

**IN THE MATTER OF  
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF  
LAND SOUTH OF  
HENFIELD ROAD,  
ALBOURNE,  
MID SUSSEX.**

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**OPENING SUBMISSIONS  
ON BEHALF OF  
THE APPELLANT**

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1. These Opening 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 The site lies outside but immediately adjacent to the (out of date) adopted settlement boundary of Albourne, a ‘Medium Sized Village’ in the Mid Sussex District Plan (2018), in a location acknowledged by the Council to be sustainably located for access 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, which may be summarised as:
  - (1) 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\_1A1 and 15\_1A1;
  - (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, which will be discussed at the s.106/conditions round table session.
5. As to Reason 1, the starting point is that the Council's development plan (including the settlement boundaries within it and the spatial application of its restrictive policies) is out-of-date irrespective of the land supply position. This is because it was formulated in a pre-2021 NPPF era, with assessments of housing need more than 5 years old, which no longer reflect current NPPF 'standard method' requirements. 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).
6. In addition, the Council's own claims of a 5-year supply demonstrate that it relies on development *outside* (ie in breach of) the settlement boundaries 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.
7. Further and in any event, the true position, the Appellant says, on the evidence, is that the Council *cannot* demonstrate a 5-year housing land supply. Mr (Steven) Brown identifies a deliverable supply of only 4.14 years (a 981 unit shortfall).

8. Thus, the premise of Reason for Refusal 1 is mis-founded. Allegation of landscape character harm will be explored in evidence, but the reason for refusal not only fails to recognise that the development plan is out of date, it also 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.
9. Indeed, even now, the planning evidence for Council continues to fail properly to account for these factors in the planning balance.
10. As noted, landscape character impact will be explored in evidence. That evidence will show the benefits as well as any 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.
11. The scheme has been landscape-led throughout its formulation, such 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, 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, providing extensive new opportunities for public access with impressive views of the South Downs to the south.
12. Reason for Refusal 2 is focused not on landscaper character matters, but on an allegation of *visual* impact, limited to two visual receptors: users of two footpaths that cross the site. Thus, while the evidence considers wider visual receptors, it is important to note at this Opening stage, only two are alleged to be caused harm sufficient to warrant a reason for refusal.

13. Again, this will be 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\_1A1, and as far as users of footpath 15\_1A1 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.
14. Once more, the reason for refusal is not well-founded.
15. 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. An allegation of 'harm to the setting' is, in policy terms misconceived. 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 which then engages the planning test in para. 202 of the NPPF.
16. Mr (Steven) Brown undertakes that test and finds (even on the Council's over-egged assessment of heritage harm) 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.
17. However, Mr Copp's expert heritage evidence is that the Council over-states 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.
18. Either way, Reason for Refusal 3 is not made out.
19. As noted above, Reason for Refusal 4 falls away.
20. 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). Thus, para. 11(d) is engaged.

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

22. The many and manifest benefits (not least housing, affordable housing, public open space, landscape and biodiversity improvements and community facilities for the school and the wider population) are by no means outweighed by the harms alleged by the Council; indeed, they plainly outweigh them.

23. Taken together, therefore, it will be respectfully submitted that none of the matters still pursued by the Council by way of objection justifies the refusal of permission here. By contrast, the benefits are significantly in excess of any (if any) harms arising, on a straight or a tilted balance.

24. Consequently, the national policy strongly supports this sustainable development which, it will in due course be submitted, should be granted planning permission, in the public interest.

CHRISTOPHER BOYLE KC

15<sup>th</sup> August 2023

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