LAND SOUTH OF HENFIELD ROAD, ALBOURNE

APPEAL BY CROUDACE HOMES LTD

PINS REF: APP/D3830/W/23/3319542

OPENING STATEMENT ON BEHALF OF

MID-SUSSEX DISTRICT COUNCIL

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1. The starting point for the determination of any planning application is section 38(6) of the Planning and Compulsory Purchase Act 2004: planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

2. In the present case, it is common ground that the Appeal Site lies outside the boundaries of the built-up area as defined in the Mid-Sussex District Plan ("MSDP") and the Site Allocations DPD ("the SADPD"), in circumstances where – leaving aside the question whether it would maintain or enhance the quality of the rural and landscape character – the Appeal Scheme does not fall within any of the exceptions allowed by Policies DP6, DP12 or DP15 of the MSDP or Policy ALH1 of the Neighbourhood Plan, under which development beyond the settlement boundaries should be permitted. In addition, although the precise extent of the harm is in dispute, it is common ground that the Appeal Scheme will cause harm to the significance of the Grade II listed building known a Finches, contrary to Policy DP34, and to the Albourne Conservation Area, contrary to Policy DP35. As we explain below, it is the Council's case that there would also be harm to the setting of five other listed buildings.

3. Against that backdrop, and given (a) that Policies DP6, 12 and 15 are all strategic policies and (b) the statutory importance attached to the protection of heritage assets, the Council's case to this Inquiry begins with the proposition that the Appeal Scheme is contrary the development plan as a whole and – applying s. 38(6) – that permission should be refused unless there are "material considerations which indicate otherwise".

4. In this regard, whilst the Council recognises that most new housing development will bring forward some benefit in terms of the contribution it can make to meeting market and/or affordable needs, that benefit alone cannot logically be a sufficient reason to override the presumption in favour of the development plan. If nothing else, that is an argument that would apply in almost every case where development was proposed outside the settlement boundary, with the result that there would simply be no point in local planning authorities making allocations in the first place. It would drive a coach and horses through the plan-led system which the NPPF promotes.

5. At this Inquiry, the Appellant's principal "other material consideration" flows from the fact that, although the MSDP was less than 5 years old (and therefore still "up to date") when the Council refused permission on 25 November 2022, the District Plan has now passed its 5th birthday, with the consequence that para 74 of the NPPF requires the Council's housing requirement to be determined by reference to the standard methodology, rather than by reference to Policy DP4. In this regard, it is almost certainly no coincidence that the appeal was not lodged until March this year, when the MSDP "turned 5".

6. However, although the Appellant's planning evidence makes great play of the fact that Policy DP4 is no longer up to date, this is an argument that – on its own - goes nowhere. Policy DP4 is not a development management policy, it was not cited in the Council's reasons for refusal, and – as previous Inspectors have observed - it is not one of the "most important policies" for determining applications such as the present. Moreover, the difference between the requirement under Policy DP4, and that calculated by reference to the standard methodology is limited to a single year (2023/24) and amounts to 214 units. In circumstances where the 2022 SADPD allocated sites for 907 houses more than the DP4 requirement, there is no basis for

concluding that the development plan does not make adequate provision for housing needs throughout the remainder of the plan period, even with the updated requirement. In simple terms, the plan-led system is still capable of leading the way.

7. On behalf of the Appellant, Mr Stephen Brown advances a number of other reasons why, in his view, the most important policies of the development plan are out of date. In particular, he argues that the Council's housing land supply is reliant on sites which – at the time when permission was granted – were outside the settlement boundaries; that the Council's emerging Local Plan demonstrates that the existing settlement boundaries are no longer adequate; and that the policies cited in the Council's reasons for refusal are inconsistent with the NPPF. For reasons we will explore in cross-examination of Mr Brown, there is no foundation in any of these arguments, a number of which are directly contradicted by previous appeal decisions.

8. In the Council's submission, the only basis on which it might be concluded that the most important policies of the development plan are not up to date is if we are unable to demonstrate a 5 year supply of land for housing ("5YHLS"). However, on the basis of Mr Roberts' evidence, the Council contends that there are sufficient sites which are suitable, available and deliverable (within the meaning of the NPPF) to demonstrate a supply of 5.04 years, with the result that the "tilted balance" set out in para 11 of the NPPF does not apply.

9. That conclusion is disputed by the Appellant: Mr Stephen Brown argues that there is, in fact, only 4.14 yrs worth of supply. The disagreement between Mr Roberts and Mr Brown is therefore one of the principal issues which the Inspector will need to consider. However, much of the evidence which Mr Roberts relies upon is identical in nature to (but an updated version of) evidence which the Inspector examining the SADPD found adequate, and in the Council's submission there is no reason to depart from that conclusion.

10. If the Inspector agrees with Mr Roberts, then the Council's position remains as we have already indicated: the Appeal Scheme is contrary to the development plan, and if the development plan up to date, then there is no "other material consideration"

which would justify granting permission. Indeed, in those circumstances, para 12 of the NPPF positively confirms that permission should be refused.

11. If, contrary to Mr Roberts' evidence, the Inspector concludes that there is not a 5YHLS, the position becomes more complicated. In particular, whilst that conclusion would be sufficient to engage the "tilted balance" under para 11, it does not follow that permission must be granted. Rather, it will first be necessary to ask whether the tilted balance is disapplied by either para 11(d)(i) or 11(d)(ii). And at the end of all of that, having regard to the case law on the status of the development plan, it will still be necessary to consider the overall planning balance.

12. Taking each of these in turn …

13. First, under para 11(d)(i), the "tilted balance" will be disapplied if the application of policies – which include policies to protect designated heritage assets – provides a clear reason for refusing the development proposed. We have already referred to the fact that it is common ground that there will be harm to at least two designated heritage assets – Finches, and the Albourne Conservation Area. However, for the reasons which Ms Wade will explain, the harm goes further than that. The Appeal Site is within the setting of 6 listed buildings, four of which have group value. The existing agricultural use contributes to the understanding of their significance as part of a small – and possibly planned - rural Sussex settlement. The Appeal Scheme will materially alter that, not only through the new built development on the central field (which will be visible from, and in views of, the various heritage assets), but also by changing the character of the southern field from agriculture to parkland. The existing clear transition between the historic core of the village and the adjoining countryside will be materially weakened.

14. Ms Wade recognises that the harm to the CA and the listed buildings will be "less than substantial" but within that category, places the harm at "moderate" and (in the case of Finches and the Conservation Area) at "moderate-high". For the reasons which Ms O'Neill will explain, the combination of that level of harm with the sheer number of assets affected is not outweighed by the benefits of the Appeal Scheme, with the

result that this is a "clear reason" for refusing the development proposed under para 11(d)(i).

15. Second, even if the heritage harm is not enough on its own to disapply the tilted balance under para 11(d)(i), it is not the only harm which will be caused. As you will see from your site visit, although not the subject of any national or local designation, the Appeal Site is an attractive rural landscape, traversed by two footpaths, and from which there are views of open countryside to the north and south (including, but not limited to, the impressive views to the South Downs National Park). Against that backdrop, it is common ground that the Appeal Scheme will have a permanent adverse effect on the character of the central field. However, for the reasons which Mr Robert Browne will explain, the harm goes further than that: it will extend to views to and from the wider area, and it will particularly impact on the enjoyment of users of FP15. The significance of this is reflected in the scale of the development as compared with the existing settlement: at 4.3ha, the central field is equivalent to approximately 41% of the existing built-up area of Albourne. As such, the Appeal Scheme gives rise to additional conflict with Policies DP6 and DP12 of the MSDP, and Policy ALC1 of the Neighbourhood Plan.

16. In contrast, Ms Ritson's evidence for the Appellant is that the overall impact on the wider landscape will be beneficial. This is a matter you will need to assess for yourself on site, but in the Council's submission, there is an air of complete unreality about Ms Ritson's position. The Appeal Site is already an attractive landscape, to which the public already has access via FP12 and FP15. It is not in need of "improvement", and – no matter how well-designed the new housing may be – it is difficult to understand how views of a new housing estate could ever make up for the loss of the current long-distance views, or the ability to obtain instant, panoramic access to open countryside when leaving the village.

17. Similar comments apply to Ms Ritson's assessment of the impact on the Millennium Garden. Currently (and accurately) described by Ms Ritson as a "small, reflective space", the Park has benches strategically placed to take advantage of the views out of the fields. Under the Appeal Scheme, this quiet, reflective scene would be replaced by views across the proposed car park/drop-off space for the new school, with short-

distance views to new housing. The idea that this change will be beneficial is simply not credible.

18. When these harms are added to the harm to heritage assets, and the harm which arises simply by reason of the conflict with the development plan, it is the Council's case that the adverse impacts significantly and demonstrably outweigh the benefits, such that permission should be refused under para 11(d)(ii) and/or through the application of the s.38(6) test.

19. In this regard, the Council observes that the binary test posed by fn8 of the NPPF ("can the Council demonstrate a 5YHLS?") is a crude tool for assessing the extent to which it is genuinely necessary to set aside the development plan. Consequently – and as the case-law makes very clear - in approaching the overall planning balance the decision-maker needs to place the simplistic "yes/no" answer to fn8 in context. This will include consideration of the extent of the shortfall, the implications of that for delivery, and the steps which the Council is taking to address the situation.

20. In the present case, even if it is concluded that the Council cannot demonstrate a 5YHLS, there are a number of factors which reduce the significance of that:

    a. Unlike the situation in many of the appeal decisions referred to by the Appellant, this is not a case where the Council has a poor track record of persistent under-delivery. Since adoption of the MSDP in 2018, there has not been a single appeal decision granting permission outside the settlement boundaries on the basis that the Council does not have a 5YHLS, or is underperforming against the Housing Delivery Test.

    b. In fact – and as the most recent Housing Delivery Test results show, Mid-Sussex has an admirable record when it comes to delivery, having over-delivered against its annual requirement for the last three years by a significant margin. Indeed, one of the ironies of this case is that it is precisely that over-delivery will have contributed to any shortfall in 5YHLS, if there is one. This is important, because 5YHLS is not an end in itself – it is simply a means to

the end of ensuring delivery. In this case, the Council's record demonstrates that delivery should not be a concern.

c. Although it did not review the housing requirement set out in Policy DP4, the 2022 SADPD allocated sites for over 900 houses more than were required at the time. This is more than enough to make up for any increase resulting from the transition to the standard methodology. There is, therefore, a plentiful "pipeline" of sites which can be expected to come on stream;

d. As Ms O'Neill will explain, the Council has continued to grant significant permissions on allocated sites. Consequently, the "pipeline" is already supplying sites which – although they do not cannot affect the current 5YHLS, which is benchmarked to April this year – will be part of the 5YHLS in the next 5YH:S position statement.

e. The Council is well advanced in the preparation of its new Local Plan. As Ms O'Neill will explain, it is on track to publish the Reg 19 draft later this year, with a view to examination in public in 2024. Viewed alongside the adoption of the MSDP in 2018, and the SADPD in 2022, this is a clear sign of an authority which is not sitting back and doing nothing, but is actively seeking to address the needs of the district through the plan-led system.

21. Beyond this, the Council takes issue with a number of the other "benefits" on which the Appellant seeks to rely in the overall balance. In particular (and as Ms O'Neill will explain):

a. While the Neighbourhood Plan refers to the lack of a shop in the village, that need will now be addressed as part of the permission for a new extra care development at the former Hazelden Nurseries site;

b. Albourne already has a village hall. In the absence of a management company which is willing to take over the new community facility which the Appellant is offering, there is no obvious need for this;

c. The primary school in Albourne has sufficient capacity to accommodate the primary school children from the proposed development. The Appellant's offer to make additional land available for the future expansion of the primary school is consequently not necessary in order to make the Appeal Scheme acceptable. Having regard to reg 122 of the CIL regulations, it is not a matter on which any weight can be placed in deciding whether or not to grant planning permission.

22. When all these matters are placed into the mix, it is the Council's clear view that the benefits of the Appeal Scheme do not come close to outweighing the adverse impacts. There are, therefore, no "other material considerations" which justify setting aside the s. 38(6) presumption in favour of the development plan. It is on that basis that we will be asking you to dismiss this appeal.

PAUL BROWN K.C.

15 August 2023

Landmark Chambers

180 Fleet Street

London EC4A 2HG