years[21].

49. Of the supply side sites, 11 are in dispute between the parties. The Appellant concludes that the Council cannot demonstrate more than 4.3 years supply (a shortfall of some 806 units)[22].

50. The circumstances in respect of these 11 sites were explored in evidence in the HLS RTS. It is, of course, for the Council to demonstrate that it can deliver the 5-year supply, not the Appellant to demonstrate otherwise. In that context it is important to note that 9 of the 11 disputed sites are what are known as 'Category B' sites where there is *no* presumption of delivery; rather, the Council needs to bring forward 'clear evidence' which is 'robust and up to date' to demonstrate delivery[23]. On the two Category A sites, there is evidence that they will *not* come forward as the Council envisages.

51. The revised respective 5yr HLS positions are set out in Table 1 of the HLS SoCG[24] and the subsequent HLS Update in ID10.

52. The Council claims a 5,770 dwelling supply. As noted, this results in a surplus of 47 dwellings and a supply of 5.04yrs. This represents a marginal surplus against the minimum housing requirement. This provides a flexibility of only 0.8%, a degree of purported accuracy that cannot engender confidence in the Council's predications. Mr Brown disputes the extent of the Council's claimed supply.

53. Following the HLS RTS, the evidential position is summarised below:

Land West of Freeks Lane, Burgess Hill:

LPA: 410 dwellings

Appellant: 250 dwellings

[21] Compare Housing Land Supply Position Statement, July 2023 [CDE.25] and Roberts proof, and HLS SoCG Table 5.6, Table 1 [CDD.5]
[22] Appellant's Updated 5 yr HLS Position [ID10]
[23] NPPF Glossary definition of 'Deliverable'; the PPG [at ID 68-007- 20190722) and see generally SBrown proof on HLS para's 3.9-3.20, and eg the decisions at Sonning Common [CDI.10] and Nantwich [CDI.11]
[24] CDD.5, p. 3

Difference: 160 dwellings

The site is within the eastern part of the DP9 allocation to the north of Burgess Hill (Burgess Hill Northern Arc (allocated for 3,500 dwellings)). Now marketed as Brookleigh.

SB[25] 3.57 - Outline pp secured by Homes England in July 2019. SB 3.58 - RM submitted by Countryside Properties. Approved 19 Dec 2019.

Record of past delivery and how this informs the future?

Reflecting the Thornbury appeal decision (para 83 & 84): the first completion on this site was 6 July 2022 (Appendix 4 to CDE.25); 50 dwellings had been completed 2022/23 (as per CDE.25) (SB para 3.59); site visit in July 2023 indicated no further completions in the 3 intervening months. (My para 3.60).

Homes England 2021 SoCG for the Local Plan detailed developers' commitment to building minimum 8 dwellings per month (SB para 3.63). Site visit indicated not being achieved.

Countryside is the developer; the site is not being actively marketed. The Council's expectations of delivery rates are not clearly evidenced robust having regard to past performance, lack of private sale marketing and delays from the link road and bridge to Isaac's Lane (A273) impinging upon later stages of the build programme. The timeline contained in the Homes England Statement of Common Ground provided in Mr Roberts Appendix 1 is not supported by the evidence before this inquiry.

Brookleigh, Phases 1.5 and 1.6, Burgess Hill:

LPA: 249 dwellings

Appellant: 225 dwellings

Difference: 24 dwellings

Again, part of the DP9 allocation. Bellway obtained RM pp on 24th May 2022. **WB8.** As SB page 33 states, Bellway website still indicates a launch in Spring 2024 for sales.

[25] 'SB' references are to Steven Brown HLS Proof

SB para 3.100 sets out the approach to assessing delivery rates. The Council's delivery assumptions are not clearly evidenced on account of past performance, delays in ability of Bellway Homes to start construction including impacts that delays from the link road and bridge from Isaac's Lane (A273) are impinging upon build programme.

Linden House, Southdowns Park, Haywards Heath

LPA: 14 dwellings

Appellant: 0 dwellings

Difference: 14 dwellings

The site has an extant outline permission for 14 dwellings. However, there is a pending detailed application for 17 dwellings, with unresolved objections from urban design and heritage.

The Council has not provided clear evidence that the 17 dwellings are deliverable in the five year period.

Northern Arc, Burgess Hill

LPA: 742 dwellings

Appellant: 413 dwellings

Difference: 339 dwellings

This is a category B site. Mr Brown's reductions take account of the evidence in his proof (Table 10) and the Homes England Statement of Common Ground (Appendix 1 of Mr Roberts) which shows a 2 year delay from site disposal/reserved matters application until first completion.

Mr Roberts's paragraph 6.4.21 supports Mr Brown's analysis of anticipated site delivery. In addition, and as the evidence demonstrates, the anticipated build rate at the Northern Arc has been reduced at regular intervals:-

- In the District Plan all 3,500 dwellings were anticipated to be complete by 2031 (at April 2017 base date)

- This was reduced to 2,770 dwellings in the Site Allocations LP (Document WB3 refers)
- Appendix 1 to Mr Robert's evidence now envisages only 2,298 dwellings.

The ongoing delays and the evidence at Mr Robert's para 6.4.21 supports Mr Brown's assessment.

Land west of Selsfield Rd, Ardingly

LPA: 35 dwellings

Appellant: 0 dwellings

Difference: 35 dwellings

This is a Category B site which the Appellant does not regard as one supported by relevant evidence to substantiate deliverability as envisaged in the NPPF, PPG and appeal decisions including importantly that by the Secretary of State in the Nantwich appeal decision (paragraph 21 of Decision letter (CDI.11)). This confirmed that merely having an outline planning permission is insufficient to demonstrate deliverability.

There is not even a pro-forma or other supporting evidence to support expectations, and consequently 'no clear evidence', as required.

Hurst Farm, Hurstwood Lane, Haywards Heath

LPA: 215 dwellings

Appellant: 100 dwellings

Difference: 115 dwellings

This is a Category B site for which the Appellant accepts is deliverable in part with a contribution of 100 dwellings within 5 years, 115 dwellings less than the Council. This revised position of the Appellant takes account the Council's resolution to grant planning permission at its August 2023 meeting, alongside the following other matters:

a) Statement of Common Ground with Homes England provided in appendix 2 of Mr

Roberts proof;

b) the 2 year gap between reserved matters/site licensing by Homes England and first completion as detailed with respect to the Northern Arc; and

c) a delivery rate of 50dpa once completions are underway.

This site is promoted by Homes England and future completions would be dependent upon a housing developer taking an interest in the land and subsequently submitting a reserve matters application. There is no clear evidence of that. There is no known developer partner and no known timetable for submission of a reserved matters application.

Using Mr Roberts's timeframe (his Appendix 1), a total of 100 completions could be achieved within the current 5 year period.

Land South of Southway, Burgess Hill

LPA: 30 dwellings

Appellant: 0 dwellings

Difference: 30 dwellings

SB proof, p. 50 onwards; Mr Roberts Proof, p. 42 onwards. Whilst allocated in LP (SA15), there is no 'clear evidence' as per the PPG or NPPF definition of 'deliverable' to indicate why this site is regarded as deliverable, beyond the Site Allocation Plan Inspector's considerations which were 2 years ago. There has been no firm progress with this site since.

Woodfield House, Issacs Lane, Burgess Hill

LPA: 29 dwellings

Appellant: 0 dwellings

Difference: 29 dwellings

This site also fails the deliverability test set out in the NPPF and PPG. There was no update on any progress with this site at the round table session. There is no clear evidence that the site is deliverable.

Hammerwood Road, Ashurst Wood

LPA: 12 dwellings

Appellant: 0 dwellings

Difference: 12 dwellings

This site also fails the deliverability test set out in the NPPF and PPG. There was no update on any progress with this site at the round table session. There is no known developer interest. There is no 'clear evidence' that the site is deliverable.

Land south of The Old Police House, Birchwood Grove, Horsted Keys

LPA: 20 dwellings

Appellant: 0 dwellings

Difference: 20 dwellings

SB Proof, p. 50 onwards; Mr Roberts Proof, p. 45 onwards.

Allocated under SA28. The information provided at Appendix 4 to Mr Roberts's evidence indicates that a pre-application request relating to a scheme for 25 dwellings was submitted in January 2023. However, the Council's response has not been provided and no further update on progress was presented at the round table session.

There is no agreed timeframe for an application. There is no scheme and the pre-application form is not 'clear evidence' of site delivery.

Land south and west of Imberhorne Upper School, East Grinstead

LPA: 75 dwellings

Appellant: 0 dwellings

Difference: 75 dwellings

SB Proof, p. 50 onwards; Mr Roberts Proof, p. 48 onwards.

This is a Category B site which the Appellant does not consider to be supported by relevant 'clear evidence' to substantiate deliverability as envisaged in the NPPF, PPG and appeal decisions.

Whilst the Council envisages a planning application in September 2023, whether an application materialises within that timeframe remains to be seen. Recent performance suggests not given the ongoing delays in submitting one. There is no clear evidence that the site is deliverable.

54. In numerical terms, the evidential position, therefore, is:

Freeks Lane (-160)

Brookleigh Phase 1.5-1.6 (-24)

Linden House (-14)

Northern Arc (-339)

Selsfield Rd (-35)

Hurst Farm (-115)

Southway (-30)

Woodfield House (-29)

Hammerwood Road (-12)

Old Police Station (-20)

Imberhorne Upper School (-75)

Total disputed dwellings: 853

55. As a matter of generality, it is respectfully submitted that the Council's evidence in support of its claimed delivery woefully fell short of the required mark. But, equally, it

must be observed that the Appellant does not need to be justified in its scepticism over the robustness of the Council's evidence in support of all 806 units in dispute; the Council's vaunted surplus now lies at only 47 dwellings (in the context of a claimed of 5,770 dwellings). A slippage of less than 1%[26] of its claimed supply renders the Council in breach of para. 74 of the NPPF, and subject to Footnote 8 and its deeming effect.

56. Manifestly, we respectfully submit, the evidence led by the Council has failed to demonstrate a deliverable 5-year housing land supply. This, on its own, triggers para. 11(d) of the NPPF.

Main Issue 4: whether the proposals secure the required infrastructure contributions:

57. As noted above, with the provision of a satisfactory s. 106 obligation, Reason for Refusal 4 falls away. As such, this Main Issue is not one which would lead to the refusal of planning permission.

Planning Balance and Conclusion:

58. For the reasons given, this is a development plan the 'most important policies' of which for the purpose of determining this appeal are 'out of date' by virtue both of being predicated on an out of date assessment of need and also the failure of the Council to be able to demonstrate the required 5-year housing land supply (with even their own HLS case relying on breaches of the settlement boundaries). In addition, the DM policies in play are inconsistent in their tests with the NPPF as currently drafted. Thus para 11(d) is engaged.

59. Consideration is given to para. 11(d)(i) by reason of allegation of heritage harm, but the test in para. 202 is passed, as the public benefits do indeed manifestly outweigh the heritage harm alleged (let alone its true extent). Thus, there is no 'clear' reason to

[26] 0.8%, see above

withhold permission under para. 11(d)(i) and attention passes to para. 11(d)(ii) and the 'tilted balance'.

60. Conveniently summarised at para 8.1 of the Planning SoCG[27], the many and manifest benefits were explored in evidence:

Housing:

61. Consistent with Secretary of State and Inspector decisions[28], the Appellant gives this significant weight whether or not the Council can demonstrate a 5-year HLS.

62. While it appeared from her written text that Ms O'Neill had sought to reduce weight if 'tilted balance' did not apply (which was agreed to be an erroneous approach[29]), she explained that what she had done was to reduce weight were the Council able to show a 5-year HLS. In the light of the appeal decisions cited in Mr Brown's evidence, that is also an erroneous position to take, given the fact that the 5-year HLS is tested against a minimum figure and the overarching imperative is significantly to boost the supply of housing.

63. Significant weight should be given.

Affordable housing:

64. As Ms O'Neill accepted, the Secretary of State and Inspectors recognise this as a separate head of social benefit, worthy of significant/substantial weight even where the provision is policy-compliant.

65. There can be (and is) no dispute that the need for affordable housing in Mid Sussex is acute and that above regional affordability ratios are worsening[30]. 'Moderate' weight is wholly unjustified and 'significant' is the proper weight, espoused by Mr S Brown.

Community Building and Shop:

[27] CDD.1
[28] See SB HLS proof Section 4
[29] O'Neill xx CBKC, Day 3
[30] See SB HLS proof, Section 4

66. The NP identifies the absence of a shop in Albourne as a constraint. While it is recognised that the recently approved elderly care facility is expected to provide a 28m2 shop available to the wider public within its central reception area, the appeal site will greatly add to provision locally, with a minimum 75m2 shop within its Community Building, in close and synergistic proximity to the school car park and drop-off.

67. Very properly, Mr S Brown gives this significant weight.

Land for the school to expand:

68. Following the entirely wrong-headed approach of the County Council, Ms O'Neill wanted to give this 'no weight'. The County seemed to be anxious to preserve its cash contribution to primary school provision, despite an apparent surplus in the adjacent primary school. It resisted recognition of the need for additional land for that school to expand, which begs the question as to where it intends to spend this contribution.

69. Properly looked at, however, the County needs the cash and the land. This is because its own evidence appended to Ms O'Neill's proof identifies a shortfall across the four local primary schools that cater, together, for this area, while the Appellant's education expert has identified that of the four, only Albourne school can expand[31]. Thus, if the additional capacity needed within the four schools is to be achieved, additional land will have to be provided at the appeal site.

70. In addition, as the Appellant's evidence has identified, the current green space play provision at Albourne primary school is roughly half that required for a school of its roll capacity. The additional 27 children from the appeal site will exacerbate that deficiency, which only land from the Appellants can remedy.

71. It is perverse, in the circumstances, to resist the offer of land for the school. If the County Council persists in its wrong-headedness, the UU has provided for the land to be transferred to the diocese (as this is a CofE school) or, in default, to the school itself – which warmly welcomes the children from the development and both the land and the opportunity to expand the roll[32]).

[31] SB Proof Appx SB2
[32] SB proof Appx SB1

72. The NP[33] states explicitly that the Council will support the expansion of the school in Albourne as a contributor to social cohesion; significant positive weight is the correct finding on this head.

Additional parking for the school:

73. Again, despite express recognition in the NP[34] of the serious issue of parking and congestion at school drop-off/pick up times, Ms O'Neill grudgingly gave this benefit 'limited weight'. Her off-cuff-comment that she'd 'prefer a mini-bus' does profound dis-service to the NP's identification of the problem, unsolved since 2016.

74. The appeal scheme can provide a solution, and remedy this problem, again as welcomed by the school[35]. Indeed, it is perhaps worthy of note just how little adverse comment has come from the residents of Albourne and the surrounding area, which may reflect the recognition of the assistance the scheme gives to long-standing problems with matters such as the school drop-off and its wider future.

75. Significant weight is properly to be accorded to this feature of the scheme, supported as it is by the 'made' s.38(6) NP.

Environmental benefits and BNG:

76. Mr S Brown gives these 'moderate weight', a matter agreed to by Ms O'Neill. +53% is the BNG figure, well in excess of the still not in force expectation of the Environment Act.

Public Open Space:

77. It is unclear why Ms O'Neill gave only 'moderate' weight to the provision of public open space. Over half the site is dedicated to public access. The entrance green gives an expanded context and better connectivity for the Millennium Garden; the northern orchard expands and brings into community ownership and management an opportunity for locally grown food and initiatives; the western edge gives a wrap-round green

[33] CDE.3
[34] ibid
[35] SB proof Appx SB1

resource of biodiversity and public recreation; the central core gives a sense of place and public realm in the heart of the residential quarter and the southern field, with its spectacular views to the South Downs, hugely expands both the extent and the attractiveness of access to the countryside at the doorstep of existing and new residents.

78. Again, Mr S Brown's 'significant' weight is the proper recognition of this benefit.

Economic benefits:

79. Neither the characterisation nor the quantification of the economic benefits provided by the appeal scheme is disputed by the Council. They are significant and deserve, in accordance with para. 81 of the NPPF, to be accorded 'significant' weight – as they were, for example, by the Inspector at Satchell Lane[36].

Proximity to services and facilities:

80. As the planning SoCG records[37], the site is accessibly located, with safe and convenient pedestrian access to existing and proposed facilities. It adjoins a 'Category 3' 'Medium Sized Village' in the adopted DP6 settlement hierarchy[38], and has good bus links to the wide range of facilities in Hurstpierpoint[39].

81. The Council recognises in express terms that the site is 'sustainably located'[40] notwithstanding that it is the 'wrong side' of the black line drawn on the proposals map called the (out of date) 'built up urban area boundary'.

Scheme design:

82. There is no design objection; the Council accords 'scheme design' limited (positive) weight. This is welcome, but significantly underplays the true position.

83. Para. 134 of the NPPF requires that 'significant' weight should be accorded to schemes that accord with national and local design guidance. Albeit at outline, it is clear from

[36] CDI.9
[37] CDD.1 at para. 6.1(f) and (h)
[38] CDE.1
[39] Highways SoCG [CDD.4] – see generally para's 2.3-2.8
[40] CDD.1, para. 6.1(i)

the DAS[41] and the evidence of Miss Ritson that that is precisely what this scheme seeks to do and will do, at reserve matters stage.

84. The Appellant is properly to be commended for 'going the extra mile' on a landscape-led and design-led proposal, with the aim and intention of genuine 'place-making'. Local distinctiveness and a full embracing of the Government's 'beauty agenda' combine to make a real, lasting and significantly positive 'place' to add to this village and its community, not detract from it.

85. 'Significant' weight is properly to be given to the holistic design qualities of this scheme.

The planning balance:

86. These benefits, summed together in the 'basket' of positives are by no means outweighed by the harms alleged by the Council; indeed, properly recognised, they plainly outweigh them.

87. Let us enumerate those alleged impacts for a moment:

- being the 'wrong side' of an out-of-date line on a proposals map (but still in what is agreed to be a sustainable location);
- a para. 174(b) landscape impact on the Council's best-case limited to 'substantial' on the site itself and 'moderate' on the adjacent settlement edge;
- a visual impact limited to 'substantial' on the footpath immediately adjacent to the development parcel; and
- a 'less than substantial' heritage impact limited to development in the setting of certain assets and predicated on not recognising that the southern field will be significantly more attractive – and just as rural – as it is now, and outweighed, in any event by the 'public benefits' of the scheme under para. 202 of the NPPF.

88. Even taken together, these 'harms' cannot conceivably outweigh the benefits, let alone 'significantly and demonstrably' so. It is respectfully submitted, therefore, that the matters still pursued by the Council by way of objection by no means justify the refusal

[41] CDA.3

of permission here. By contrast, the benefits are significantly in excess of any harms arising, on a straight or a tilted balance.

89. Consequently, and given that the local policy framework is fairly acknowledged to be out of date, national policy represented by the NPPF strongly supports this sustainable development which, it is respectfully submitted, should be granted planning permission as sought - in the public interest.

CHRISTOPHER BOYLE KC

22nd August 2023

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