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# Appeal Decision

Inquiry held between 15 – 22 August 2023

Accompanied site visit made on 24 August 2023

**by Dr Rachael A Bust BSc (Hons) MA MSc LLM PhD MIOl MCMI MIEEnvSci MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> October 2023**

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**Appeal Ref: APP/D3830/W/23/3319542**

**Land south of Henfield Road, Albourne (Easting 526300: Northing 116837)**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Croudace Homes Ltd against the decision of Mid Sussex District Council.
  - The application Ref DM/22/2416, dated 28/07/2022, was refused by notice dated 25 November 2022.
  - The development proposed is the erection of up to 120 residential dwellings including 30% affordable housing, public open space and community facilities. All matters are reserved except for access.
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## Decision

1. The appeal is dismissed.

## Preliminary and Procedural Matters

2. The Case Management Conference call was held on 19 June 2023. During the Inquiry there was formal presentation of evidence with cross examination of the matters of landscape, heritage and planning. Round table sessions were used to examine the five-housing land supply evidence, planning conditions and obligations.
3. In addition to the accompanied site visit which included a walking route agreed by the parties, I also carried out two unaccompanied visits to the site and Albourne using public footpaths. The first on 14 August the day before the Inquiry opened, and the second on 18 August having heard the evidence in relation to landscape and heritage.
4. The application was made in outline with access as the only matter to be considered at this stage. The Planning Statement of Common Ground (SoCG) set out the agreed plans which form the appeal scheme together with a list of the supporting plans, including parameter plans. Despite the outline nature of the scheme during the Inquiry frequent references were made by witnesses from both parties to the Land Use Plan (drawing reference 3117/A/1201/PR/C); such that by the Inquiry session on planning conditions, the main parties agreed that this plan should be elevated from being a supporting and parameter plan in the original submission to become an approved scheme plan in the event that the appeal were to be allowed. Having regard to the *Wheatcroft* principles<sup>1</sup>, as the Land Use Plan was part of the full suite of

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<sup>1</sup> *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

documents and consulted upon, I am satisfied that no prejudice would arise to any party from the change of status of this Plan. Accordingly, I have determined the appeal on the basis of the original scheme plans together with the Land Use Plan. All other supporting and parameter plans are for indicative and illustrative purposes only and I have therefore considered them accordingly.

5. The application was refused planning permission for four reasons. These related to harm to the aspects of (i) landscape character, (ii) views from 2 public rights of way (Footpaths 12\_1AI and 15\_1AI) and (iii) several designated heritage assets and (iv) the absence of infrastructure and affordable housing contributions. The Planning SoCG<sup>2</sup> confirms that the fourth reason for refusal would be addressed through the submission of a planning obligation under Section 106 of the Town and Country Planning Act 1990.
6. Two Section 106 planning obligations were submitted in draft and subsequently discussed at a round table session during the Inquiry. The signed and executed versions dated 29 August 2023 were submitted within the agreed timescale following the close of the Inquiry. Both deeds contain the mechanism (sometimes known as a 'blue pencil' clause) which provides that for any obligation(s) which I find does not pass the statutory tests such obligation(s) shall have no effect and consequently the owner and/or other covenanters shall not have liability for payment or performance of that obligation. I have had regard to both planning obligations and the Council's submitted Infrastructure Statement and will return to them later in the decision.
7. One planning obligation is made by way of an Agreement between the District Council, County Council, Appellant and Landowner. The Agreement provides for index linked financial contributions for formal sport, play space, kickabout, community buildings, local community infrastructure, police, health, primary and secondary education, libraries and transport. Associated administration/monitoring costs are also included. In addition, it secures the provision for on-site affordable housing. It also includes provision for the community orchard, locally equipped area of play (LEAP), public open space, and a community building to include a shop.
8. The second planning obligation by way of Unilateral Undertaking on the part of the Landowner and Appellant in favour of the County Council provides additional school land, woodland school land and school car park.
9. A revised National Planning Policy Framework (the Framework) was published on 5 September 2023 which replaces the version published in July 2021. However, the only revision relates to the Government's policy on onshore wind development within chapter 14. There is no onshore wind proposed as part of this appeal scheme. As such there was no need to seek the parties' views on the revision to the Framework.
10. From all I have read, heard and seen, the main issues are:
  - (i) The effect of the proposal on the landscape character including the public rights of way;

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<sup>2</sup> CDD.1 – Statement of Common Ground (25 July 2023)

(ii) The effect of the proposal on the significance of nearby designated heritage assets including the Albourne Conservation Area and Listed Buildings; and

(iii) Whether or not the Council can demonstrate a deliverable 5-year housing land supply.

## **Reasons**

11. For the purposes of this appeal the relevant part of the Development Plan comprises the *Mid Sussex District Plan 2014-2031* adopted in March 2018 (the DP); the *Mid Sussex Site Allocations Development Plan Document* (the DPD) adopted in June 2022 and the *Albourne Parish Council Neighbourhood Plan* made in September 2016 (the NP). The Council confirmed that no concerns were raised in relation to *West Sussex Joint Minerals Local Plan* (2018), so I do not consider minerals any further.
12. The Council and the Appellant consider that the following policies, which are included in the reasons for refusal, should be considered most important for this scheme. These are Policies DP6, DP12 and DP15 of the DP together with Policies ALC1 and ALH1 of the NP. I see no reason to disagree. Consideration of the relevant policies and weight to be given to them is considered in the planning balance.
13. The appeal site is located outside of the defined built-up area boundary of Albourne and is therefore in the countryside for policy purposes. The proposal is not necessary for the purposes of agriculture or supported by a specific policy reference elsewhere in the overall development plan and therefore there is conflict with Policy DP12 of the DP.
14. Albourne is defined as a category 3 medium sized village which provides essential services for the needs of residents and immediate surrounding communities. It is not disputed that Albourne is a settlement which can receive some growth. However, Policy DP6 envisages any expansion outside of the built-up area to be contiguous and that un-allocated windfall sites would be for 10 dwellings or fewer. The appeal proposal is for up to 120 dwellings which is a significant scale in relation to this policy expectation and would represent a substantial increase on the number of existing households in the village based on the Census 2021<sup>3</sup>. In this respect the proposal would conflict with Policy DP6 of the DP.

## **Landscape character**

15. The appeal site comprises approximately 11.54ha and is located to the south of Henfield Road, on the western side of Albourne. It is agreed that the appeal site is not covered by any national or local landscape designations. It is not considered to be a valued landscape in accordance with paragraph 174(a) of the Framework and the impact on the South Downs National Park is neutral. As such the appeal site is to be regarded as the countryside which should in any event be recognised and valued for its intrinsic character and beauty according to paragraph 174(b) of the Framework.

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<sup>3</sup> ID13 Census 2021 Profile for Albourne indicates that there are 270 households in Albourne rounded to the nearest 10 households.

16. Several landscape character assessment documents have been put to me, including the relevant extract from the National Character Area<sup>4</sup>, a county-wide assessment<sup>5</sup> and a district-wide assessment<sup>6</sup>. Collectively, these provide a useful context and from them, and as confirmed by my site visit, the appeal site is located within an agricultural and pastoral rural landscape which has a largely dispersed settlement pattern of small hamlets, ancient farmsteads and farmstead clusters. The patchwork pattern of fields is generally enclosed by hedgerows and/or trees which form small woodlands. The topography is undulating with ridges and vales. Whilst these features are not rare, they are important to the rural landscape character of the countryside in this location.
17. The appeal site can be viewed as three portions, the northern part with a defined orchard area; the central and southern parts are divided east to west by one of the two Public Rights of Way (Footpath 15\_1AI) and a hedge line which is patchy in places. Consequently, there is a sense of openness and connection between adjacent fields. Footpath 12\_1AI runs along the eastern boundary of the southern portion in a north-south direction. Individual and groups of trees are present in places around the site boundary. The undulating nature of the topography allows a wide variety of short, medium and longer views, including to the South Downs from the site and across the site.
18. I consider that the appeal site is typical of the landscape in this location and shares many of the characteristics established in the collection of landscape character assessment documents. Consequently, in my opinion, the appeal site integrates very well into the wider landscape.
19. The appeal proposal is in outline, with the layout and external appearance to be considered at a future reserved matters stage. However, the Land Use Plan and other supporting and parameter plans help to illustrate how the site could be developed. It was clear throughout the Inquiry that by following a landscape led approach, the housing and built development would be focussed on the central part of the site with the southern portion becoming a form of managed landscape public open space. The existing orchard area to the north end would be largely unchanged, however this is the minority portion of the overall appeal site.
20. It is acknowledged by both main parties that as an undeveloped site adjacent to an existing settlement there will be some landscape character harm. The appeal scheme would be seen as a significant extension to the side of the village. I am not entirely persuaded that due to the scale, siting and the provisions indicated on the Land Use Plan that it could be effectively integrated with Albourne.
21. I have had full regard to the intentions set out in the Design and Access Statement (CDA.3) and the evidence of Ms Ritson for a landscape-led and design-led approach. A Landscape and Visual Impact Assessment with addendum<sup>7</sup> was submitted as part of the planning application. There is no dispute regarding the methodology used, the disagreement relates to landscape sensitivity, landscape effects and visual effects. At the Inquiry the Appellant presented an agreed Revised Landscape and Visual Clarification Note<sup>8</sup>

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<sup>4</sup> CDG.10 – Natural England National Character Area NCA 121 The Low Weald

<sup>5</sup> CDG.11 – West Sussex County Council A Strategy for the West Sussex Landscape (October 2005)

<sup>6</sup> CDG.1 – A Landscape Character Assessment for Mid Sussex (November 2005)

<sup>7</sup> CDA.15 – Landscape and Visual Impact Assessment (July 2022) & CDA.16 - Addendum LVIA (September 2022)

<sup>8</sup> ID1 – Landscape and Visual Clarification Note, Revision A, Ms Ritson (August 2023)

- which contained 3 tables to identify in summary form, the differences in the assessments of receptors and effects.
22. During my various visits to the area, I saw all of the agreed visual receptors<sup>9</sup>, some of which were from the closest point of public land. In my opinion the visual receptors where the impact of the proposal would be the greatest are those which are closest to the appeal site and include both footpaths 15\_1AI and 12\_1AI, the Millennium Garden, the Primary School, Henfield Road near Inholmes Farmhouse and Church Lane.
  23. Footpaths 12\_1AI and 15\_1AI were specifically identified in the second reason for refusal. These public footpaths appear to be well used and as Mr Zeidler explained to the Inquiry, they offer some more level walking and are less prone to mud than other footpaths. In addition to the accompanied site visit I walked the paths at other times and was passed by walkers and dog walkers.
  24. It is important to remember that from the footpaths the experience will be kinetic, since there will be continuing change as a receptor moves along the footpath in countryside. With the exception of the section of Footpath 12\_1AI which is narrow and enclosed with vegetation alongside the primary school, both footpaths provide attractive routes that link up with a wider network of paths for informal recreation. At present users of these footpaths have an immediate experience of rural and traditional agricultural open fields and all-round views despite some more recent planting, including the attractive views of the South Downs escarpment and Wolstonbury Hill when leaving the edge of Albourne. Walkers are likely to particularly value the rural nature of these paths and are likely to be attuned to the environment through which they pass and thus highly sensitive to change.
  25. I heard at the Inquiry that the southern portion of the site would be an area of managed landscaped open space with a variety of paths and interpretation boards. Whilst the precise treatment of the southern portion and other aspects of detail would be assessed by the Council in a future reserved matters application, at this stage the principle of development and therefore change is examined. The change would diminish the current rural and traditional agricultural experience of the users of the sections of Footpaths 12\_1AI and 15\_1AI that run alongside and through the appeal site. Consequently, people would need to walk much further west from Albourne beyond the appeal site to gain a similar experience to what is experienced at present. The addition of a specific viewpoint, as fine as it is, would not overcome the harm arising from the change in the southern field as a whole.
  26. I concur with the Appellant's description of the Millennium Garden that it is a small, reflective space. From my site visits and spending time in this community space I found it to be very peaceful, tranquil and from the northern bench, it provides an opportunity to enjoy a variety of short, medium and longer views of the wider countryside. The appeal scheme would introduce a permanent change. Future users of the Millennium Garden would see the car parking area and potentially a community building in short views followed by medium views of new housing. Even if the housing layout was designed to enable some longer views of the countryside, this would not be sufficient to mitigate the significant adverse impact that would arise.

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<sup>9</sup> CDD.2 – Landscape Statement of Common Ground, Table 1 (17 July 2023)

27. The primary school is a sensitive receptor as it would share a boundary with the central section of the appeal site. Even with boundary vegetation the sense of change that would be experienced in this location from rural traditional agricultural field to built development would be a significant adverse change.
28. Church Lane is a rural lane bounded by a vegetated bank opposite the row of dwellings. The lane is at a lower level than the southern portion of the appeal site. From the proposed appeal site access, the roofline of dwellings on Church Lane to the south can be seen nestling and positively contributing to the rural landscape. Despite intervening field boundary vegetation from various points walking along Church Lane there is a strong sense of openness arising from the rural agricultural field and vistas across it. The topography of the southern field adds to the rural character and has a steep slope from northwest to southeast together with a more gentle valley slope in approximately half of the eastern side of the southern field which is the lowest point where it meets Church Lane. Although the appeal scheme would not aim to introduce built development into this southern field, the proposed change to a managed landscape would be significant and adverse.
29. From the mid-point of Church Lane, it is my opinion that the edge of the proposed built development on the central field would be likely to be perceptible between intervening vegetation when in leaf and more so during autumn/winter seasons or when vegetation has had pruning maintenance. From this section the primary school can be seen in the medium distance views and also the roofline of Inholmes Farmhouse outside the northern boundary of the appeal site in the longer views. From parts of Church Lane, new rooflines would be likely to appear as skyline development and would result in a harmful change to the character of the landscape.
30. Inholmes Farmhouse is an attractive large three storey dwelling which occupies a prominent position on Henfield Road. It currently acts a local focal point due to its siting and height. From the public highway outside Inholmes Farmhouse with some intervening vegetation the appeal site can be seen in wide open landscape scale views. From Henfield Road longer range views across the site to the South Downs can be seen. Residential development in the central section of the appeal site as proposed would completely obscure these longer-range views.
31. Allowing greater public access to the countryside in addition to the 2 footpaths is positive. My accompanied site visit enabled me to stand in a localised high point of the southern field which is not presently available to the public and experience the particularly fine views of Wolstonbury Hill and the South Downs ridgeline. Notwithstanding this particularly fine viewpoint spot that could become available, this opportunity must be balanced against the change in the experience that would arise from the appeal proposal as a whole.

#### *Landscape Character Conclusion*

32. Despite the outline form of the proposal and all of the Appellant's intentions that I have read and heard about producing a landscape led scheme, the current landscape is already attractive which does not require improvement. The change that would arise to the landscape character from the appeal proposal would be considerable, with the exception of the orchard which would remain largely unchanged. The adverse impact would be the greatest for

visual receptors which are closest to the appeal site. Although predominantly localised, other receptors would still experience change but to a lower level of significance and effect. The walkers near Albourne Place and near Lanehurst would experience a neutral change and similarly from the long-range receptors, the views from Wolstonbury Hill and Devil's Dyke, the change would also be neutral since the site is imperceptible without binoculars.

33. Even with landscaping measures to be submitted at the reserved matters stage, I am not satisfied that at year 15<sup>10</sup> they could overcome the harm I find from the principle of the proposal in relation to the landscape character and the experience for users of both Footpaths 12\_1A1 and 15\_1A1 and the Millennium Garden.
34. Accordingly, the proposal conflicts with Policies DP6, DP12 and DP15 of the DP. As spatial policies which define the circumstances in which development will be permitted beyond the built-up area boundary, there is no dispute that the appeal scheme is contrary to all 3 policies. There would also be conflict with Policies ALC1 and ALH1 of the NP. Policy ALC1 seeks to conserve and enhance the character of the countryside and maintains or enhances the quality of the rural and landscape character. Policy ALH1 indicates that housing development would be supported immediately adjoining the built-up area where, amongst other things, the development is appropriate to a village setting in terms of scale, makes use of a brownfield site or infill and surrounded by existing development. The appeal proposal fails to comply with these criteria. In addition, the appeal proposal would not be supported by paragraph 174 (b) of the Framework.

### ***Designated heritage assets***

35. The appeal site lies adjacent or near to several designated heritage assets which would be affected by the proposal including the Albourne Conservation Area (ACA). There are no listed buildings within the appeal site. However, the Council contends that the appeal site falls within the setting of six Grade II Listed Buildings, namely *Hunter's Cottage*, *Bounty Cottage*, *Finches* and *Souches* on The Street which lie to the east of the appeal site; *Spring Cottage* on Church Lane to the south of the appeal site and *Inholmes Cottage* on Henfield Road to the north-east of the appeal site.
36. In addition to viewing all these properties and ACA from the public realm, during the accompanied site visit I had the opportunity to view the appeal site from within the gardens of *Finches*, *Souches* and *Bounty Cottage* on the western side of The Street. Also at the request of a third party I visited the property known as *Nortons Cottage* on the eastern side of The Street within the ACA.
37. Specific statutory duties arise in relation to designated heritage assets. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard should be had to the desirability of preserving the setting of Listed Buildings. This means that considerable weight and importance must be given to any harm caused to the Listed Buildings or their setting. Similarly, section 72(1) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of any buildings or other land in a Conservation Area. Unlike the setting of the listed

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<sup>10</sup> ID2 – Agreed Revised Comparison of Year 15 Effects on Visual Effects (13 August 2023)

buildings, the setting of Conservation Area is not protected by statute. Nevertheless, the same considerations will apply as a matter of policy in terms of weighing harm to significance against benefits.

38. The special interest of a heritage asset derives not only from its physical presence and historic fabric but also from its setting which comprises the surroundings in which it is experienced. The setting of a heritage asset can therefore contribute to the significance of the designated heritage asset.
39. The Glossary of the Framework suggests that the setting of a heritage asset is the surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. The word 'experienced' has a broad meaning, which is capable of extending beyond the purely visual, and could include, but is not limited to, economic, social and historical relationships, and considerations of noise and smell.
40. The Framework indicates that when considering the impact of a proposed development on the significance of the designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
41. The Council and Appellant agree that the appeal proposal would cause less than substantial harm to the setting of the Listed Building of *Finches* and to the ACA. Whilst they have a different viewpoint on the magnitude of harm when using a spectrum approach, any harm should be given weight in the decision-making process. There is no common ground between the main parties regarding the effect on the other 5 Listed Buildings.

#### *Albourne Conservation Area*

42. The ACA abuts the appeal site boundary within the southern portion. The ACA is centred on the historic nucleus of development along the southern part of The Street and incorporating part of Church Lane. Historically, this area was known as Albourne Street and it contains a number of Listed Buildings. Although there is no Conservation Area Appraisal or equivalent, the Council's document 'Conservation Areas in Mid Sussex' (CDF.10) provides a high-level description which describes the character of The Street as an important feature. The Street is a sunken road in the core of the ACA which creates a sense of enclosure due to banks and retaining walls. The variety of vegetation provided a verdant appearance at the time of my site visit. The absence of a defined building line and pavement creates a rural meandering character and adds to the feeling of the ACA being informal.
43. It is common ground that the significance of the ACA lies in its status as a small, rural village which would have, historically, been surrounded by agricultural farmland. Furthermore, there is agreement that the surrounding landscape provided an agrarian based economy for the early development of the settlement which later diversified into dairy farming and market gardens. The siting, design and materials of a number of buildings within the ACA despite some alterations over time, still have an agricultural feel and therefore provide a historical link and relationship with the surrounding landscape.
44. The document 'Conservation Areas in Mid Sussex' (CDF.10) specifically identifies the attractive views to the west and south from ACA. As such it is common ground that the views to the west from the ACA includes the appeal

site. Accordingly, the appeal site provides one of the last substantive views to the west from the ACA of the agricultural landscape. This agricultural landscape in my judgement forms a fundamental part of the setting of the ACA which is integral to its significance.

45. The Appellant's stated intention would be to redevelop the southern portion of appeal site for a managed parkland area with defined planting, paths and potentially interpretation display boards. As public open space it could open up the whole area through the provision of a network of paths in addition to the retention of the existing rights of way.
46. Notwithstanding the outline nature of the application the appeal proposal would change the use and visual appearance of the land from agriculture to a more managed parkland open space and housing. This would represent a change in character and would result in the loss of the agricultural nature of the appeal site. As I have identified this agricultural character makes a substantial contribution to the setting of the ACA and it would therefore harm the significance of the ACA. Having regard to the Framework the harm would be less than substantial.
47. As indicated earlier, on my site visit I went to the property known as *Nortons Cottage* which lies within the ACA, but located on the eastern side of The Street and as such is slightly further away from the appeal site. In common with other properties within the ACA, *Nortons Cottage* occupies an elevated position in relation to the sunken road of The Street. From the front garden patio area, it was possible to see across to the appeal site, predominantly the southern portion. However, as a more glimpsed and corridor-style view in between *Finches* and its outbuildings on the western side of The Street, in my assessment the change arising from the appeal proposal would not directly impact on this property, although I have found harm to the ACA would arise.

#### *Listed Buildings on The Street and Church Lane*

48. In assessing the effect of the proposal on the Listed Buildings it would seem sensible to deal with them in groups where there are similarities to limit unnecessary repetition. As such *Hunter's Cottage*, *Bounty Cottage*, *Finches* and *Souches* are located side by side on the western side of The Street and in addition to their individual listing, in my view they also have a value as a collection of Listed Buildings. With the exception of *Hunter's Cottage*, all three have a similar plot depth and share a common boundary with the appeal site. The tithe map and apportionment schedule show there is some historic association between the appeal site and the dwellings on the west side of the Street. The Borrer family owned the land that comprises the appeal site at the time of the tithe survey for the parish in 1845. *Spring Cottage* lies to the south of the appeal site on Church Lane.

#### *Finches*

49. *Finches* is a Grade II Listed Building within the ACA. The significance derives principally from the historic and architectural interest of its physical fabric as a 17<sup>th</sup> century timber framed farmhouse, with 18<sup>th</sup> century alterations. It is recorded in the West Sussex Historic Farmsteads and Landscape Character Assessment as a historic farmstead of the post medieval period. A key part of *Finches'* significance lies in the degree of historic fabric in situ, its aesthetic value, and the way in which it illustrates the development of the traditional

farmstead. Within the curtilage, other buildings are present, and from their siting and design, contribute to, and reinforce, the understanding and appreciation of the historical farmstead.

50. Boundary landscaping vegetation can be ephemeral due to nature of the species and the seasons and often based on occupiers' preference. The rear boundary of *Finches* is maintained vegetation at a relatively low-level. This low-level boundary when combined with the elevated nature of the plot provides for a close physical association and strong visual connection with the appeal site to the west. As such there is clear intervisibility between the southern portion of the appeal site and various different positions within the rear garden area of *Finches*. Furthermore, there are also opportunities to see the northern portion of the appeal site and the indicative area of housing from several positions within the rear garden. *Finches* can be clearly seen from within the southern portion of the appeal site and the adjacent footpath 12\_1A1. From the various points on footpath 15\_1A1, it is also possible to see *Finches*.

#### *Conclusion on Finches*

51. As such the existing agricultural nature of the appeal site contributes to the setting of *Finches* and reinforces the value of the experience of the former farmstead in the rural landscape. This is an integral part of the significance of *Finches* as a Listed Building. The land use change arising from the appeal proposal would collectively lead to less than substantial harm to *Finches* as a designated heritage asset.

#### *Souches and Bounty Cottage*

52. *Souches* is a Grade II Listed Building within the ACA. The significance derives principally from the historic and architectural interest of its physical fabric and construction as a 17<sup>th</sup> century or earlier timber framed building. It is a good example of the local vernacular style and retains a high amount of historic fabric in situ. In particular, its timber frame contains information about the building's construction and evolution over the course of centuries. *Souches* and its relationship to the adjacent historic properties along The Street collectively illustrate the development of the historic settlement.
53. The rear garden is landscaped and as such during the year when the vegetation is in full leaf it naturally limits but does not completely eliminate the intervisibility between the appeal site including the footpath 15\_1A1 and how the Listed Building can be experienced. The proposed change from an agricultural land use to a managed parkland open space would introduce change in my judgement that would alter the setting of this designated heritage asset.
54. *Bounty Cottage* is a Grade II Listed Building within the ACA. The significance derives principally from the historic and architectural interest of its physical fabric as a 17<sup>th</sup> century or earlier timber framed building. Whilst there have been later alterations, the original fabric remains discernible, and the building's architectural interest may still be appreciated. The building has historic interest as an example of the local vernacular, experienced as part of a group of buildings which contribute to an understanding of the historic development of the village. *Bounty Cottage* is predominantly visible from a number of vantage points from within the appeal site. The setting of this designated heritage

asset would also be changed by the introduction of managed parkland open space on the appeal site.

### *Conclusion on Souches and Bounty Cottage*

55. The indicative land use plan<sup>11</sup> referred to extensively during the Inquiry suggests that the southern portion of the appeal site would be a managed open space. Whilst this could provide a more landscaped approach to the setting of the *Bounty Cottage* and *Souches*, in my judgement the change from the present agricultural field which provides the rural context for the Listed Buildings to a more managed parkland style area of open space would be detrimental to the setting of these designated heritage assets. I find that the appeal proposal would lead to a change which would result in less than substantial harm to these designated heritage assets.

### *Hunter's Cottage*

56. *Hunter's Cottage* is a Grade II Listed Building and listed for group value within the ACA. The significance derives principally from the architectural interest of the physical fabric of the original portion as a 17<sup>th</sup> century or earlier cottage. A later red brick L-shaped wing was added to the south-west in the 19<sup>th</sup> century. It is a good example of the local vernacular style and together with the nearby historic properties along The Street contributes to the townscape in this part of the village.

57. *Hunter's Cottage* does not share a boundary with the appeal site. From the appeal site there is no direct visual link with *Hunter's Cottage* due to existing vegetation, however, its presence is experienced from The Street and the entrance to footpath 15\_1A1. *Hunter's Cottage* has less of a direct relationship to the surrounding countryside than the other Listed Buildings to the south. As such its setting is predominantly the village street scene context. The appeal proposal may well alter the perception of openness experienced from within the garden to the cottage. However, I find that the appeal proposal would have an overall neutral effect on this designated heritage asset.

### *Spring Cottage*

58. *Spring Cottage* is a Grade II Listed Building within the ACA. The significance derives principally from the historic and architectural interest of its physical fabric as a 17<sup>th</sup> century or earlier timber framed building and its association with an adjacent spring. An inset stone on the chimney indicates the historical association with the manor and a right to fetch water from its adjacent spring which suggests there was also a communal value. From within the narrow lane, *Spring Cottage* is experienced as an attractive historic property within its own domestic curtilage, enclosed by hedging and timber panel fencing along the roadside.

59. Due to the topography, *Spring Cottage* is set down from the appeal site enclosed within a well-defined hard boundary of closed boarded timber fencing and brick walls. A substantial amount of vegetation on the opposite side of Church Lane gives this section of the lane a strong sense of enclosure. Therefore, despite its physical proximity to the appeal site there is not a strong visual connection to the agricultural land, and it is more a perception of openness. If built development were to be introduced into the southern portion

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<sup>11</sup> Drawing reference 3117/A/1201/PR/C

of the appeal site then the perception of openness within the setting would be lost, but the proposed open space would not lead to a perceptible change. Although in winter when the deciduous vegetation is not in leaf, any form of development on the appeal site would become discernible. I find that the impact on this designated heritage asset and its setting would be neutral and therefore its significance would be preserved.

### *Inholmes Cottage*

60. *Inholmes Cottage* is a Grade II Listed Building within the ACA. The significance derives principally from the historic and architectural interest of its physical fabric as a 17<sup>th</sup> century building. Modern development to the west and north has considerably diminished the setting but it is still possible to see some of its relationship with surrounding older buildings associated with the small settlement of Albourne Green which had open fields to three sides.

61. There is a visual link between *Inholmes Cottage* and the appeal site. At the time of my site visit the existing mature deciduous boundary vegetation to the Albourne Court site did limit the visual connection to the appeal site. However, this would change during the autumn and winter seasons when the trees would not be in leaf as the photograph of view 3 from March 2022 contained within the submitted LVIA addendum does illustrate. The visual link and therefore the part of the appeal site which could be associated with the setting of this property would be predominantly the proposed access and some of the proposed built development. In my opinion, such a change would not materially alter the setting of *Inholmes Cottage* and how it is currently experienced and understood. Retention of hedgerow and orchard adjacent to the northern end of the appeal site could be satisfactorily controlled and this would be sufficient to mitigate the presence of the appeal proposal and enable the impact to be neutral. Accordingly, I do not agree with the Council that harm would arise to the setting of this designated heritage asset.

### *Heritage Conclusion*

62. The appeal proposal would lead to harm to the setting of some of those designated heritage assets which have been identified to me in this case, namely the ACA, *Finches*, *Souches* and *Bounty Cottage*. Although I do not find harm to *Hunter's Cottage*, *Spring Cottage* or *Inholmes Cottage*. As such there is conflict with Policies DP34 and DP35 of the DP. Policy DP34 seeks to protect listed buildings and their settings and conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the character and quality of life of the District. Policy DP35 seeks, amongst other things, for development to protect the setting of the ACA and in particular views into and out of the area.

63. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal as set out in paragraph 202 of the Framework.

64. In this case the public benefits include the delivery of up to 120 new homes including affordable homes, additional land for the primary school, provision of car parking, provision of a community building to include a shop and public open space within the southern field.

65. Having regard to my statutory duties I attach considerable weight and importance to the harm to the setting of the designated heritage assets. Although it amounts to less than substantial harm, I find that harm to be significant and towards the upper end of a spectrum within the scale of less than substantial harm. Therefore, whilst a number of public benefits would arise, in my opinion they do not individually or cumulatively outweigh the less than substantial harm. As such on heritage grounds, the appeal proposal would conflict with the development plan and the Framework.

### ***Housing land supply***

66. The Framework in paragraphs 60 and 74 indicates that to support the objective of significantly boosting the supply of housing local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing including a buffer associated with the Housing Delivery Test (HDT), against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.

67. In this case, the DP reached its fifth anniversary in March 2023. As such, it is agreed between the main parties that by operation of paragraph 74 and footnote 39 of the Framework, the Council's housing requirement has to be determined by reference to the standard methodology, rather than by the adopted strategic Policy DP4 in the DP.

68. The 5-year period for calculating the housing land supply (HLS) is 1 April 2023 to 31 March 2028. Using the standard method, the 5-year minimum requirement is 5,450 dwellings. With reference to the HDT results published in January 2022, it is agreed that it is appropriate to apply a 5% buffer to the requirement. Consequently, the agreed 5-year minimum requirement with buffer is 5,723 dwellings.

69. The dispute between the parties is whether or not the Council can demonstrate a deliverable 5-year HLS. The Council claims a deliverable supply of 5,770 dwellings (5.04 years) with a 47-dwelling surplus<sup>12</sup> whereas the Appellant claims a revised supply calculation<sup>13</sup> of 4,917 (4.3 years) resulting in an 806-dwelling shortfall.

70. The Framework Glossary defines 'deliverable' as sites that, amongst other things, have a realistic prospect of housing being delivered within 5 years. The Glossary goes on to identify two types of sites, A and B. Category A sites are those which do not involve major development and have planning permission, and all sites with detailed planning permission. As such this should be considered deliverable unless there is clear evidence that homes will not be delivered within 5-years. Category B sites are those that have outline planning permission for major development, are allocated in a development plan, have a grant of planning permission in principle, or are identified on a brownfield land register. These sites should only be considered deliverable where there is clear evidence that housing completions will begin on site within 5-years.

71. There is no definition of what constitutes 'clear evidence.' Paragraph 007<sup>14</sup> of the PPG indicates that 'robust, up to date evidence needs to be available to

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<sup>12</sup> CDD.5 - Statement of Common Ground: Five Year Housing Land Supply (24 July 2023)

<sup>13</sup> ID10 - Appellant's Updated Five Year Housing Land Supply Position (16 August 2023).

<sup>14</sup> Ref ID: 68-002-20190722

support .... planning decisions.’ It suggests some examples in an open list of evidence to demonstrate deliverability may include current planning status including any planning performance agreements, firm progress being made towards the submission of an application or site assessment work or clear relevant information about site viability, ownership constraints or infrastructure provision. I note the view of Inspector Stephens in that securing an email or completed pro-forma from a developer or agent does not in itself constitute clear evidence<sup>15</sup> (my emphasis). However, it is perfectly reasonable for this to be part of the evidence if it is up to date.

72. Deliverability does not mean certainty or probability, rather it is part of the exercise of planning judgement to reach a conclusion as to the realistic prospect of delivery. That said, the use of the words ‘clear, robust and up to date’ demonstrates that the judgement on deliverability would need to be underpinned by an assessment of clearly articulated evidence.
73. The Appellant disputes the delivery assumptions made by the Council and contends that there is insufficient evidence that the quantum of housing would be deliverable within the 5-year period. From the Appellant’s revised position (ID10) it is now common ground that the two sites known as *Firlands, Church Road* and *Hanley Lane, Cuckfield* should be included within the HLS calculation, I concur and therefore do not need to consider these further. There are 11 sites in dispute, 2 falling within Category A and the remainder within Category B. I will now assess each in turn.

*Land West of Freeks Lane, Burgess Hill.*

74. This category A site with reserved matters permission for 460 dwellings was approved in December 2019. As such this site should be considered deliverable unless there is clear evidence that homes will not be delivered within the 5-year period. Work commenced on site preparation during 2020 with 50 dwellings completed and occupied during the 2022/23 monitoring period. Whilst the Appellant accepts this site is deliverable, they contend it is not delivering as expected and there is no evidence that delivery would exceed 50 dwellings per annum which is the average on similar sites in Mid Sussex. The Appellant’s site visit in July 2023 indicated no further completions in the intervening months of the 2023/2024 monitoring year. I am not satisfied that the Appellant has provided clear evidence that the anticipated housing will not be delivered during the 5-year period.
75. The evidence in SoCG<sup>16</sup> between the Council and Homes England contains relevant and up-to-date information on this site and others within Brookleigh (which is the marketing name for the Northern Arc). Whilst there has been some delay to the provision of significant infrastructure which is required to support this site and the wider Northern Arc which is a flagship strategic development. The latest position is that this will be completed by Autumn 2023 and the Council advised that the junction onto Isaacs Lane will follow on by early 2024. Homes England is a public body whose remit is to deliver housing and I give weight to their stated position in the SoCG.

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<sup>15</sup> CDI.10 – APP/Q3115/W/20/3265861 (25 June 2021)

<sup>16</sup> Mid Sussex District Council and Homes England, Statement of Common Ground on Delivery at Brookleigh, Burgess Hill (5 July 2023), Proof of Evidence, Mr Roberts at Appendix 1.

76. There is a contractual arrangement between Homes England and the national housebuilder to deliver a minimum of 8 dwellings per month (96 per annum). As the Council explained there are various mechanisms and levers within the contract and this site has a minimum acceleration clause which can be used by Homes England to ensure delivery with the ultimate action being termination and transfer to another developer.
77. As such, I am satisfied that although there may have been some slippage, given the contractual arrangement there is nothing substantive before me to suggest that this site would not deliver the remaining 410 dwellings within the 5-year period, and as such it should remain within the HLS calculation. It is in my view, appropriate to base the delivery rates for the strategic sites on the Homes England contractual arrangements and not simply past averages of similar sites in Mid Sussex.

*Brookleigh phase 1.5 and 1.6, Isaacs Lane, Burgess Hill.*

78. This is another category A site with planning permission for a total of 249 dwellings. Work has not yet commenced on site, but it is scheduled to commence during 2023/24<sup>17</sup>. Again, the Appellant questions the realism of delivery rates as amongst other things, the infrastructure associated with Isaacs Lane is impinging on the build programme.
79. From the discussion about the discharge of conditions for this site, it demonstrated to me that the Council is taking a methodical approach with dedicated officer resource for this site and the wider Northern Arc. As such I have no reason to doubt that the applications relating to the remaining conditions for this site would not be progressed in a timely manner. The Appellant's contentions in relation to this site do not demonstrate the clear evidence required by the Framework to indicate that housing will not be delivered during the 5-year period.
80. The contractual arrangement between Homes England and the national housebuilder requires 6 dwellings per month (72 per annum). This site is subject to the same contractual obligations as *Freeks Lane*. As such, even if there were to be some slippage in the expected delivery timescale, given the contractual build rate requirements this site would still deliver within the 5-year period, and as such all 249 dwellings should remain within the HLS calculation.

*Linden House, Southdowns Park, Haywards Heath.*

81. This is a category B site with outline planning permission for a 14-unit apartment block granted in 2021. The Appellant argues that without any evidence relating to the submission of reserved matters, this site should not be included in the HLS. I do not find this argument persuasive as a starting point given that it is based predominantly on a general perspective rather than the individual circumstances of each site. The Appellant uses the same argument for many of the contested sites.
82. A revised application for 17 units is currently awaiting a decision. The Council indicated that there were no fundamental matters outstanding. As the scheme is for an apartment block it would be expected to be delivered in one phase. From CDD.5<sup>18</sup> there is still time for the submission of reserved matters on the

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<sup>17</sup> CDD5 - Housing Land Supply Position including 5 year Housing Land Supply Statement (July 2023)

<sup>18</sup> Ibid.

existing outline permission if wanted. Consequently, there is a clear intention and progress towards the delivery of this modest scheme. It would seem reasonable to include the 14 units within the HLS calculation.

*Northern Arc, Burgess Hill.*

83. This is a category B site with outline permission for a comprehensive mixed use to include 3,040 dwellings. As a large strategic allocated site, it will be divided into 5 parcels with delivery agreements to be drawn up between Homes England and the delivery partners; 2 of the 5 are in place and they are at an advanced pre-application stage working towards reserved matters applications later this year. The Appellant suggests that the delays in delivery has led to expected build rates being reduced at regular intervals. With only 2,298 dwellings being the latest anticipated yield. As such the Appellant is challenging the delivery rates.
84. As a phased development, the Council is relying upon 752 units within the next 5 years. I am mindful that housing delivery for this strategic site was considered in the Bolney appeal<sup>19</sup> and also assessed through the Examination process for the recently adopted Site Allocations DPD<sup>20</sup> and found sound. I attach significant weight to the finding of the Inspector who examined the issue of housing delivery in the Site Allocations DPD. Substantive evidence has not been provided to me to indicate that at this early stage the housing delivery trajectory envisaged in the DPD is flawed.
85. Whilst it will require higher build out rates than other sites in Mid Sussex, the Lichfields research<sup>21</sup> indicates that greenfield sites do build out at a higher rate. Given the strategic significance of the Northern Arc which is a flagship site for Homes England with public investment to deliver infrastructure and open up the area for development, along with the contractual mechanisms, I am satisfied that at this stage there is clear evidence that this site will deliver the 752 dwellings within the 5-year period and so should be retained within the HLS calculation.

*Land West of Selsfield Road, Ardingly.*

86. This is a category B site with outline planning permission for 35 dwellings granted in March 2023. The Council's evidence indicates that the developer promoted the site through the development plan process and pursued it through the permission stage. The Appellant contends that having an outline permission is insufficient to demonstrate deliverability. I note the reference to the Nantwich appeal decision,<sup>22</sup> however, it is not clear from that decision what the anticipated timescale for reserved matters would be for outline permissions in Nantwich or the wider Cheshire East area. As such I cannot be satisfied that the position adopted in that appeal is relevant to Mid Sussex and this case.
87. In this case, the Council has the baseline analysis to understand their housing and infrastructure delivery lead in and build out times. This analysis indicates that for a site of this size, the reserved matters would be forthcoming within 2.4 years and a build out rate of 30 dwellings per annum. Given that the

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<sup>19</sup> CDI.5 – APP/D3830/W/19/3231996 and APP/D3830/W/19/3231997 (16 December 2019)

<sup>20</sup> CDE.21 – Inspector's Report for Site Allocations DPD (dated 30 May 2022)

<sup>21</sup> CDI.21 – Start to Finish – What factors affect the build-out rates of large scale housing sites? Second Edition, Lichfields Insight (February 2020)

<sup>22</sup> CDI.11 – APP/R0660/A/13/2197532 and APP/R0660/A/13/2197529 (15 July 2020)

outline has only recently been granted there is nothing to indicate that reserved matters would not be forthcoming within a timescale similar to the Council's baseline analysis. It is a modest number of dwellings which remains capable of being delivered within the 5-year period and as such the 35 dwellings should remain within the HLS calculation.

*Hurst Farm, Hurstwood Lane, Haywards Heath.*

88. This is a category B site and allocated in the Haywards Heath Neighbourhood Plan for a mixed-use development including approximately 350 dwellings. The position at the time of the Inquiry<sup>23</sup> was that the Council had resolved to grant outline permission for up to 375 dwellings, 215 dwellings would be delivered within 5-years. The Appellant's revised position at this Inquiry is that only 100 dwellings should be counted.

89. The SoCG<sup>24</sup> with Homes England provides written evidence of the future of this site, the SoCG anticipates delivery from 2025/26. Homes England acquired the site and will use contractual arrangements to ensure delivery at higher-than-normal delivery rates through the use of modern methods of construction on the site. Based on the written evidence before me, I have no reason to doubt that this site would not be delivered within the 5-year period and as such the 215 dwellings should be included in the HLS calculation.

*Land South and West of Imberhorne Upper School, East Grinstead.*

90. This is a category B, allocated site for 550 dwellings. The Appellant contends that, as there was no update on progress given at the round table session of the Inquiry, this site fails the delivery test. The Council tendered written correspondence<sup>25</sup> for the timescale for the delivery of this site confirmed by the developer, including the submission of a hybrid application. The construction of the residential phases is indicated to commence in mid-2025. The Council is only relying upon 75 dwellings for this current 5-year supply period. It was assessed through the Examination process including in relation to delivery rates in the recently adopted Site Allocations DPD<sup>26</sup> and found sound. As dwellings from this site would be built out towards the end of the 5-year period, I see no reason to doubt at this very early stage that the anticipated 75 dwellings would be delivered within the 5-year period and so should be retained within the HLS calculation.

*Southway, Woodfield House, Hammerwood Road and the Old Police House.*

91. These are all category B sites and allocated in the Site Allocations DPD. The Appellant contends that as there was no update on progress given at the round table session of the Inquiry, these 4 sites fail the deliverability test for the same reasons.

92. These sites have been assessed through the Examination process for the recently adopted Site Allocations DPD and found sound. The Council indicated that there has been some progress on some of these sites since Examination. In relation to *Woodfield House*, pre application discussions are in progress and

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<sup>23</sup> ID7 – Recent permissions in Mid Sussex, email from Mr Roberts (14 August 2023) and ID15 – Hurst Farm Planning Position – Note by the Council (handed up 18 August 2023)

<sup>24</sup> Appendix 2, Council's Housing Land Supply Proof of Evidence (Mr Roberts)

<sup>25</sup> ID14 – Land South and West of Imberhorne Upper School - Inquiry Note and email exchange between developer and the Council (17 August 2023)

<sup>26</sup> CDE.2 – Mid Sussex District Council Site Allocations Development Plan Document, Adoption Version June 2022

there is now a SoCG with Homes England. The owners of *Hammerwood Road* have identified a housebuilder. The housebuilder in control of the *Old Police House* has requested pre-application advice. As such in relation to these 3 sites I do not accept the argument that there has been no progress towards delivery. Progress is underway and having regard to the evidence on delivery timescales in Mid Sussex I am satisfied that delivery within the 5-year period is reasonable. These 3 sites and their anticipated unit yield should remain within the HLS calculation.

93. In relation to *Southway*, the Council acknowledge limited progress as part of the housing trajectory, however, given the modest quantum of 30 dwellings and the time remaining, it would not be unreasonable at this very early stage to include it within the HLS calculation. Even if the limited progress on *Southway* was to persist, it would serve to reduce the surplus of 47 dwellings down to 17 dwellings.
94. The Appellant contends the unmet housing need from within the Crawley Borough Council area should be taken into account in the housing land supply calculation. It has been put to me that Crawley can only meet 42% of its own predicted housing needs during the 2024-2040 plan period. As such the remaining unmet housing need from Crawley will need to be considered in the plan making processes of other authorities within the Housing Market Area which includes Mid Sussex. The Framework in paragraphs 61 and 66 both specifically refer to the legitimacy of providing for needs that cannot be met within neighbouring areas. However, it is for the respective plan making process to determine the details as part of a strategic approach to planning for all types of housing need and not any individual appeal. Plan making is underway in Mid Sussex and I have no reason to doubt that this will continue. I note that the Draft Crawley Borough Local Plan<sup>27</sup> has not yet been examined and its suggested housing figure and proposed method of meeting that figure including any cross-boundary reliance has yet to be tested.

#### *Housing Land Supply Conclusion*

95. From the Council's evidence it is clear that Mid Sussex has a history of housing delivery and it is not an area with a record of persistent under delivery of housing. I am confident that the Council understands and acknowledges its obligations under the HLS and HDT. The Site Allocations DPD has allocated more land for housing than the DP required, and the Council approaches the issue of housing in a positive and proactive manner.
96. Overall, I find that the Council has taken and continues to take a proactive approach to housing delivery at both plan making and decision making. From the evidence to this Inquiry and in particular the summary contained within the Housing Land Supply Position including 5-year Housing Land Supply Statement (CDD.5), the Council is effectively using a variety of tools and mechanisms to ensure housing can be delivered in a timely manner. Plan making progress as acknowledged by the Appellant is commendable and is positive and continuing to progress. The use of dedicated planning officer resources for the Northern Arc, the use of both statements of common ground and Planning Performance Agreements and also planning conditions to reduce the timescales for submission of some applications is all positive. There is a methodical and

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<sup>27</sup> ID11 – Draft Crawley Borough Local Plan 2024 – 2040, Submission Publication Consultation May 2023, paragraph 12.39

robust analysis of lead in times and build out rates and therefore in my opinion, the Council has a good understanding of housing and infrastructure delivery within their administrative area.

97. I therefore conclude that the Council has demonstrated that it can identify a supply of specific deliverable sites sufficient to provide a minimum of 5-years' worth of housing against the standard method.

### **Other Matters**

#### *Infrastructure Contributions – s106 by Agreement*

98. Policy DP20 of the DP sets out the principle for infrastructure contributions and is supported by an adopted Supplementary Planning Document (SPD) - Development Infrastructure and Contributions. Policy DP31 of the DP sets out the affordable housing requirement and is also supported by an adopted SPD.
99. The first s106 is made by way of an Agreement between the District Council, County Council, Appellant and Landowner. It provides for index linked financial contributions for formal sport, play space, kickabout, community building (village hall), local community infrastructure, police, health, primary and secondary education, libraries and transport. Associated administration/monitoring costs are also included. It also secures the provision for on-site affordable housing. The Council's submitted Infrastructure Statement sets out the justification for the infrastructure contributions and affordable housing provision. All of the requested contributions in line with the SPD requirements have been included within the s106 Agreement. As these comply with the policy requirements, I am satisfied that they are necessary and appropriate.
100. In addition to the requested contributions the s106 Agreement also includes provisions on site of a community orchard, locally equipped area of play space (LEAP) on site within the public open space, and a community building to include a shop. The orchard already exists on site and by securing it as a community orchard would integrate it into the site, ensure its ongoing maintenance and contribution towards biodiversity. The provision of the LEAP would meet Policy DP24 of the DP.
101. The s106 Agreement contains an obligation to provide a community building in an agreed location, to an approved specification as part of a future reserved matters application. Policy DP25 of the DP requires on site provision of new community facilities on larger developments, where practicable and viable, including making land available for this purpose. Neither Policy DP25 nor the SPD appears to define what is meant by larger development in this context. The Council does not set out that Albourne needs an additional community building when there is already an existing village hall. The Parish Clerk confirmed at the Inquiry that the village hall has a range of current users. There is no evidence that the village hall is oversubscribed and cannot meet the local needs arising from the development to the extent that a second community building would be practical or viable.
102. The s106 Agreement identifies that within the 100 square metres community building, not less than 75 square metres would be for a shop. How the remaining space, potentially a maximum of 25 square metres, would be used is unclear. The Albourne Neighbourhood Plan (NP) sets out an aspiration for a

shop. However, since the NP was made, a shop has been secured as part of a number of facilities to be provided within the approved extra care scheme on the former Hazelden Nurseries site. As such, the NP aspiration will be satisfied if the Hazelden Nurseries site comes forward as expected.

103. There is no evidence that a second shop in Albourne would be required. A community shop is already available in nearby Sayers Common and a wider range of shops can be found within nearby Hurstpierpoint. Consequently, I am not persuaded that the provision of a shop within the community building is necessary to make the development acceptable in planning terms. It is not directly related to the proposed development or fairly and reasonably related in scale and kind to the development.

104. Examining the policy basis and rationale for each of these obligations within the s106 Agreement, as set out in the evidence and discussed as necessary at the Inquiry, I am satisfied that, with the exception of the community building incorporating the shop, they meet all of the relevant tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, as repeated in Paragraph 57 of the Framework.

#### *Infrastructure contributions – s106 by Unilateral Undertaking*

105. A second planning obligation by way of unilateral undertaking between the Landowner and Appellant to the County Council in respect of additional school land, woodland school land and land for school car park. These obligations would be included within a future reserved matters application and take effect following their approval.

106. The additional land to enable the Albourne Church of England Primary School to physically expand is not required to accommodate the potential additional pupils arising from the appeal proposal. A financial contribution for additional facilities at the school has already been sought and secured under the first s106 Agreement.

107. The County Council's position as the Education Authority was clear in that they did not consider that the offer of land met the tests and, in any event, would not be able to accept the land without an option agreement following their due diligence process.<sup>28</sup> The introduction of the cascade mechanism inserted into the final signed version would enable a sequence of other school related bodies to be offered the land, one of whom is the Hurst Education Trust which the Appellant indicated that they would be pleased to receive the land as they have confirmed that they consider additional land to be a benefit.<sup>29</sup> Consequently, I am not satisfied that this obligation is fairly and reasonably related to the development proposed or necessary to make the development acceptable.

108. The woodland school land would be an area of land in the southern portion of the appeal site, within the potential public open space, for use by the primary school. The Appellant argues that there is insufficient playing field space for the current pupils and that the appeal development would exacerbate this shortfall. It is established practice that a planning obligation should not be used to address an existing deficiency. The siting of the suggested woodland school would have to be determined and assessed as part of the details of a

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<sup>28</sup> ID16 – Email exchange between Croudace and the County Council (16 and 17 August 2023)

<sup>29</sup> Planning Proof of Evidence (Mr Brown), Appendix SB1 – Letter from The Hurst Education Trust (29 June 2023)

reserved matters application. Even if it were to be located at the closest part of the southern portion of the appeal site to the school, I have reservations about the operational suitability of such a proposal. I am not satisfied on the evidence before me that the woodland school land would be suitable additional playing field space in any event. Consequently, I am not satisfied that this obligation provision is fairly and reasonably related to the development proposed or directly related to the development, or necessary to make the development acceptable.

109. The offer of land for school car parking is not directly related to the proposed development as the school is located in close proximity to the development site. Therefore, it would not be unreasonable to expect pupils to be walked to the school. Although I acknowledge that the NP has identified traffic congestion around the school and operationally some more land to potentially assist with this could be of wider benefit, it is not the role of planning obligations to address existing problems. Consequently, I am not satisfied that this obligation is fairly and reasonably related to the development proposed or directly related to the development, or necessary to make the development acceptable.
110. From examining each of these obligations, as set out in the evidence and discussed as necessary at the Inquiry, I am not satisfied that the obligations set out in the unilateral undertaking meet all of the relevant tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, as repeated in Paragraph 57 of the Framework.
111. In addition to the main issues and infrastructure requirements, a range of other matters have been raised by interested parties including highway safety, environmental and ecological impact including trees, use of agricultural land, noise, air and water pollution, flooding and drainage.
112. Access is a matter for determination at this stage. From the submitted plans relating to access, the absence of objection from the Highway Authority<sup>30</sup> and subject to suitable planning conditions and financial contributions secured through the s106 Agreement, the proposal would not result in a significant impact on the operation of the local highway network to the extent that permission should be refused.
113. An Ecological Impact Assessment was submitted as part of the application with suitable mitigation measures being proposed where applicable to address potential impact on protected species. Such mitigation measures together with other enhancement measures, including a full tree planting schedule could be secured through suitable planning conditions and examined further as appropriate at the reserved matters stage. The Council's Ecology Consultant has considered the information submitted and raised no objection subject to the imposition of conditions on any approval. The Biodiversity Net Gain Assessment indicates that the proposal would deliver a 54% biodiversity net gain and that could be secured through appropriate planning conditions.
114. The submitted Arboricultural Impact Assessment confirms that no trees are proposed to be removed. Whilst concerns have been raised regarding a very large Oak tree, I note that this tree is not within the site boundary. Any

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<sup>30</sup> CDD.4 Highways Statement of Common Ground

- relationship between the proposed layout and any potential canopy overhang into the site could be assessed at the reserved matters stage.
115. The appeal site comprises mostly agricultural land. Agricultural Land is classified into grades of quality numbered 1 (excellent) to 5 (very poor). The Framework in Annex 2 indicates that the best and most versatile land is grades 1, 2 and 3a. Approximately 24%<sup>31</sup> of the agricultural land on the appeal site is classed as subgrade 3a (good) with the majority of the land quality being either subgrade 3b (moderate) or Grade 4. Whilst the proposal would result in the loss of some agricultural land, it is a minority proportion of the site which is considered to be the best and most versatile land and its potential loss would not on its own be a reason to resist development.
116. A range of concerns regarding noise, site and water pollution have been raised. However, from the submitted evidence there would be no substantive impact either individually or cumulatively from these matters which could not be satisfactorily addressed by a wide range of potential planning conditions.
117. To manage potential flood risk and drainage concerns, a flood risk assessment and outline drainage strategy have been submitted. The Council's Drainage Engineer and County Council's Flood Risk Team have raised no concerns in principle. As such further matters of water management could be secured through suitable planning conditions if the appeal was allowed.
118. My attention has been drawn to other appeal decisions within the evidence and Core Documents. Across all of these decisions, various decision-makers have both granted and refused planning permission. Having taken these into account, I do not find that they provide justification in themselves for making a decision either way. I note the approaches taken, but ultimately, I have determined the appeal scheme on the basis of the evidence put before me.
119. Having regard to the submitted copy of the extra care scheme on the Former Hazelden Nurseries appeal decision.<sup>32</sup> From the wording of the Inspector's decision I am satisfied that this scheme was allowed on the basis of other considerations including the significant level of unmet need for this type of accommodation.
120. As part of the standard procedure for appeals the main parties suggested thirty planning conditions for my consideration in the event of the appeal being allowed. These were discussed in detail during the Inquiry, and I have considered each of these in light of the tests for planning conditions as set out in paragraph 56 of the Framework. Many of these conditions would deal with matters of detail which are common to many planning applications. However, they would not in aggregate lead me to a different conclusion to that which I reach below and so, I do not discuss them further.

### **Planning Balance and Conclusion**

121. It is the Appellant's case that this is a development plan where the most important policies for determining this appeal are out of date by being based upon an out-of-date assessment of need, failing to demonstrate a deliverable 5-year housing land supply and the relevant development management policies are inconsistent with the Framework.

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<sup>31</sup> Planning Proof of Evidence (Mr Brown), paragraph 7.154 and CDA.34, Table 2: Agricultural Land Classification.

<sup>32</sup> CDI.20 – Site of the former Hazeldens Nursery, London Road, Albourne (APP/D3830/W/19/3241644), dated

122. The Council and the Appellant consider that Policies DP6, DP12 and DP15 of the DP together with ALC1 and ALH1 of the NP should be considered most important for this scheme. Whether these policies are considered out of date in terms of paragraph 11d) of the Framework will depend upon their degree of consistency with its policies.
123. Policy DP6 establishes a settlement hierarchy which derives its spatial application through the use of built-up area boundaries. Establishing boundaries is often argued as being a mechanism of constraint if there are no circumstances identified in the policy which would allow exceptions. In this case Policy DP6 is a permissive policy because it does establish the circumstances where settlement expansion would be supported to meet local needs. Policy DP15 allows for new homes in the countryside where special justification exists which focus on the usual established criteria (rural workers; exceptional design or rural exception sites providing affordable housing). It also cross refers to the need to meet the requirements of Policy DP6.
124. It was accepted by the Council during cross-examination that Policies DP12, DP34 and DP35 were not entirely consistent with the Framework. Policy DP12 does not reflect the conceptual structure and policy tests of paragraphs 174(a) and (b) of the Framework. Policy DP12 use the word 'protection' in a more overarching sense whereas the Framework now only uses this in relation to valued landscapes in paragraph 174 (a) as part of a more structured and sub-divided policy approach. I do not find that this would render the policy out-of-date since it remains a positive policy and does not impose a blanket ban on development and it recognises the countryside for its character and beauty which is what the Framework refers to within paragraph 174 (b). As such my findings are in line with Inspector Hockley in the Bolney case<sup>33</sup> and Inspector Downes in the former Hazelden Nurseries site appeal case<sup>34</sup> neither of whom found Policy DP12 out of date for decision making purposes.
125. It was common ground that Policies DP34 and DP35 of the DP relating to heritage matters did not reflect the conceptual structure and policy tests of paragraphs 201 and 202 of the Framework. It is established practice that policies of the Framework should not be repeated in a development plan. There is a cross reference to the Framework in Policy DP34, however, this is only in relation to heritage assets excluding Listed Buildings. Both heritage policies give effect to the statutory duties in relation to designated heritage assets and it is appropriate to have regard to the Framework in relation to all heritage assets.
126. I am satisfied that policies DP12, DP34 and DP35 have broad consistency with the Framework. There has not been such a fundamental shift in Government policy in relation to either of these topics which would render these policies out of step and therefore out of date. They are still capable of leading the way for decision making. In any event in decision making in relation to designated heritage assets regard must be had to the relevant statutory duties and to the Framework which is what I have done.
127. Policy ALC1 seeks to maintain and where possible enhance the quality of the rural and landscape character of the Parish. Overall, its terms seem to me to be similar to Policy DP12. Policy ALH1 generally supports development on land

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<sup>33</sup> CDE.5 - APP/D3830/W/19/3231997 and APP/D3830/W/19/3231997 (16 December 2019)

<sup>34</sup> CDE.20 - APP/D3830/W/19/3241644 (11 September 2020)

immediately adjoining the built-up boundary, whereas policy DP6 permits such development if it is contiguous with an existing built-up area. Policy ALH1 also has the added requirement that other than a brownfield site the development must be infill and surrounded by existing development. These provisions are more restrictive than Policy DP6 in the DP which was adopted after the NP and therefore represents the more up to date policy of the two.

128. Whilst it is common ground that Policy DP4 which contains the housing requirement is out of date. It does still provide the context for other important policies, like DP6, DP12 and DP15 of the DP together with ALC1 and ALH1 of the NP. Policy DP4 is not in itself directly related to individual proposals because its role is as a strategic policy. I have found that the Council has a demonstrable 5-year HLS against the standard method. Policy DP4 has not prevented this higher annual figure from being achievable in the HLS.
129. From the above, I have found that the most important policies are not out of date, furthermore I do not consider that the policy basket overall is out of date either. Paragraph 11 of the Framework sets out the approach to decision making within the context of the presumption in favour of sustainable development. In this case there are development plan policies relevant to the determination of this scheme and overall, I conclude that they are not out-of-date. I have found the Council can demonstrate a 5-year deliverable HLS. Paragraph 11d) is therefore not engaged. Consequently, the appeal case is determined on the standard planning balance.
130. There would be significant harm to landscape character including the two footpaths and other identified receptors. For the reasons I have given, this harm would be from specific locations but not as widespread as the Council has suggested.
131. There would be material harm to the significance of designated heritage assets. The harm would be less than substantial but nevertheless the harm should be given considerable importance and weight. In my judgement, I did not find that the public benefits test in the Framework would individually or cumulatively outweigh the harm as part a heritage balance exercise.
132. Where a proposal is contrary to the development plan it is necessary to examine whether or not there are material considerations which could outweigh the harm and therefore justify granting planning permission. A range of benefits have been presented to me by the Appellant, some of which would be secured by planning conditions or obligations and/or a future reserved matters application.
133. The provision of market housing in principle is a benefit and would add to the planned and expected housing within Mid Sussex both of which contribute to the Government's intention of significantly boosting supply. The provision of affordable housing in an area where such provision is needed also attracts significant weight.
134. There would be economic benefits arising from the development. These would include construction jobs and future spending. However, it would be the case that any housing schemes of this magnitude would deliver similar benefits and as has been identified in evidence, such other developments are underway. Accordingly, I attribute this only moderate weight.

135. A number of proposed community facilities are proposed, including provision of a community building to accommodate a shop, together with the land for the primary school and land for school car parking. Greater public access to the countryside in the form of a community orchard and the managed parkland open space would be provided. I acknowledge that these elements constitute benefits, however for the reasons I have set out, they are not necessary to make the development acceptable. Collectively they attract limited weight, except for the community orchard and managed parkland open space which in my view should attract moderate weight.
136. I have acknowledged that significant net gain in biodiversity would result from the development. The retention of existing trees and hedgerows is a neutral factor. It has been suggested that environmentally sustainable housing would be provided, however, as an outline scheme the details are not for assessment at this stage. Overall, I find the environmental benefits to be moderate at the most.
137. Whilst a wide range of financial contributions are provided through the s106 Agreement which address the impact of the scheme, they would not be necessary if the proposal were not to go ahead. As such they can be afforded a neutral weight in the balance.
138. The appeal proposal would be contrary to the development plan as a whole. I have carefully considered all arguments presented by the Appellant and have taken account of all other matters raised in the representations and in the oral evidence to the Inquiry in my assessment of this scheme. Having regard to all matters it is my overall conclusion that the benefits that weigh in favour of the proposal would not be sufficient to overcome the conflict with the development plan and the harm that I have identified. In such circumstances, material considerations do not indicate that a decision should be reached otherwise than in accordance with the development plan.
139. Even if my conclusions in relation to the housing land supply were incorrect such that there was not a demonstrable five-year housing land supply, in my judgement, none of the other considerations individually or cumulatively would outweigh the harm that I have identified and the conflict with the development plan when taken as a whole.
140. Consequently, the appeal is dismissed.

*Rachael A Bust*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Mr Christopher Boyle, of King's Counsel, instructed by Woolf Bond Planning LLP

He called:

Mr Thomas Copp BA(Hons) MA IHBC Associate	Director of Built Heritage RPS Group
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Ms Catherine Ritson BL(Hons) CMLI	Director Allen Pyke Associates Ltd
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Mr Steven Brown BSc(Hons) DipTP MRTPI	Principal Woolf Bond Planning LLP
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Also present for the housing land supply session:

Mr Graham Ritchie BSc(Hons) DipTP MRTPI	Associate Woolf Bond Planning LLP
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Also present for the planning obligations and conditions session:

Mr Ben Hunter BA DipMS	Associate Director, Education Facilities Management (EFM) Ltd
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### FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Brown, of King's Counsel, instructed by Legal and Democratic Services, Mid Sussex District Council

He called:

Mr Robert Browne BSc(Hons) MA CMLI	Landscape Associate Place Services, Essex County Council
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Ms Emily Wade MA Hons, MSc	Conservation Officer Mid Sussex District Council
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Mr Alex Roberts BSc(Joint Hons) AssocRTPI MIED	Director of Planning, Regeneration & Infrastructure Lambert Smith Hampton
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Ms Mary-Jane O'Neill BA(Hons) MATP MRTPI FRSA	Head of Planning Lambert Smith Hampton
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Also present for the planning obligations and conditions session:

Mrs Joanne Fisher BSc(Hons) MATP MRTPI	Senior Planning Officer Mid Sussex District Council
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Ms Vanessa Cummins LLB(Hons) Schools Planning Officer  
West Sussex County Council

Mr Iain McClean Clerk to Albourne Parish Council

**INTERESTED PERSONS:**

Mr Geoffrey Zeidler Local resident and  
District Councillor for Downland Villages Ward

Ms Kirsten Rottcher Local resident

**CORE DOCUMENTS**

Available on the Council's Online Public Register [AP/23/0035 | midsussex.gov.uk](https://www.midsussex.gov.uk/AP/23/0035)

**DOCUMENTS SUBMITTED AT THE INQUIRY**

ID1. Landscape and Visual Clarification Note, Revision A, Ms Ritson dated August 2023

ID2. Comparison of year 15 effects on visual receptors plan, Ms Ritson dated 13/08/2023.

ID3. Mid Sussex District Council Planning Permission DM/20/4692, dated 1 Aug 2023.

ID4. Mid Sussex District Council Planning Permission DM22/22/3049, dated 26 Jul 2023.

ID5. Draft Minutes of Mid Sussex District Planning Committee relating to full planning application DM/23/0002, dated 13 July 2023.

ID6. Appeal Decision APP/F2545/Y/22/3303353, dated 11 August 2023.

ID7. Email relating to Hurst Farm (DM/22/2272) and NCP Car Park, Harlands Road (DM/22/0596) from Mr Roberts to Mr S. Brown and others, dated 14 August 2023.

ID8. Opening statement on behalf of the Appellant.

ID9. Opening statement on behalf of the Local Planning Authority.

ID10. Appellant's Updated Five Year Housing Land Supply Position Statement by Mr S Brown, dated 16 August 2023.

ID11. Extract from Draft Crawley Borough Local Plan 2024-2040 Submission Publication Consultation May – June 2023.

ID12. Mid Sussex District Council Albourne Conservation Area Boundary Plan with Public Rights of Way Extract at 1:1250 scale, dated 17 August 2023.

ID13. Census 2021 Profile for Albourne.

ID14. Developer confirmation of expected timescales for Land South and West Imberhorne Upper School, East Grinstead, dated 17 August 2023.

ID15. Hurst Farm Planning Position Note.

ID16. West Sussex County Council email confirming position in relation to a land offer, dated 17 August 2023.

ID17. Written transcript of Mr Zeidler's statement read out on 15 August 2023.

ID18. Revised s106 planning obligation by agreement, submitted 18 August 2023.

ID18a. Further Revised s106 planning obligation by agreement, submitted 21 August 2023.

ID19. Revised s106 planning obligation by unilateral undertaking, submitted 21 August 2023.

ID20. Note of Croudace Housing Delivery 2018-2023, dated 17 August 2023.

ID21. Closing submissions on behalf of the Local Planning Authority, dated 22 August 2023.

ID22. Closing submissions on behalf of the Appellant, dated 22 August 2023.

*Submitted after the end of the Inquiry:*

ID23. Signed s106 planning obligation by agreement, dated 29 August 2023.

ID24. Signed s106 planning obligation by unilateral undertaking, dated 29 August 2023.

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