



## Appeal Decision

Inquiry held on 25 - 28 January 2022

Site visit made on 31 January 2022

**by Andrew Dawe BSc (Hons), MSc, MPhil, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12<sup>th</sup> April 2022

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**Appeal Ref: APP/D3830/W/21/3281350**

**Land East of Turners Hill Road, Fellbridge, Crawley, RH10 4HH  
(grid ref. 5333519, 139402)**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Grant Stevenson of Rainier Developments (Cophorne) Ltd against the decision of Mid Sussex District Council.
  - The application Ref DM/20/3081, dated 18 August 2020, was refused by notice dated 7 July 2021.
  - The development proposed is the development of a 64 bed care home (Class C2) and associated infrastructure, including a new access road, car park and landscaped gardens.
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### Decision

1. The appeal is allowed and planning permission is granted for the development of a 64 bed care home (Class C2) and associated infrastructure, including a new access road, car park and landscaped gardens at Land East of Turners Hill Road, Fellbridge, Crawley, RH10 4HH (grid ref. 5333519, 139402) in accordance with the terms of the application, Ref DM/20/3081, dated 18 August 2020, subject to the conditions set out in the attached Annex.

### Application for costs

2. An application for costs was made by Mr Grant Stevenson of Rainier Developments (Cophorne) Ltd against Mid Sussex District Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. For clarity, the date of the application in the third bullet of the above header and in the decision is taken from the original planning application form, notwithstanding that it is stated as 19 August 2020 on the Appeal form.
4. The emerging Mid Sussex District Council Site Allocations Development Plan Document (the SADPD) remains to be adopted. However, it is at an advanced stage whereby consultation on the Inspector's Main Modifications (MMs) has recently taken place. Those MMs include under MM3 a proposed additional policy to those originally set out, policy SA39, relating to Specialist Accommodation for Older People and Care Homes. Given the advanced stage towards adoption of the SADPD, and the relevance of that emerging policy SA39 to this appeal, that policy attracts a significant degree of weight for the purposes of this appeal.

## **Main Issues**

5. The main issues are:

- i) the effect of the proposed development on the landscape character and appearance of the site and surrounding area;
- ii) the effect of the proposed development in terms of the Council's spatial strategy with particular regard to sustainable travel, having regard to local and national policy;
- iii) the nature and scale of the need for housing of the type proposed to meet the needs of older people.

## **Reasons**

### *Landscape character and appearance*

6. The site is located outside of any defined built-up area boundaries, is not allocated in the development plan for the proposed use and is not contiguous with an existing built-up area of any settlement. As such it would not be supported by policy DP6 of the MSDP relating to settlement hierarchy, and in relation to this main issue is within the countryside. Furthermore, paragraph 174 of the National Planning Policy Framework (the Framework), states that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
7. Policy DP12 of the Mid Sussex District Plan (the MSDP) sets out the requirement for protection and enhancement of the countryside. It states that the countryside will be protected in recognition of its intrinsic character and beauty. It goes on to state that development will be permitted in the countryside, defined as the area outside of built-up area boundaries on the Policies Map, provided it maintains or where possible enhances the quality of the rural and landscape character of the District, and it is necessary for the purposes of agriculture; or it is supported by a specific policy reference either elsewhere in the Plan, a Development Plan Document or relevant Neighbourhood Plan.
8. Policy DP26 of the MSDP relates to character and design and requires, amongst other things, that all development and surrounding spaces will be well designed and reflect the distinctive character of the towns and villages while being sensitive to the countryside. Furthermore, policy CDNP05 of the Crawley Down Neighbourhood Plan (the CDNP) states the planning permission will be granted for residential development subject to, amongst other things, the scale, height and form fitting unobtrusively with the surrounding buildings and the character of the area or street scene.
9. The Appellant conducted a Landscape and Visual Appraisal (LVA), which has been undertaken in accordance with the Guidelines for Landscape and Visual Impact Assessment third edition 2013 which is not disputed. I have taken account of the LVA in respect of this issue along with all other relevant evidence.
10. In respect of a Landscape Character Assessment for Mid Sussex 2005, the site is located within Landscape Character Area (LCA) 6 relating to High Weald

which occupies a large proportion of the District; and in respect of the Mid Sussex Landscape Capacity Study 2007, it is within LCA 01 – East Crawley – Copthorne Settled Woodland Matrix. The LVA finds that the site and surrounding area are broadly consistent with the descriptive analysis for both of these LCAs and I have no substantive basis to consider differently.

11. The site comprises mixed woodland comprising a variety of mature trees, mainly deciduous but also with some evergreen. The development in the close vicinity of the site, in terms of that fronting Turners Hill Road is limited to a small number of properties to the north, south and opposite the site, sporadically positioned. The proposed development would lessen the degree to which that partially sporadic nature of development in that vicinity of the site would remain. However, the sporadic nature and linear aspect of development along Turners Hill Road is not the sole characteristic of that immediate vicinity. In this respect there is also a more formal small housing estate opposite and to the south-west of the site and a small number of properties along Chapel Lane extending away from Turners Hill Road to the north and north-east of the site.
12. Notwithstanding the wooded, verdant and undeveloped nature of the site, it is therefore set within that context of existing built form in close proximity to the junction with the A264 to the south, known as the Dukes Head roundabout. It is really only beyond Mill Lane opposite the north-west corner of the site and the dwelling immediately to the north of the site on the opposite side of Chapel Lane, that the countryside character on both sides of the road becomes more generally open. This includes fields, woodland and a small number of properties spread out on the western side of the road, and the spacious grounds of the Effingham Park hotel on the eastern side.
13. The proposed development would therefore not encroach into that more widely open countryside environment. Furthermore, and in any case, it would still retain a significant verdant character with the retention of most of the existing mature roadside trees on the site. It would be a noticeably and distinctly larger building than those in that immediate vicinity and it would occupy a large area of the plot. However, other than in respect of the housing estate opposite, there is no uniformity in the scale of those existing buildings or their footprint to plot ratio. Furthermore, it would not be an unusual feature in the context of the slightly wider area where there are existing large buildings such as relating to the hotel in Effingham Park to the north or business units to the east alongside the A264.
14. In visual terms, the site has a distinctly wooded appearance which on the approaches along Turners Hill Road is dominated by the mature frontage trees. However, I saw that those trees further within the site's boundaries can also be seen to varying degrees, certainly in the winter, in the closer proximity either via the Rowan site or viewed directly through the frontage trees when in front of and very close to the site. That is a similar scenario on the approach to the site along Chapel Lane.
15. The proposed care home would therefore be visible to varying degrees from local public vantage points. However, it would be set back and softened by the intervening vegetation which would likely remain the dominant feature of the site, despite the gap that would be created by the site access and the loss of trees further within the site, particularly as seen on the approaches to the site along Turners Hill Road. The degree of prominence of the proposed building as

seen from outside of the site would also be reduced to some extent through its design and position on the site and some likely additional softening by proposed new trees, hedge and shrub planting. In this respect, as well as the varying degrees of set back from the site boundaries, the massing of the proposed building would be broken up with a single storey element separating the two main sections, and the building slab level would be generally slightly lower than Turners Hill Road.

16. Although there are those existing dwellings to the east and north of the site, they are not clearly visible from the road, such that beyond Rowan on that eastern side of Turners Hill Road, there is a distinctly verdant character to the streetscene. That would therefore be eroded to a degree but for the above reasons, not significantly. Furthermore, the proposed development would be seen in the context of an existing prominent dwelling positioned close to the road opposite the site on Turners Hill Road, as well as the immediately to the south. As such, the presence of the proposed additional built form within that existing context would not be seen as an isolated alien visual feature.
17. The proposed development of the currently undeveloped wooded site would inevitably change the character and appearance of the site and to some extent the immediate surroundings. As such, to a degree, it would detract from the intrinsic character and beauty of the countryside. However, for the above reasons, the extent of that harm, including localised visual effects, would be limited.
18. For the above reasons, I conclude on this issue that the proposed development, as well as not being supported by policy DP6 of the MSDP, would cause some harm to the landscape character and appearance of the site and surrounding area. As such, regardless of the disputed position as to whether or not the proposed development is supported by a specific policy reference, it would conflict with policies DP12 and DP26 of the MSDP and policy CDNP05 of the CDNP. However, also for the above reasons, the extent of that harm would be limited, and I will consider this further in the planning balance.

#### *Sustainable travel*

19. Policy DP21 of the MSDP states that decisions on development proposals will take account of whether, amongst other things, the scheme is sustainably located to minimise the need for travel; and appropriate opportunities to facilitate and promote the increased use of alternative means of transport to the private car, such as the provision of, and access to, safe and convenient routes for walking, cycling and public transport, including suitable facilities for secure and safe cycle parking, have been fully explored and taken up. It goes on to state that where practical and viable, developments should be located and designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles.
20. Policy CDNP10 of the CDNP states that development that does not conflict with other policies will be permitted provided that it promotes sustainable transport within the Neighbourhood Area by, amongst other things, demonstrating that adequate sustainable transport links to the principal village facilities including the village centre, the primary school, Health Centre and recreation open space already exist or will be provided.

21. As established above, the proposed development would not be supported by policy DP6 of the MSDP in terms of its location within the countryside, outside of a defined settlement boundary and clearly separated from such defined settlements. Furthermore, policy SA39 of the emerging SADPD sets out certain criteria under which proposals for specialist accommodation for older people and care homes will be supported, comprising where the site is allocated, part of a strategic allocation, located within the defined Built-Up Area Boundary, or where outside of that boundary it is contiguous with it and the development is demonstrated to be sustainable, including by reference to the settlement hierarchy. The appeal site does not meet any of those criteria such that the proposed development would not be supported by that policy.
22. Section 9 of the Framework relates to promoting sustainable transport and in paragraph 105 states, amongst other things, that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
23. The nature of the proposed development would indicate that residents themselves would be unlikely to leave the site on their own in terms of accessing the wider area either on foot or by other means of transport, such as to local services and facilities such as shops. Nevertheless, there would be a number of staff and the likelihood of regular visiting by family and friends travelling to and from the site; and as referred to above the proposed development would be located outside of any settlements with defined District Plan boundaries, which would not be within easy walking distance of the site. There are a relatively small number of dwellings in the immediate vicinity of the site, notably including the small estate opposite the site. However, those would be unlikely to account for a significant number of people travelling to and from the site.
24. Furthermore, the speed of traffic along the A264 and B2028 and absence of dedicated cycle lanes in the close vicinity of the site would be likely to deter most cyclists. This is notwithstanding the presence of a solid white line to the side of and set away from the carriageway along most of the A264 between the Dukes Head roundabout and the main roundabout junction serving Copthorne towards its western end, which would be likely to provide some degree of separation from motorised traffic. Nevertheless, cycle usage to and from the site would be likely to be encouraged to some degree through the proposed planning obligations to enable works to be undertaken by the County Council relating to a scheme to manage traffic speeds on Turners Hill Road and improving pedestrian and cycle infrastructure and/or the Turners Hill Road cycle path, together with the proposed on-site cycle parking.
25. That District Plan defined built up area of Copthorne is relatively close, being in between Crawley and the site and would therefore involve relatively short travel distances, albeit still more likely to be by motorised transport than on foot or cycle, particularly from the more westerly parts of that settlement. Likewise, the low density housing north of Effingham Park would be in fairly close proximity, albeit again not within short walking distance and where I saw the intervening footway to be generally unlit.
26. The site is therefore by no means isolated from existing housing in the near and slightly wider vicinity from where vehicle trips would be quite short. Nevertheless, it remains the case that the more substantial wider populations,

- such as in Crawley, East Grinstead and Crawley Down, from where most staff and visitors would be more likely to be drawn, would be at such distances as to involve the likelihood of significant use of and reliance on motorised transport to get to and from the site, albeit with easy access via the existing road network.
27. However, there are three bus stops within easy walking distance of the site serving bus routes east and westwards to Copthorne, Crawley and East Grinstead and southwards to Crawley Down, and to the nearest railway stations at Three Bridges and East Grinstead. Although not all local settlements are served by buses, a large number of people living in the wider area including relating to the above District Plan defined settlements would have such potential access to a bus service. There would inevitably be varying degrees of convenience for those coming to the site in terms of the proximity of bus stops to homes within those larger settlements. However, it remains the case that there are a number of services to different locations thereby increasing the likelihood of some degree of use.
  28. A key factor in respect of likely bus usage would be the frequency of services to enable staff and visitors to get to and from the site at times to suit their requirements. The frequency relating to the three bus stops close to the site in each of the above directions varies, with the eastbound stop served by the least number; and in all cases Sunday services are noticeably less. Nevertheless, other than on Sundays, with a small number of exceptions there is generally at least one service an hour from early morning to late evening, serving each of those three local bus stops, and often more, ranging from one to four and in one case five per hour.
  29. The bus services, particularly on Monday to Saturdays, therefore allow use throughout the day and at frequencies that would generally enable staff and visitors to utilise them at a variety of times. These may not fit in precisely with shift patterns or visiting times for all those potential users, necessitating varying degrees of planning around that or the inevitable use of private cars to some degree instead. However, the services are at a level likely to be sufficient to enable a good degree of usage should that be the chosen mode of transport. The more limited Sunday services are however only approximately two hourly and not to Crawley Down. That would still enable some degree of use, depending on where people are coming from, although it would be less likely to fit in with required timings.
  30. The three bus stops concerned, and the pedestrian routes between them and the site, are well lit which would likely be a factor encouraging their use during hours of darkness. The proposals would also include the upgrading of the existing pathway between the site and the A264 junction to make it easier and safer to use for all pedestrians. In this respect, I note that the Local Highway Authority (LHA) is also satisfied that the proposed upgraded footway would provide a workable route for pedestrians to the nearest bus stops. The LHA also refers to all the bus stops being accessible along the existing footway network from Turners Hill Road, with informal dropped kerb crossing points provided over Turners Hill Road and Copthorne Common Road to provide access to the westbound bus stop. I have no substantive basis to consider differently.

31. The bus stops are however unsheltered which would be likely to make them less attractive for use in inclement weather, albeit that I have no substantive evidence to indicate the extent to which this would be likely to affect usage. Furthermore, their use would involve crossing the A264 and B2028 for at least one leg of any return journey. Whilst that could be a deterrent for some people using buses, I have not received any substantive evidence of this situation having caused any accidents to date involving pedestrians crossing the roads concerned, albeit that the proposed development would add to the potential numbers of people using those crossing points. Furthermore, the proposed development would include improvements to the Turners Hill Road crossing points, comprising dropped kerb tactile paving.
32. Walking alongside the A264, including for access to the bus stops, is in proximity to fast moving traffic. However, the road is wide and pedestrians are also protected to some degree by the separation provided by the solid white line on the road referred to previously. Whilst Turners Hill Road is narrower, the existing narrow and poor quality path alongside it is proposed to be widened and improved, and where approximately half of its length between the site and the Dukes Head roundabout is, and would be, set away from the roadside, separated by a grass verge. Furthermore, as referred to above, the planning obligations would secure the means to improve conditions for pedestrians and cyclists on Turners Hill Road.
33. I have had regard to another recent appeal decision relating to a proposed care home at Tilgate Forest Lodge in Pease Pottage<sup>1</sup> which was dismissed (the Tilgate decision). My colleague in making that decision, whilst citing benefits and applying associated weight to these, including in relation to meeting a need for older persons care accommodation, gave substantial weight to the development not being in an accessible location, albeit with some factors in its favour in this respect such as there being a pavement along the adjacent road, which also has nearby bus stops and is part of a National Cycle Route.
34. However, in that case, unlike for the current appeal, it was noted that the bus stops mainly rely on light spill from the adjacent A23 rather on the road concerned, albeit in that case one of the stops has a shelter. My colleague also referred to deficiencies in terms of the convenience of the bus service in that case. However, I do not have the full details of the level of provision concerned, including the extent of locations served by buses linking to the site in that case. For these reasons, that other appeal cannot be clearly compared with the current appeal in respect of this main issue which I have considered on its own merits. Furthermore, the planning balance resulting in the dismissal in that other case importantly also included, amongst other things, great weight being afforded to harm to the character and appearance of an Area of Outstanding Natural Beauty, which is not a designation relating to this appeal site.
35. The proposed development would include provision for a Travel Plan and a staff minibus service to incentivise the use of travel modes other than the private car. I acknowledge that there is no comparative objective evidence to demonstrate the extent to which the measures concerned would be likely to be utilised, which is a similar point to one made by my colleague in the Tilgate decision. There is also limited specific detail provided as to the how the

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<sup>1</sup> Appeal Ref. APP/D3830/W/20/3251365

proposed Travel Plan would operate in full at this stage, such as in relation to the proposed minibus service, albeit that this could be secured by a condition to ensure an appropriate level of provision. Nevertheless, despite figures submitted indicating that cycling and bus use in the wider area constitutes a low percentage of trips, the proposed Travel Plan would be likely to form a basis for encouraging the use of alternative modes of transport to the private car; and in respect of the minibus, a further means by which a choice of transport modes would be provided, albeit to an unknown extent.

36. I note that my colleague in the Tilgate decision refers to the proposed Travel Plan in that particular case as having a more limited practical effect, especially with regard to buses, albeit also referring to there being no compelling comparative objective evidence to suggest a likely take-up of staff car sharing. As referred to above I have insufficient evidence to indicate that the level of convenience of bus services to the current appeal site is comparable to that other case, and no mention was made in that decision of a minibus service as is proposed in this case.
37. The proposed development would also incorporate electric vehicle charging facilities. Whilst this would still relate to the use of individually owned private cars, it would nevertheless encourage the use of a more sustainable form of transport in terms of emissions.
38. I have also had regard to the extent to which staff and visitors would have access to local services and facilities such as shops, health and leisure provision. The extent of such a need to access facilities close to the workplace for staff as opposed to close to where they live is disputed by the parties. Nevertheless, the prime reason for the journey from home to the site for staff would be to work, albeit that it cannot be generally disregarded that people at or travelling to and from a place of work would not reasonably wish to combine this with other visits to services and facilities before or after work or during breaks. There would therefore be limited scope for this or for visitors to do so also within the close vicinity of the site.
39. A lot of mention was made at the Inquiry of the shop and takeaway provision at the nearby petrol filling station on the A264. I saw that this is fairly easily accessible from the site, albeit via the road crossing points in the vicinity of the Dukes Head roundabout and on a narrow path alongside moderately fast-moving traffic on the road. For reasons referred to previously relating to walking alongside the roads concerned, together with there being street lighting for much of the route, the shop concerned would be likely to comprise a useable and potential destination. However, the nature of the shop is such that it only offers a limited facility in terms of general shopping provision, with provision likely to cater more for small-scale top-up shopping, lunch or snacks for example.
40. Other than that shop and the public house located adjacent to the Dukes Head roundabout, there are little or no other services and facilities in the close vicinity of the site, accessible on foot. However, the proposed development would include on-site catering facilities, with provision for a café shown on the plans which would be likely to lessen reliance on outside food outlets to at least some degree in relation to meal provision for staff.
41. I have also had regard to whether the circumstances in terms of access to services and facilities would be similar to those relating to general purpose



Class C3 housing, having regard to other recent appeal decisions for housing developments in the vicinity of the site. These include proposed developments referred to by the Council at Land off Turners Hill Road, Crawley Down including 167 dwellings<sup>2</sup>; The Park Farm, Snow Hill, Crawley Down for two dwellings<sup>3</sup>; and at land rear of Star Place, Copthorne Common Road for either 2 or 3 dwellings<sup>4</sup>, all of which were dismissed. However, despite those decisions citing, amongst other things, matters relating to the locations not being sustainable in transport terms, that was in a different context to a care home proposal whereby the residents themselves would not be reliant on accessing outside services and facilities independently; and where staff and visitors would be likely to live elsewhere, thereby being less likely to be so reliant on there being services and facilities within close proximity of the site. Furthermore, even if there were to be more sequentially preferable sites in the local area to meet any local need, I have determined this appeal on its merits.

42. I have had regard to the planning permission recently granted for a change of use on the adjacent Rowan site from an existing dwelling and outbuildings to create a Class C2 care facility. The Council granted planning permission for that use and acknowledged factors such as proximity to bus routes and provision for electric vehicle charging. However, it was a balanced decision, taking account of need for the accommodation, referring to it not being in a sustainable location in relation to access to shops and other services and with a reliance on the private motor car. However, in that case the balance included the factor of the site already being developed and in existing residential use, unlike the current appeal site. This in itself is therefore a significant difference to the circumstances of the appeal proposal.
43. For the above reasons, together with not being supported by policy DP6 of the MSDP, or emerging SADPD policy SA39 in terms of not relating to an allocation and not being contiguous with the Built-Up Area Boundary, the proposed development would have some shortcomings in terms of the Council's spatial strategy with particular regard to sustainable travel, having regard to local and national policy. As such, it would also conflict with policy DP21 of the MSDP, policy CDNP10 of the CDNP and paragraph 105 of the Framework. However, also for the above reasons, including the likelihood that there would be some degree of choice of transport modes, the extent of any harm relating to this issue would be limited. I shall consider this further in the planning balance.

#### *Need*

44. The MSDP appropriately addresses the need and supports proposals for housing for older people through policies DP25 and DP30. The former states, amongst other things, that the provision of community facilities and local services that contribute to creating sustainable communities will be supported and that such facilities and services to meet local needs will be identified through Neighbourhood Plans or a Site Allocations Development Plan Document. Furthermore, policy DP30, relating to housing mix, states that to support sustainable communities, housing development will, amongst other things, meet the current and future needs of different groups in the community including older people. It goes on to state that if a shortfall is identified in the supply of specialist accommodation and care homes falling within Use Class C2

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<sup>2</sup> Appeal Ref. APP/D3830/W/16/3142489

<sup>3</sup> Appeal Ref. APP/D3830/W/17/3181272

<sup>4</sup> Appeal Refs. APP/D3830/W/21/3268144 & 3268145

- to meet demand in the District, the Council will consider allocating sites for such use through a Site Allocations Document.
45. It is not disputed that the proposed development would meet a need for registered care accommodation. However, the weight to be afforded to such a benefit is disputed, having regard to the existing and projected supply and demand. It is this that I will therefore consider in more detail.
46. In terms of the methodology used to assess the level of need for registered care beds, the Council undertook an assessment of housing need for older people, published as an addendum to the Housing and Economic Development Needs Assessment (HEDNA) in August 2016. The HEDNA Addendum forms part of the evidence base for the MSDP and the assessment was undertaken using the Strategic Housing for Older People Analysis tool (the SHOP@ tool). This tool has limitations, including that it is based on national population prevalence data rather than local, and is claimed by the Council to be out of date. Nevertheless, it is common ground between the Council and Appellant that it is the latest published assessment of older persons accommodation needs in the Mid Sussex Council Area. Furthermore, whilst reference has been made to the new Strategic Housing Market Assessment (the SHMA), the Council has confirmed that it does not rely on the evidence in the SHMA for the purposes of this appeal, and I have no substantive basis to consider otherwise.
47. A lot of time was taken up in the Inquiry with consideration of the level of need having regard to the HEDNA Addendum methodology, which after all is that which the Council saw fit to use as its evidence base for the adopted MSDP, as has been the case with other relatively recent Inquiry decisions relating to housing for older people including those at Albourne<sup>5</sup> and Pease Pottage<sup>6</sup>, albeit that the former related to provision for extra care units as opposed to a care home.
48. It is also agreed by the Council and Appellant that another frequently used methodology within the sector is based upon care home occupancy by age based on prevalence rates researched by sector specialists LaingBuisson. This methodology is also referred to by the Appellant alongside the HEDNA Addendum/SHOP@ tool but is not relied upon in isolation. It is agreed by the parties that the level of demand shown by the LaingBuisson research indicates a significantly lower demand for care beds for the elderly than under HEDNA/SHOP@. However, as highlighted by the Appellant, the bed numbers concerned in relation to the application of LaingBuisson are a baseline as, amongst other things, the rate is based on occupation of bedspaces and is therefore suppressed due to those areas of the country where there are insufficient beds to meet demand. I have received no substantive rejection of that being the case from the Council. The Appellant has indicated that the true level of need is likely to fall at a point between the figures relating to the two methodologies. However, I have no substantive basis to support the extent to which that would be the case, especially given uncertainty around the extent to which the level of demand has been suppressed. Therefore, for the above reasons, it seems to me that, notwithstanding its limitations, the HEDNA Addendum is the most appropriate methodology to adopt for the purposes of this appeal.

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<sup>5</sup> Appeal Ref. APP/D3830/W/19/3241644

<sup>6</sup> Appeal Ref. APP/D3830/W/20/3251365

49. Having regard to the HEDNA/SHOP@ methodology, in terms of need for registered care beds within the MSDP plan period up to 2031, on a purely quantitative basis, based on a demand for 2442 beds and supply of 1518 as of November 2021, this would amount to 924 beds. The corresponding immediate need as of November 2021, based on a demand for 1806 beds would be 288 beds. These figures in themselves represent significant shortfalls.
50. Furthermore, they do not take account of the significant number of rooms which are not single occupancy and are without any ensuite facilities, agreed by the Council and Appellant to now be a reasonable minimum expectation for registered care bedrooms for older people. On that basis, the need over the plan period would be for 1294 beds, with an immediate need, agreed to be the more important figure, of 658 beds based on a current supply of rooms with at least an ensuite toilet and/or bathroom of 1148 rooms. The Appellant considers that the timescale for completion of the proposed development would be by 2025 which I have no substantive basis to disagree with, especially as there is an operator involved subject to planning permission being granted. Based on a demand then for 2123 beds, there would be a need by that time of an additional 317 beds on top of the above immediate need figures.
51. On the Appellant's figures, in the absence of anything similar from the Council, only 11 of the 37 registered care homes in the District have any rooms with an ensuite facility including a wetroom, with an estimate of a small number more than 589 of the current 1518 supply of bedrooms having such a facility. I have no substantive basis to disagree with this analysis and acknowledge that such provision, as is proposed in this case, would prevent the need for sharing such facilities, both from a wellbeing perspective and to minimise the spread of infections. On that basis the need would be much greater than the consideration relating to provision of only the minimum ensuite facilities.
52. It is important to consider the extent to which the above need figures would be likely to be addressed through any proposed care homes in the pipeline and the facilitation of such development in the development plan, including any allocated sites for this purpose in the emerging SADPD. In terms of those in the pipeline in Mid Sussex, there are two proposals with planning permission and one, at the time of the Inquiry, awaiting a decision. I have not been informed that the two with permission (at Haywards Heath and Sayers Common for 67 and 70 bedrooms respectively) are under construction, albeit that could change at any time, notwithstanding the Appellant's claim that they currently have no associated operators.
53. Furthermore, the degree of uncertainty until a decision is made relating to the third proposal in Burgess Hill for 68 bedrooms, reduces the weight afforded to that additional potential supply. Nevertheless, even if permission were to be granted for that one and all three were to be constructed, providing a total of 205 bedrooms, it is uncertain as to when they would be completed. Not being in place now, and even with the minimum period necessary until completion, means that they do not address the immediate need referred to above. Even if built by 2025 those 205 bedrooms would still fall significantly short of even the additional need of 317 beds referred to above, on top of which there would remain the current immediate need figures.
54. I acknowledge that the relevant MSDP policies and emerging SADPD policy SA39 provide support for such proposals, that future proposals may come

forward, and that there will be likely to be some natural replacement of that existing provision without the minimum ensuite facilities. I also note that emerging policy SA39 was added to take account of the previously referred to Albourne appeal decision which underlines the importance of providing for older persons housing. This is with reference to what is now paragraph 62 of the Framework and the Planning Practice Guidance which stresses that the need to provide housing for older people is critical in view of the rising numbers in the overall population.

55. That emerging policy provides clear support for care homes and has been proposed in the context of an identified need. However, based on the evidence before me, there remains uncertainty as to the extent to which it will result in the significant unmet need identified above being addressed, in the shorter term and within the MSDP period, in terms of the scale and nature of that need, particularly when taking account of the qualitative factors, including ensuite provision, and given that there is only one site allocated in the SADPD for C2 use.
56. There is also an additional factor concerning attrition rates whereby it would not necessarily just be non-ensuite rooms lost if and when those homes close which have both ensuite and non-ensuite rooms. This would therefore add to the unmet need for suitable care home accommodation, albeit partially offset by recent new developments and acknowledging that there is no clear evidence as to ongoing attrition rates despite evidence of some closures over the last few years.
57. A further factor potentially impinging on the degree to which care home need will be met during the MSDP period relates to the undisputed evidence provided by the Appellant relating to viability and land value factors. This identifies that it is hard for such care home development to compete with general needs housebuilders on housing sites not specifically allocated for housing for older people, including care homes, but which could in theory be suitable for this.
58. The SADPD allocation referred to above includes, amongst other things, Class C2 Use for a minimum of 142 dwellings, relating to a site in East Grinstead, Ref SA20. That allocation is not specifically for a registered care home such that it could be developed for extra care, claimed by the Appellant to be more likely given the number of rooms the allocation relates to. However, even if that were built as a registered care home, it again does not change the immediate need and remains not having any planning permission in place, resulting in uncertainty as to if and when it would be constructed in order to meet the need within the MSDP period. Furthermore, in itself it would only address a relatively small proportion of the overall need during the plan period, whether relating this to supply generally or just that with at least the minimum ensuite facilities.
59. The Council highlights the extent to which there is increasing diversification within the care sector with less emphasis on registered care beds than expected as opposed to extra care in particular, albeit citing work carried out in Hampshire. The particular demand for extra care provision was a point made by my colleague in the previously referred to Albourne decision. However, that appeal related to proposed extra care units and so did not address, in the same way as in this case, the specific need for registered care. That is a clear difference between the two cases, whereby I have considered this proposal on

its own merits. Whilst I acknowledge the likelihood of increased diversification going forward, the extent to which that would affect an ongoing remaining need for registered care homes in Mid Sussex is unclear, particularly given the extent of the current and future need within the MSDP period referred to above.

60. The Council highlights that the Appellant did not previously identify qualitative aspects of need in representations to the SADPD, in the Statement of Case or in Mr Burden's proof of evidence. Although such qualitative analysis was introduced in and relates to Mr Newton Taylor's evidence, it is nevertheless somewhat puzzling as to why it was not otherwise previously introduced by the Appellant given the extent to which it is now relied upon. Despite that, it was a matter fully explored at the Inquiry, as a result of which I have found it to be an important issue for consideration.
61. For the above reasons, I conclude on this issue that there is a significant unmet need for registered care homes in Mid Sussex, more so in relation to provision for bedrooms that have at least the minimum ensuite facilities. In considering the extent of the shortfall in the context of the critical need for such accommodation nationally, I afford substantial weight to the benefit of adding to the local supply with the proposed care home. That benefit is strengthened by the circumstances whereby there is an operator committed to the proposal subject to gaining planning permission, indicating a likelihood of relatively short term implementation, and given the intended provision for full wetroom ensuite facilities, thereby exceeding what was agreed to be the minimum requirement.

#### *Other Matters*

62. Having regard to matters of highway safety, the Appellant has submitted a Transport Statement (TS) which forecasts that the proposed development would have no perceptible material impact on the local transport network. Furthermore, it is common ground between the Council and Appellant that the trip rates set out in the TS are appropriate for the proposed development and that the forecast trip generation would not exceed the traffic levels that were previously considered acceptable by the LHA for a previous application for residential development on the site. I have no substantive basis to consider otherwise.
63. In relation to the nearby Copthorne Preparatory School, whilst any increases in pupil numbers would potentially add to that existing level of traffic upon which the TS was based, evidence produced at the Inquiry suggested that such expansion of the school may not be going ahead. In any case, even if there were any expansion, that would need to be a matter for consideration at that time in terms of any related highways safety implications.
64. The LHA has raised no objections to the proposed development on highway safety grounds and I have no substantive basis to consider differently subject to appropriate conditions and planning obligations. Furthermore, the LHA is satisfied that there would be sufficient parking provision on the site for the level of usage likely with development of the nature proposed, and again I have no substantive basis to consider differently.
65. With regard to noise concerns, comings and goings in relation to the site and its vicinity would inevitably increase due to the existing undeveloped nature of the site. However, in the context of other traffic movements locally on the adjacent roads and in relation to existing residential development in the locality

this would be unlikely to cause significantly increased or unexpected levels of noise to surrounding occupiers. Furthermore, given the positioning of the proposed car parking areas, served by access directly onto Turners Hill Road, much of the vehicular activity would be generally focussed away from the quieter rear of the site. Other potential noise from construction activity and any plant and machinery within the proposed development could also be appropriately controlled through conditions. For future residents, measures to protect them from unacceptable levels of noise from the adjacent road, could be appropriately secured by condition in relation to the detailed design of the building concerned.

66. With regard to the ecology of the site, the Appellant has undertaken a Preliminary Ecological Appraisal, a Preliminary Bat Roost Assessment and analysis concerning Biodiversity Net Gain (the Ecological Report) which assesses the site as being of local ecological importance; and an Arboricultural Impact Assessment with associated Arboricultural Note, both of which I have taken into account. The proposals would involve the loss of a significant number of trees and associated understorey habitat and the ecological report highlights that there would be a net loss of biodiversity on the site as a result of the proposed development. However, the tree loss would mainly be in the central part of the site primarily comprising early successional species and young semi-mature trees. The generally higher quality mature boundary trees, protected by Tree Preservation Order (TPO), with varied understorey would generally be retained. In this respect, those proposed to be removed to make way for the proposed site access are classified in the ecology report as Category C trees as opposed to those either side being Category B and I have no substantive basis to disagree with such categorisation.
67. Furthermore, the Council's Tree Officer raises no objections on arboricultural grounds, subject to appropriate conditions, having regard to the position of the proposed access in terms of measures to mitigate its impact on two larger trees either side; that there would not otherwise be any excavation works within the root protection areas of trees retained at the site boundaries; and referring to appropriate proposed new tree planting on the site, subject to the need for the submission of a detailed planting plan which could be secured by condition.
68. The Ecology Report highlights that no trees with potential for bat roosting would be removed and that there would be a suitable buffer between the development and the trees concerned to prevent disturbance. Nevertheless, only one tree was found to possess moderate, as opposed to otherwise low, potential to support roosting bats. The report, amongst other things, also draws attention to the need to conduct sensitive vegetation removal including in respect of breeding birds, reptiles and hedgehogs. It also highlights that there are no records of badgers within two kilometres of the site in the past 20 years and that no signs of badgers were found on the site during the survey work undertaken. I have no substantive basis to consider otherwise.
69. In terms of those conditions suggested by the Council as being necessary in the event of the appeal being allowed, those that would relate to ecological mitigation would importantly include securing the protection of intended retained trees, and their associated understoreys and habitat value, during the construction phase. It is also likely that proposed new tree and hedge planting and other soft landscaping, further details of which could also be secured by

condition, would provide some degree of replacement or improved habitat. With such conditions, and for the above reasons, despite a net loss of biodiversity on the site, it is therefore likely that any harm to the ecological value of the site would be limited and not to an unacceptable level.

70. In respect of the potential effects on the amenities of surrounding residents relating to increased levels of lighting and pollution generated as a result of the proposed development, I have no substantive basis to consider that any such increases would cause significant additional harm. Furthermore, measures to control odours, any external lighting, and to ensure adequate air quality associated with the proposed development, could all be appropriately controlled by conditions.
71. Having regard to concerns over the impact of the proposed development on the local medical infrastructure, I have no substantive evidence to indicate that this would be likely to cause significant additional pressure on such provision, especially as the nature of the proposed development would involve a level of care within the home itself.
72. In terms of any additional strain that may be caused by the proposed development on local drainage infrastructure, I have received no substantive evidence to indicate that foul and surface water could not be adequately disposed of from the proposed developed site, subject to details that could be secured by condition. In this respect, I also note that the Council's Flood Risk and Drainage Team raises no objections in respect of drainage subject to further details being submitted through a condition.

#### *Conditions and planning obligations*

73. The Council has submitted 25 suggested conditions were I minded to allow the appeal. These follow the submission of an amended schedule where one new suggested condition has been added. These are generally agreed by the Appellant who has also confirmed agreement to the imposition of the pre-commencement conditions concerned. I have considered these in the light of advice in the National Planning Practice Guidance and have, in the interests of clarity and precision, amended some of the wording, combined two of the originally suggested conditions and added one. I have referred to the condition numbers, cross referenced to the attached annex, in brackets for clarity purposes.
74. For certainty, the standard time condition for commencement of the development (1), and a condition requiring the development to be carried out in accordance with the approved plans (2), would be necessary.
75. In the interests of highway safety conditions would be necessary to secure: the completion of the proposed off-site footway and tactile paving crossing points alongside Turners Hill Road, also so as to provide sustainable travel options (3); the submission and implementation of a Construction Management Plan, also to protect the amenities of surrounding residents and the area generally (6); the completion of the proposed site access (13). Also, to provide sustainable travel options, conditions would be necessary to secure details and the implementation of covered and secure cycle parking spaces on the site (14); the implementation of the proposed electric vehicle charging spaces (23); and the submission and implementation of a Travel Plan, including provision for a staff minibus (24).

76. So as to provide adequate drainage of the site, conditions would be necessary to secure the submission and implementation of details of foul and surface water drainage measures (4 & 5).
77. In the interests of tree protection, the character and appearance of the area, and the ecological value of the site, a condition would be necessary to secure the implementation of proposed arboricultural measures (7). Also in the interests of the character and appearance of the area conditions would be necessary to secure the submission and implementation of: samples of facing materials and finishes proposed to be used in the construction of the proposed development (8); further details of various architectural elements of the proposed development (9); hard and soft landscaping details (12), also in the interests of the site's ecological value; details of the proposed bin store, pumping station and sub-station (22).
78. To protect the living conditions of local residents, conditions would be necessary to: control the hours of construction and demolition works as well as the times for deliveries or collection of plant, equipment or materials during the construction phase (10); secure measures for controlling the emission of fumes and odour and noise from the proposed development (15 & 16), also in the interests of the living conditions of prospective residents; secure measures to mitigate any risks from landfill/ground gas, also in the interests of the living conditions of prospective residents (17); secure details prior to implementation of any external lighting (18); ensure adequate levels of air quality relating to the proposed development (19), also in the interests of the living conditions of prospective residents. In order to protect the amenities of residents of the proposed development in respect of noise generated by traffic or other external sources, a condition would be necessary to secure details and implementation of appropriate mitigation measures (20).
79. In order to protect the local environment and the safety of construction workers and future and existing residents, a condition would be necessary to secure provision during construction for the remediation of any contamination found at the site that had not been previously identified (11).
80. Having regard to the safe movement of aircraft and the operation of Gatwick Airport, a condition would be necessary to secure the submission and implementation of a Bird Hazard Management Plan so as to minimise the attractiveness of the proposed roof area to birds (21).
81. An additional condition (25) to require the implementation and retention of the proposed car parking spaces would also be necessary in the interests of ensuring provision for adequate parking and highway safety. Whilst this would be additional to those suggested and discussed at the Inquiry, I consider that the Appellant would not be prejudiced by this as it would not require anything not already proposed, as shown on the submitted plans; and would not be unexpected as it is a condition already suggested by the LHA in its consultation response to the application concerned.
82. Planning Obligations have been submitted within a Section 106 Agreement making provision for the following:
- Appropriate financial contribution towards local library provision relating to additional stock that would be required at East Grinstead Library, including on the basis that the library service is proactive in its contact



with residents of care homes as a result of the benefit to stimulation and engagement that the services can provide. This would be in accordance with the Framework which, in paragraph 93 sets out that to provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should, amongst other things, plan positively for the provision and use of community facilities and other local services to enhance the sustainability of communities and residential environments; and the Mid Sussex Development Infrastructure and Contributions Supplementary Planning Document (the SPD) which highlights, amongst other things, that where a library is unable to meet standards due to development, a reasonable contribution will be requested towards the service.

- Appropriate financial contribution relating to works undertaken by the County Council concerning a scheme to manage traffic speeds on Turners Hill Road and improving pedestrian and cycle infrastructure and/or the Turners Hill Road cycle path, so as to encourage less car dependency and the use of sustainable transport modes, particularly by staff and visitors. This would be in accordance with the Framework which in paragraph 104 states, amongst other things, that opportunities to promote walking, cycling and public transport use are identified and pursued; and with the SPD which in respect of this matter relates to ensuring provision of an efficient and sustainable transport network and highlights the MSDP policy DP19 aim to facilitate and promote the increased use of alternative means of transport to the private car.

83. The Council and West Sussex County Council have submitted a statement of compliance of the planning obligations with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) (CIL Regulations). Based on that evidence, policy DP20 of the MSDP relating to securing infrastructure, the relevant paragraphs of the Framework and the SPD, I am satisfied that the provisions, would meet the tests set out in paragraph 57 of the Framework and Regulation 122(2) of the CIL Regulations.

#### *Planning balance*

84. I have found that the proposed development, as well as not being supported by policy DP6 of the MSDP, would cause some harm to the landscape character and appearance of the site and surrounding area. However, for the reasons set out, the extent of that harm would be limited.

85. I have also found that, together with the proposed development not being supported by policy DP6 of the MSDP, or emerging SADPD policy SA39, it would have some shortcomings in terms of the Council's spatial strategy with particular regard to sustainable travel, having regard to local and national policy. However, again for the reasons set out, the extent of any harm would be limited.

86. The proposed development would however contribute towards what I have found to be a significant unmet need for registered care homes in Mid Sussex, more so in relation to provision for bedrooms that have at least the minimum ensuite facilities, causing me to afford substantial weight to the benefit of adding to the local supply with the proposed care home. I have also found that that benefit is strengthened by the circumstances whereby there is an operator committed to the proposal subject to gaining planning permission, indicating a

likelihood of relatively short term implementation, and given the intended provision for full wetroom ensuite facilities, thereby exceeding what was agreed to be the minimum requirement. There would also be the likelihood of added local economic benefits associated with the jobs generated by the proposed development, both during its construction in the shorter term and once operational in the longer term.

87. Notwithstanding my findings in relation to the first two main issues, I have found there to be no other matters that would cause unacceptable harm, subject to appropriate conditions and planning obligations where applicable.
88. Applications for planning permission must be determined in accordance with an up-to-date development plan unless material considerations in a particular case indicate that the plan should not be followed. Taking all of the above into account, the benefits of the proposed development, comprising material considerations, would outweigh the harm that I have identified and the conflict with development plan policies. As such, the material considerations in this case indicate that planning permission should be granted that is not in accordance with the development plan.
89. Some Inquiry time was taken up with the disputed matter of whether the policies which are most important for determining the appeal are out of date. Whilst I have considered the submissions on this matter, I have not dealt with this in detail in light of the above overall planning balance, which does not rely on whether or not the tilted balance relating to paragraph 11(d)(ii) of the Framework applies.

### **Conclusion**

90. For the reasons given above I conclude that the appeal should be allowed.

*Andrew Dawe*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Christopher Young QC, No5 Chambers

Instructed by Timothy Burden,  
Turley Associates

He called:

Clare Brockhurst (for round table discussion  
on landscape matters)

Director, Leyton Place Limited

Matthew Grist

Director and Head of Transport  
Planning, Jubb

Nigel Newton Taylor

Director, HPC

Richard Garside

Director and Head of  
Development Consultancy,  
Newsteer

Timothy Burden

Director, Turley Associates

### FOR THE LOCAL PLANNING AUTHORITY:

Jack Parker, Barrister Cornerstone Barristers

Instructed by Tom Clark, Mid  
Sussex District Council

He called:

Christopher Tunnell

Director of Planning and Leader  
of the London Planning Group,  
Arup

Also participated in round table discussion on conditions:

Susan Dubberley

Mid Sussex District Council

## **INQUIRY DOCUMENTS (IDS):**

1. Opening Statement made on behalf of the Appellant.
2. Opening Statement for Mid Sussex District Council.
3. PPG - Housing for older and disabled people.
4. Government response to the Second Report of Session 2017-19 of the Housing, Communities and Local Government Select Committee inquiry into Housing for Older People.
5. Suggested viewpoints and locations for site visit.
6. Suggested Conditions.
7. Mid Sussex Development Infrastructure and Contributions Supplementary Planning Document.
8. Appellant's agreement to pre-commencement conditions.
9. Location plan prepared by Appellant for site relating to appeal ref APP/D3830/W/20/3251365 – Tilgate Forest Lodge, Brighton Road, Pease Pottage.
10. Planning Statement and site plan supporting MSDC Planning Application: DM/21/3385 – Land to the south of Kings Way, Burgess Hill, West Sussex.
11. Appellant's Costs Application.
12. Plan showing proposed off-site footpath and crossing works: dwg no. 006 Rev P1.
13. Amended suggested conditions.
14. Details of notifications carried out for Rowan planning application Ref DM/21/0028.
15. Crawley Observer article 18 November 2021 concerning Copthorne Preparatory School.
16. Further amended suggested conditions 28 January 2022 and confirmation of the Appellant's agreement to those that would be pre-commencement conditions.
17. Council's response to Appellant's costs application.
18. Closing Statement for Mid Sussex District Council.
19. Closing Statement made on behalf of the Appellant.
20. Email dated 21 January 2022 from the Council to clarify its position with regard to evidence in the HEDNA Addendum 2016 and 2021 SHMA.

## **ANNEX - Conditions**

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the plans listed below:
  - Site Location Plan 100 Rev A
  - Site Roof Plan 176 106 Rev -
  - Cut and Fill Plan – Site Roof Plan 176 107 Rev-
  - Elevations 176 125 Rev A
  - Elevations 176 126 Rev A
  - Elevations 176 127 Rev A
  - Ground Floor Plan 176 114 Rev A
  - First Floor Plan 176 115 Rev A
  - Second Floor Plan 176 116 Rev A
  - Roof Plan 176 117 Rev A
  - Landscape Proposals RDL712 DRG01 P4
  - Landscape Sections and Entrance Details RDL712 DRG02 P5
  - 20191 001 Rev P1 Proposed Vehicular Access
  - 20191 006 Rev P1 – Proposed off site footpath and crossing works.
3. No part of the development shall be occupied until provision of the footway and tactile paving crossing points alongside Turners Hill Road has been constructed in accordance with plan: 20191 006 Rev P1.
4. No development shall take place unless and until details of the proposed foul water drainage and means of disposal have been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until all the drainage works concerned have been carried out in accordance with the approved details. Maintenance and management during the lifetime of the development shall be in accordance with the approved details.
5. No development shall take place unless and until details of the surface water drainage and have been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until all the drainage works concerned have been carried out in accordance with the approved details. Maintenance and management during the lifetime of the development shall be in accordance with the approved details.
6. No development shall take place, including any works of demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved CMP shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate, but not necessarily restricted to, the following matters:
  - the anticipated number, frequency and types of vehicles used during construction;
  - the method of controlling surface water during construction;
  - the method of access and routing of vehicles during construction;
  - the parking of vehicles by site operatives and visitors;
  - the loading and unloading of plant, materials and waste;

- the storage of plant and materials used in construction of the development,
  - the erection and maintenance of security hoarding;
  - the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders, if required);
  - details of public engagement both prior to and during construction works;
  - measures to control noise affecting nearby residents;
  - dust control measures;
  - pollution incident control.
7. The development hereby permitted shall be carried out in accordance with the Arboricultural Impact Assessment (reference 12622\_R01\_A) dated 14th August 2020 and the Arboricultural Note (reference 13340-C001a\_JP\_270121) dated 27<sup>th</sup> January 2021, which shall be implemented and adhered to throughout the entire construction period.
8. No development shall be carried out above ground slab level until samples of materials and finishes to be used for all facing materials, including the external walls/roof/fenestration of the proposed buildings, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
9. No development shall be carried out above ground slab level until 1:20 scale section and elevations (vignettes) of:
- (a) the single storey frontage showing the entrance, green roof and columns;
  - (b) a typical dormer window;
  - (c) a chimney;
  - (d) a first-floor terrace/balcony;
- have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
10. Works of construction or demolition, including the use of plant and machinery, necessary for implementation of this consent, as well as deliveries or collection of plant, equipment or materials for use during the demolition/construction phase, shall be limited to the following times:
- Monday – Friday: 08:00 - 18:00 Hours  
Saturday: 09:00 - 13:00 Hours  
Sundays and Bank/Public Holidays: None permitted
11. If during construction, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the Local Planning Authority), shall be carried out until a method statement identifying and assessing the risk and proposing remediation measures, together with a programme, has been submitted to and approved in writing by the Local Planning Authority. The remediation measures shall be carried out as approved and in accordance with the approved programme. If

no unexpected contamination is encountered during development works, on completion of works and prior to first occupation of the proposed development, a letter confirming this shall be submitted to the Local Planning Authority. If unexpected contamination is encountered during development works, on completion of works and prior to first occupation of the proposed development, the agreed information, results of investigation and details of any remediation undertaken shall be submitted to and approved in writing by the Local Planning Authority.

12. No development shall be carried out above ground slab level until full details of both hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of those to be retained, together with measures for their protection in the course of development, have been submitted to and approved in writing by the Local Planning Authority, which shall be carried out as approved.

Hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the first occupation of any part of the development, or in accordance with a programme which, prior to such occupation, shall first have been submitted to and approved in writing by the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

13. No part of the proposed development shall be first occupied until such time as the vehicular access serving the development has been constructed in accordance with the submitted details shown on the drawing titled Proposed Vehicular Access 20191\_001\_P1.
14. No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details that shall first have been submitted to and approved in writing by the Local Planning Authority. The cycle parking spaces shall thereafter be maintained as such thereafter for the purpose of cycle parking.
15. The development hereby permitted shall not be brought into use until a scheme for the installation of equipment to control the emission of fumes and odour from the premises has been submitted to and approved in writing by the Local Planning Authority, and the scheme as approved has been implemented. The equipment concerned shall thereafter be maintained in accordance with the approved details. The submitted odour control scheme shall be in accordance with current best practice and shall include an odour risk assessment, as well as a maintenance and monitoring schedule for the odour control system, to ensure adequate control of odours, to align with the manufacturer's instructions.
16. The development hereby permitted shall not come into operation until a scheme has been submitted to and approved in writing by the Local Planning Authority demonstrating that the noise rating level (L<sub>Ar</sub>,Tr) of plant and machinery within the development shall be at least 5dB below the background noise level (L<sub>A90</sub>,T) at the nearest residential facade. All measurements shall

be defined and derived in accordance with BS4142: 2014+A1:2019. The assessment shall be carried out with the plant/machinery operating at its maximum setting. The approved measures shall be implemented before the development is brought into first use and thereafter be maintained in accordance with the approved details.

17. Before the development hereby permitted commences, an investigation and risk assessment for landfill/ground gas to ascertain whether gas protection measures are required shall be undertaken. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to, and approved in writing by, the Local Planning Authority. Where gas protection measures are required the details of these shall be submitted to, and approved in writing by, the Local Planning Authority. All required gas protection measures shall be installed before the development is occupied.
18. Prior to the installation of any external lighting to the site, details of light intensity, spread and any shielding and times of use together with a report to demonstrate its effect on nearby residential properties shall be submitted to and approved in writing by the Local Planning Authority. It is recommended that the information be provided in a format that demonstrates compliance with the ILP Guidance Notes for the Reduction of Obtrusive Light. Relevant information is available from the following site: <https://www.theilp.org.uk/documents/obtrusive-light>. The lighting concerned shall be implemented in accordance with the approved details and maintained as such thereafter.
19. Prior to the commencement of construction of any part of the development hereby permitted, the details of a scheme of mitigation measures to improve air quality relating to the development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be in accordance with, and to a value derived in accordance with, the Air Quality and Emissions Mitigation Guidance for Sussex which is current at the time of the submission of the scheme to the Local Planning Authority. All works which form part of the approved scheme shall be completed before any part of the development is occupied and shall thereafter be maintained in accordance with the approved details.
20. No development shall take place until a scheme for protecting the proposed residential units from noise generated by traffic or other external sources, has been submitted to, and approved in writing by, the Local Planning Authority. All works that form part of the scheme shall be completed in accordance with the approved details before any part of the noise sensitive development is occupied. Unless otherwise agreed in writing, the submitted scheme shall demonstrate that the maximum internal noise levels in bedrooms post construction will be 30 dB LAeq T (where T is 23:00 - 07:00) and in bedrooms and living rooms will be 35 dB LAeq T (where T is 07:00 - 23:00). Noise from individual external events typical to the area shall not exceed 45 dB L<sub>Amax</sub> when measured in bedrooms internally between 23:00 and 07:00, post construction. In the event that the required internal noise levels can only be achieved with windows closed, then the applicant shall submit details of an alternative means of ventilation with sufficient capacity to ensure thermal comfort of the occupants with the windows closed.



Unless agreed in writing, noise levels in gardens and outdoor living areas shall not exceed 55 dB LAeq 1 hr when measured at any period.

Details of post installation acoustic installation testing shall be submitted to and approved in writing by the Local Planning Authority upon request.

21. Development shall not commence until a Bird Hazard Management Plan has been submitted to and approved in writing by the Local Planning Authority. The submitted plan shall include details of: management of any flat/shallow pitched roofs on the proposed building which may be attractive to nesting, roosting and "loafing" birds. The Bird Hazard Management Plan shall be implemented as approved upon completion of the roof and shall remain in force for the life of the building. No subsequent alterations to the plan shall take place unless first submitted to and approved in writing by the Local Planning Authority.
22. No part of the development hereby permitted shall be first occupied until the proposed bin store, pumping station and sub-station have been implemented in accordance with drawings showing their details that shall firstly have been submitted to and approved in writing by the Local Planning Authority.
23. No part of the development hereby permitted shall be first occupied until the electric vehicle charging space(s) have been provided in accordance with plans and details which shall firstly have been submitted to and approved in writing by the Local Planning Authority.
24. Prior to the first occupation of the development hereby permitted, a Travel Plan including the provision of a staff minibus shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.
25. No part of the development hereby permitted shall be first occupied until the car parking areas have been constructed and provided in accordance with the approved plans. The car parking spaces shall thereafter be retained at all times for their designated purpose.



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## Costs Decision

Inquiry Held on 25 – 28 January 2022

Site visit made on 31 January 2022

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12<sup>th</sup> April 2022

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### **Costs application in relation to Appeal Ref: APP/D3830/W/21/3281350 Land East of Turners Hill Road, Fellbridge, Crawley, RH10 4HH (grid ref. 5333519, 139402)**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Grant Stevenson of Rainier Developments (Cophorne) Ltd for a full award of costs against Mid Sussex District Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for the development of a 64 bed care home (Class C2) and associated infrastructure, including a new access road, car park and landscaped gardens.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for Rainier Developments (Cophorne) Ltd (submitted in writing)**

#### **Introduction**

2. This application is made in accordance with the Planning Practice Guidance on costs ("the guidance"). It is made in line with the PPG which states:

*"All costs applications must be formally made to the Inspector before the hearing or inquiry is closed, but as a matter of good practice, and where circumstances allow, costs applications should be made in writing before the hearing or inquiry. Any such application must be brought to the Inspector's attention at the hearing or inquiry, and can be added to or amended as necessary in oral submissions"<sup>1</sup>.*

3. It is an application for a full award of costs against Mid Sussex District Council (hereinafter 'the Council').
4. Costs play an important part in the appeal process. The aim of the costs regime includes this<sup>2</sup>:

*"Encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up*

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<sup>1</sup> Paragraph: 035 Reference ID: 16-035-20161210

<sup>2</sup> Paragraph: 028 Reference ID: 16-028-20140306

*to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.”*

5. All good costs applications should be short. That is because the point being made should be simple and obvious. That is exactly the position here.

### **Relevant Guidance**

6. Costs may be awarded where a party has behaved unreasonably and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process<sup>3</sup>. The word “unreasonable” is used in its ordinary meaning: see *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 774.
7. In the context of an application for costs, such behaviour may be procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal<sup>4</sup>. This application relates to the latter.
8. As to the type of behaviour which may give rise to a substantive award of costs against a local planning authority, particular attention is drawn to the following examples in the PPG (not exhaustive)<sup>5</sup>:
  - 8.1 Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
  - 8.2 Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead;
  - 8.3 Acting contrary to, or not following, well-established case law;
  - 8.4 not determining similar cases in a consistent manner.

### **Submissions**

#### Location and Accessibility

9. The Council has objected to this proposal on grounds that it is an unsuitable location for a care home, raising concerns about accessibility and access to public transport. It is a fundamental part of their case against the proposal and features expressly and clearly in the reasons for refusing the Appellant’s scheme.
10. Yet what the Appellant has discovered is that the Council has very recently just granted planning permission for a care home on the site immediately next door on 18 February last year.
11. The Council did not disclose this to the Appellant: neither during or after the planning permission was granted. The Appellant discovered it through diligent

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<sup>3</sup> Paragraph: 030 Reference ID: 16-030-20140306

<sup>4</sup> Paragraph: 031 Reference ID: 16-031-20140306

<sup>5</sup> Paragraph: 049 Reference ID: 16-049-20140306

- enquiry. The Council should have disclosed this. It is completely inappropriate for the Council not to have done so.
12. The very latest time that the Council should have disclosed this was when the decision was made to approve the adjacent care home. In fact the Council should have done so when it was submitted. But the Council kept very quiet about it.
  13. The planning application, the subject of this appeal was submitted to the Council on 19 August 2020 (for all dates see the Planning SCG, page 10 onwards). In the Autumn of 2020 the application was subject to extensive consultation discussion and a Design Review Panel.
  14. There was considerable discussion with officers about the application. This led, on 27 January 2021, to a pack of updated and revised documentation being submitted to the Council.
  15. The Rowan application for a C2 care home was submitted at this time – January 2021.
  16. The Appellant has discovered this afternoon that Council consulted on the Rowan's application on 20 January 2021. Neither the Appellant, nor its agents were consulted about the Rowan application.
  17. The Rowan application was granted on 18 February 2021.
  18. The Appellant continued to discuss the application with the case officer. No mention was made at this time, or ever, of the Rowan application or the fact that by February 2021 it has been granted planning permission.
  19. Further information was submitted to the Council in February 2021, yet again no mention was ever made of the Rowan application or the fact that by February 2021 it had been granted.
  20. The application the subject of the appeal was refused by the Council on 7 July 2021.
  21. Yet again no mention was ever made of the Rowan application or the fact that by February 2021 it had been granted. In their report in respect of the appeal application there was no consideration by officers of the Rowan application or the planning permission. This despite the fact that it was in fact mentioned by a local resident in their representations.
  22. The care home that is the subject of the appeal was rejected for being located outside the settlement boundary. This is the first reason for refusal.
  23. The Rowan care home is immediately adjacent and also located outside the settlement boundary. It was granted planning permission.
  24. The permission for the care home on the site immediately adjacent is for a children's care home. The site is PDL. These differences are not relevant to the location and accessibility of the site for a care home. The location is where it is located and the accessibility relates to the access to public transport, including the frequency and quality of the bus service, the location of the bus stops, the ability to walk to the bus stops, and the ability to access other relevant services such as local shops.

25. The Council rejected the appeal proposal on the basis of its location and claimed it was contrary to Policy DP21 – the third reason for refusal.
26. The Council granted permission for the Rowan care home without any alleged breach of DP21.
27. The care home that is the subject of the appeal was rejected for being located away from existing settlements. This is also part of the third reason for refusal.
28. The Rowan' care home is located immediately adjacent and was not rejected for being located away from existing settlements. It was granted planning permission.
29. If anything there is likely to be more movement to and from a young persons care home, compared to an elderly persons care home. The Rowan care home has 25 car parking spaces. The Planning Statement supporting the Rowan care home permission, refers to this parking be needed for staff, visitors and residents (page 10, para 50) and "Around 50% of residents have a vehicle to be kept on site for mobility and access." (page 11 para 51)
30. What it reveals is this is a perfectly acceptable location for a care home.
31. The Council have tried to argue the bus services for the appeal site are poor. But they were emphasized in terms of addressing the sustainability credentials of the Rowan care home.
32. The Council have tried to highlight the appeal proposal is not near to school, doctors surgeries etc. Yet these are services which are located where people live: doctors visit care homes.
33. None of this was considered relevant in respect of the Rowan proposal. This despite the fact this is where young people live.
34. The whole of paragraph 84 of the NPPF (2019) was relied upon by officers in support of the Rowan (not just the last sentence about PDL). But this paragraph was ignored for the appellant's appeal proposal. Instead other paragraphs of the NPPF were relied upon reject the appeal care home. These other paragraphs were not cited in the officers report for the Rowan.
35. Mr Tunnell tried to suggest that the factors listed by the officers in respect of the reasons why the care home was acceptable in this location on page 7 of the Rowan report (i.e. "Furthermore, etc) and the conclusions on the very end of the report were mostly concerned highway safety. They plainly were not. They were relied upon to show why the location was judged acceptable for a care home, including the nature of the residents and their needs and mobility.
36. The Council have plainly acted in a wholly inconsistent way. The Appellant has a cast iron case against the Council in terms of consistency in decision making. That is also a failure to properly understand the law on the need for consistency in decision making.
37. The Council have no objection to the proposal on any other technical matters.

#### Landscape and Visual Harm

38. The Council's case on landscape and visual impact is unreasonable. There is no reason for refusal relating to landscape and visual impact. Moreover, the Council

has no expert evidence to support its case on this issue, and call no landscape witness. What is written in the planning proof is not substantial evidence in support of the case put forward.

39. The site is exceptionally well contained. It is impossible to build on a greenfield site and not cause some adverse impact. But that does not make the proposal unacceptable.
40. The Council's design officer accepted the proposal would be well screened from public view.

### Need

41. The Council's case against the Appeal proposal is therefore largely predicated on an alleged lack of need. This is hopeless. The Government has made clear there is a "critical need" for this type of accommodation. Added to which this is an area with a very high proportion of elderly people.
42. The Council seems to argue there is no need for more bedspaces. Yet it accepts that it is a reasonable expectation that care home bed will be single occupancy and en suite provision. In light of Covid 19 that point is beyond argument.
43. On the basis of this, the Council plainly does accept an unmet need of 658.
44. The Council has sought to then rely on sites in the pipeline or with planning with planning permission. This is a figure of 203 bedspaces which the Council seeks to rely on to reduce the unmet need to 445 bedspaces.
45. But the pipeline supply does not have operators. One does not even have planning permission. Also these sites will not address the current unmet need.
46. The need they would be addressing is future need. Yet the need figures increase yet further by 2025.
47. This is even before one turns to consider the existing provision and the nature of it, is completely inadequate against modern standards.
48. The Council do not rely on expert evidence to address these points.
49. The Council call no evidence to dispute the Appellants qualitative case.
50. The Council sought to rely on the SHMA. But quickly abandoned that idea after Mr. Newton Taylor the way in which this has been done is both inappropriate and inconsistent with neighbouring authorities.
51. The Council's case on need is utterly unconvincing.

### **The response by Mid Sussex District Council (submitted in writing)**

52. The Appellant has applied for a full award of costs against the Council.
53. The Council resists the application, which is utterly unmeritorious, unreasonably pursued and is nothing more than a thinly veiled strategic ploy on the part of the Appellant to try and strengthen its case on the merits before the Inspector.

54. At times, it is difficult to follow the points which the Appellant has pursued in the written application. The Council reserves the right to respond further to any of those points if they are clarified.

### Sustainability

55. The Appellant complains that the Council acted unreasonably because it failed to inform the Appellant that planning permission had been granted for an adjacent site at Rowan (paragraphs 13 – 24 above) and because it was unreasonably for the Council to adopt an “inconsistent” position as between the two applications (paragraphs 25 – 39 above).
56. Mr Young QC appeared to labour under the misapprehension that planning permission had only just been granted at Rowan. In fact, planning permission was granted at Rowan on 18 February 2021 (almost a year ago) and five months before the application the subject of this appeal was determined, in July 2021. It is not, therefore, a “recent” approval.
57. Mr Burden accepted in cross-examination that he did not criticise the Council in respect of the publicity of the application at Rowan. A site notice was erected and neighbour notification letters sent out. As Mr Burden accepted, if the Appellant did not become aware of the application, that is not the Council’s fault, nor does it demonstrate that the Council acted unreasonably.
58. It is not the responsibility of a local planning authority officer to draw to the attention of applicants for planning permission other planning decisions on nearby land. Local authority planning officers have quite enough to do already and the pressures on local authority planning officers are well known. If it was anyone’s job to make sure that the Appellant kept abreast of decisions on nearby development sites, it was Mr Burden’s. His failure to do so is not a failing which can be laid at the door of the Council.
59. The Rowan permission was then specifically referred to in the officer’s report for this application (CD 8.15). It is difficult to see how the Appellant can possibly criticise the Council for a failure to draw its attention to the Rowan decision from this point onwards given that explicit reference to it is made in the body of the officer’s report. Again, if anyone should have picked up the significance of the reference to planning permission having been granted at Rowan, it is Mr Burden (or one of the Appellant’s other consultants). The fact that Mr Burden failed to read the officer’s report for one of his own applications carefully enough to pick up what he now says is such a vital consideration in the determination of this appeal, is telling. For Mr Burden nonetheless to maintain that the Council is somehow at fault for his failure to properly read the committee report is nothing less than astounding.
60. The obvious reason why the Rowan decision was not of such significance to Mr Burden at the time and the obvious reason why it was not referred to by the officer in her assessment of the application, is that the Council has adopted an entirely consistent position between the two applications. As Mr Burden accepted in cross examination, the Council found both proposals to be located in an unsustainable location. That is clear, as Mr Burden accepted, from the penultimate paragraph of the committee report (CD 8.15), which provides that: *The site is not considered to be in a sustainable location in relation to access to shops and other services and there will be a reliance on the private motor car.*”

61. Mr Young QC has accused the Council of not understanding the law. In North Wiltshire District Council v Secretary of State, Mann LJ said that, in deciding whether there is an obligation to provide reasons for departing from a previous decision, "*a practical test for the [decision-maker] is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case?*" In this case, the officer in the Rowan decision found that the appeal proposals would be located in an unsustainable location. The officer in this application agreed with that assessment. There was no need to provide an explanation as to any difference between those judgments because there was none.
62. As Mr Burden accepted, the Council's approach to the issue of sustainability between both applications has been entirely consistent.
63. As Mr Burden accepted, the Council granted planning permission at Rowan despite the fact that the site was unsustainably located because there were material considerations which outweighed the unsustainable location, as set out in the final paragraph of the committee report. Those considerations have nothing to do with sustainability, namely the need for the development, the PDL status of the land and the fact that the proposals would re-use the existing built form of the residential development on the site. Given that it refers to issues which, as the Appellant accepts, have nothing to do with sustainability, the final paragraph of the report cannot sensibly be understood as providing reasons as to why the Council considered the site to be sustainable. The final paragraph of the report is plainly concerned with the overall planning balance and, in particular, whether there were considerations to outweigh the unsustainable location.
64. The balance of considerations in this appeal is obviously different. This is a greenfield site. The proposals would not re-use existing built form. This would be a large a care home for older people for which, in the Council's judgment, there is a moderate need.
65. The Appellant may disagree with the judgment reached by the Council but it is plainly not unreasonable for the Council to have exercised a different planning judgment in this case as to whether the need for the proposal was such as to overcome the sustainability objection and the conflict the Council identified with Policy DP12.
66. As to the Appellant's other points, the proposal at Rowan was found to be acceptable in principle (notwithstanding that it was outside the settlement boundary) because it was previously developed land, to which specific policies in the Development Plan attached. The appeal site is not previously developed land and so does not benefit from those policies.
67. As to fact that no breach of Policy DP21 was identified in the Rowan decision, Mr Burden accepted that the officer had found that the site would be located in an unsustainable location.

### Landscape

68. This part of the application is misconceived. The Appellant suggests that there is no reason for refusal relating to landscape. As the Inspector pointed out at the CMC, the first reason for refusal identifies that "*the proposal would not protect the intrinsic character and beauty of the countryside and would have an*



*intrusive and harmful urbanising impact on the landscape.*" The fact that there is no separate reason for refusal is irrelevant.

69. The effect of the proposed development on the landscape character and appearance of the site and surrounding area was identified as a main issue by the Inspector and Mrs Brockhurst's proof of evidence is expressly addressed to that issue (see paragraph 1.21).
70. The Council's evidence is properly set out in the proof of evidence of Mr Tunnell and based, in part, on the Appellant's own LVIA (which identified that the proposals would have adverse effects on landscape character).
71. The other points made in the application are either incomprehensible or go to the merits of the Council's judgment. The Appellant may disagree with the Council's judgment but the Council's position is plainly not unreasonable.

### Need

72. The Council's case is not predicated on a lack of need and the Appellant's application is otherwise misleading as to the Council's position.
73. The Council has accepted (as set out in the SoCG and in Mr Tunnell's proof) that there is a need for this type of development and that the replacement of older facilities to provide entirely ensuite accommodation would be beneficial.
74. Mr Newton Taylor confirmed in his oral evidence<sup>6</sup> that, having regard to the need for bedspaces and the current and pipeline supply of bedspaces, his concern was not with the quantum of bedspaces but rather with the quality of bedspaces. It is striking that, despite the Appellant's heavy reliance on qualitative deficiencies in care home accommodation in the district at the inquiry, that was not an issue which was considered sufficiently important even to mention as a benefit of the proposal in the Appellant's representations to the Site Allocations DPD, the Appellant's Statement of Case or, indeed, Mr Burden's own proof of evidence, as Mr Burden accepted in cross examination.
75. For the reasons given by Mr Tunnell, the Council considers that, taken in the round, the benefits of the appeal proposals should attract moderate weight and would not outweigh the unsustainable location of the site and the conflict with Policy DP12. All of the Appellant's other disparate complaints go to the weight to be accorded to the benefits of the proposals in the planning balance. Again, while the Appellant may disagree with the Council's judgment, that does not mean that the Council's position is unreasonable.
76. For all these reasons, this application should be dismissed.

### **Verbal reply by Rainier Developments (Cophorne) Ltd to the Council's response**

77. With reference to the Rowan officer report (core document 8.15), with respect to the above paragraph 65 of the Council's response, in particular on page 7 of that report relating to where it says that: 'The views of the Parish Council are acknowledged on location sustainability however.....'; use of the word 'however' is contrasting, acknowledging that the Council's witness in this appeal did not interpret as that.

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<sup>6</sup> Cross-examination

78. At the end of the Rowan officer report it states that: 'The site is not considered to be in a sustainable location in relation to access to shops and other services and there will be a reliance on the private motor car'; and then the following paragraph starts with the word 'however' and includes reference to the nature of the use. While the Council did say that it would not be sustainable, it does provide a very clear rejection by the use of the word 'however'. With respect to consistency, the Council does not do that on the appeal site and does not adopt the same approach. The appeal proposal was refused in relation to being an unsustainable location, whereas the Rowan application was not.

### **Reasons**

79. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

#### *Location and accessibility*

80. In respect of the matter of the Council not informing the Appellant of the adjacent Rowan planning application and decision, I note that the Appellant was not directly consulted on the application. However, it was the case that a site notice was posted. Furthermore, whether or not that adjacent proposal was mentioned in discussions between the Council and Appellant in respect of development of the appeal site, I consider that firstly it would have been quite possible for, and reasonable to have expected, the Appellant to have undertaken a search of their own as to any potential developments locally that may affect their proposals. I also note that reference to Rowan having been granted planning permission for a care home was mentioned in the officer report relating to the appeal scheme, albeit only briefly within the summarised third party representations and clearly not a direct notification of that permission to the Appellant. Even if that reference was missed by the Appellant, an investigation they conducted, albeit close to the date of the Inquiry, lead to their discovery of that planning permission in time to raise it in the context of the Inquiry.

81. Secondly, whilst I acknowledge that issues relating to the sustainability of the location are similar between the two cases, given their similar uses and locations, the circumstances are different in respect of nature of the respective sites. A balanced decision was taken in respect of Rowan highlighting, despite it being considered as an unsustainable location in relation to access to shops and other services and likely reliance on the private motor car for access by staff, mitigating outweighing factors in that case. As well as the identified need and the fact that the residents would have a high dependency and would not be making unaccompanied trips, these included it being an existing developed site with residential use, in contrast to the undeveloped appeal site and being on a fairly major route such that it would not result in a significant increase in journeys; that it is on a bus route, albeit without any detailed analysis of the quality of services and facilities; and it included provision for EV charging points.

82. In these respects, there are clearly similarities between the two proposals. However, taken as a whole, the circumstances were different, notably given the added factor in the balance relating to the appeal scheme comprising development of an undeveloped site. This factor is reflected in the Council's

first reason for refusal which states, amongst other things, that the proposal would not protect the intrinsic character and beauty of the countryside and would have an intrusive and harmful urbanising impact on the landscape. As such, I consider any failure to mention the Rowan proposal in discussions between the Appellant and Council would not necessarily have been expected. Furthermore, for the same reasons, I do not consider there to have been an inconsistent approach to decision making whereby considerations such as the access to bus stops and EV charging in the Rowan decision were matters within the balance, not espoused as being factors indicating a fundamentally sustainable location. This is apparent in the conclusion to the officer's report, despite some confusion introduced earlier in that report where it is stated, having referred to most of the above mitigating factors, that it is considered that from a highway safety perspective the application complies with policy DP21 of the Mid Sussex District Plan and policy CDNP10 of the Neighbourhood Plan.

83. I note the Appellant's comment about there having been no consideration of accessibility of the Rowan site within the application material for that proposal, and that there was no transport assessment submitted with the application or a Travel Plan secured. As referred to above, the Council did nevertheless deal with the matter of the sustainability of location in the officer report. Notwithstanding those circumstances, and whether or not it was appropriate for the Council not to make comparisons with the Rowan application in its officer report relating to the appeal proposal, the situation remains that there were sufficient differences between the two planning applications to cause the Council to reasonably come to different conclusions. This is notwithstanding my decision on the appeal.

#### *Landscape and visual harm*

84. Given the nature of the proposed development, relating to the site in question and in the location concerned, it was reasonable for the Council to have considered those matters that culminated in the first of its reasons for refusal that I have referred to previously. Furthermore, I have found in my decision that there would be some harm to the landscape character and appearance of the site and surrounding area and conflict with relevant policies, albeit limited.
85. Notwithstanding my appeal decision, I also consider that the Council clearly presented its concerns in respect of the first main issue identified in my decision, through its officer report, decision notice, proof of evidence and presentation of evidence to the Inquiry.

#### *Need*

86. The Council has made it clear in its evidence that it accepts that there is a need for older persons accommodation and acknowledged the benefits of ensuite accommodation. Notwithstanding my findings and conclusions in my appeal decision, the Council has reasonably presented evidence in respect of the extent of the need, how it considers it would be met, and accordingly the weight to be afforded to it, and taken that into account within its overall planning balance.
87. Notwithstanding my decision on the appeal, I consider that the Council clearly presented its consideration in respect of this issue, through its officer report, proof of evidence and presentation of evidence to the Inquiry.

*Conclusion*

88. In conclusion on this application, I therefore find that the Council behaved reasonably in determining the application and in defending its decision at appeal and that, therefore, the Applicant's costs in pursuing the appeal were not unnecessarily incurred and wasted. For this reason, neither a full or partial award of costs is justified.

*Andrew Dawe*

INSPECTOR