



## Appeal Decision

Inquiry held on 1 March 2022

Site visits made on 3, 7 and 8 March 2022

**by Anne Jordan BA (Hons) MRTPI**

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

**Decision date: 22 April 2022**

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**Appeal Ref: APP/L3815/W/21/3286315**

**Land to the West of Church Road, West Wittering, West Sussex, PO20 8FJ, 479822, 97732**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Welbeck Strategic Land IV LLP against the decision of Chichester District Council.
  - The application Ref WW/20/02491/OUT, dated 28 September 2020, was refused by notice dated 1 July 2021.
  - The development proposed is an outline planning application for residential development of 70 dwellings (some matters reserved except for access).
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of 70 dwellings (some matters reserved except for access). at Land to the West of Church Road, West Wittering, PO20 8FJ in accordance with the terms of the application, Ref WW/20/02491/OUT, dated 20 September 2020, and the plans submitted with it, subject to the conditions attached.

### Applications for costs

2. An application for costs was made on behalf of the appellant. This is the subject of a separate decision.

### Preliminary Matters

3. The application was initially submitted on the basis of a scheme for 76 dwellings. This was subsequently amended on the 17 March 2022 to a scheme for 70 dwellings and the Council and appellant agreed the description of development set out above. I have therefore determined the appeal on the basis of the agreed description. The application is made in outline form with all matters reserved other than access.
4. The application is accompanied by a legal agreement dated 16 March 2022 which makes provision for affordable housing, a travel plan, open space, a play area and a landscape buffer. It also provides for a contribution to mitigate the effects of recreational disturbance on the Solent SAC and a financial contribution towards improvements on the A27. The legal agreement is accompanied by a plan showing the adjoining land within the ownership of the applicant. This area was not shown in the original application plans. However, this additional information does not alter the proposal in any way and so I am satisfied that its absence from the original application plans does not prejudice any party.

5. The application was subject to 3 reasons for refusal. The third reason relates to provision for securing the necessary infrastructure to serve the proposed development. The Council confirmed at the Inquiry that subject to the provision of the legal agreement to secure these matters, they were no longer defending the third reason for refusal.
6. During the Inquiry I heard from a number of local residents. Their evidence was in some cases accompanied by written submissions which expanded upon their original responses at the time of the application. These have been accepted as Inquiry documents and are listed as such in the Schedule appended to this decision.
7. At the time the application was refused the Council could not demonstrate a five-year supply of housing land. The Council subsequently contended that a five-year supply could be demonstrated and as a result five-year housing land supply would be a main issue for the Inquiry. The parties prepared a Statement of Common Ground (SoCG) specifically in relation to five-year supply prior to the event which identified agreement as to the housing requirement. Subsequently the appellant introduced late evidence disputing the requirement which related specifically to the effect of unmet need from the South Downs National Park. Consequently, the majority of the evidence in relation to housing land supply was heard by means of a round table discussion on day 3 of the Inquiry with written submissions relating to unmet need being submitted after the Inquiry sessions finished.

### **Main Issues**

8. Accordingly, the main issues for the appeal are:
  - Whether the authority can demonstrate a 5-year supply of housing land;
  - The effects of the proposal on the character and appearance of the area and upon the local landscape;
  - Whether the proposal would represent sustainable development with regard to accessibility to local services and employment.

### **Reasons**

#### *Planning Policy Background*

9. The site lies outside the settlement boundary of East Wittering and within the parish of West Wittering. The Chichester Local Plan was adopted in 2015 (LP). Policy 2 sets out a settlement hierarchy and indicates the scale and type of development that will be provided in the different settlements. Policy 45 seeks to restrict development in the countryside to a limited range of development considered appropriate in a rural area. As the site lies outside the settlement boundary it conflicts with both policies. However, the housing requirement has not been reviewed within the last 5 years. Policy 2 and 45 cannot therefore be considered to be up to date. In addition, policy 2 is derived from settlement boundaries which are based on an out-of-date housing requirement and this also reduces the weight I can attribute to them.
10. The Council referred to a number of other policies within the decision notice. Policy 1 reflects the presumption in favour of sustainable development. Policy 33 relates to new residential development and seeks to ensure that new development

provides a high-quality living environment, in keeping with the character of the surrounding area and its setting in the landscape.

11. Policy 8 relates to transport and accessibility, Policy 9 relates to development and infrastructure provision and Policy 39 relates to transport, accessibility and parking. Together these policies seek to mitigate the effects of development in relation to infrastructure provision, including roads, and to ensure that new development can be safely accessed. They also seek to locate development in locations which minimise the need to travel.
12. Policy 48 - natural environment, Policy 49 - biodiversity and Policy 50 - development and disturbance of birds in Chichester and Langstone Harbours Special Protection Area (SPA) all seek to protect local wildlife and to ensure that the effects of new development are appropriately mitigated whilst taking available opportunities to enhance the natural environment.
13. Policy 52 relates to the provision of green infrastructure and Policy 54 relates to open space and recreation. Both policies seek to ensure that new development provides adequate open space and recreation facilities to meet the needs of existing and future residents.
14. All these policies are consistent with the aims and objectives of the National Planning Policy Framework (the Framework) and carry full weight.
15. In November 2020 the Council published its Interim Position Statement for Housing (IPS). This provides a framework for the consideration of housing applications in the absence of an up-to-date development plan and in the light of a deficit of 5-year supply in the District. Although the Council now considers that it can demonstrate a five year supply it has continued to adopt a proactive approach to boosting the supply of housing by continuing to apply the 13 criteria within the IPS in assessing housing proposals.
16. The Council has referred to a number of policies within the IPS. Policy IPS1 supports development which is in whole or in part is contiguous with an identified settlement boundary as approved in the adopted development plan. Policy IPS2 supports development the scale of which is appropriate to the settlement's location in the settlement hierarchy and with a range of facilities which would make it a sustainable location for new development. IPS4 requires development which respects the character and appearance of the settlement. IPS5 seeks development which does not have an adverse effect on landscape character. IPS7 seeks development which is supported by all necessary infrastructure. IPS10 seeks development which is sustainably located in accessibility terms. All these policies are consistent with the aims of the Framework, and although the IPS is not adopted policy, the policies within it are nonetheless a material consideration that carries considerable weight.
17. The Chichester Local Plan Review (CLPR) is currently at an early stage. Although the Plan was initially scheduled to be submitted for examination in 2022, I note that the Regulation 19 Draft Submission has yet to be published with no date fixed for public consultation on the document. It therefore appears unlikely that the Plan will be adopted in the near future. For this reason and given that it remains uncertain how far the policies in the CLPR might be carried forward into the final Plan, I attribute very little weight to the policies within it.

18. Although not referred to in the Council's reasons for refusal, the site lies within the West Wittering Neighbourhood Plan Area. The submission version of the *West Wittering Neighbourhood Plan* (WWNP) was agreed by the Parish Council on 3 February 2022. The site is not identified within the WWNP for development, and policy WW3 within the plan would not be supportive of development at the site, as it lies outside the settlement boundary. Furthermore, although the plan has been through pre-submission consultation, I note that it has yet to be agreed by the Council for consultation and to undergo consultation, examination, potential modification and then a referendum before it can be adopted. I can therefore not be assured that the Plan will be adopted in its current form, and this limits the weight I can attribute to the policies within it.

### *Housing Land Supply*

#### The Requirement

19. The Standard Method (SM) calculation for Chichester District is 763dpa (as of January 2022). The Council have deducted 125 units to take account of need arising from within the National Park Authority and thereby covered by provision within the South Downs National Park Local Plan (SDNPLP). This gives a requirement of 638dpa. Chichester District is subject to a 5% buffer, therefore totalling 670dpa, or 3,350 dwellings over the five-year period 2021 to 2026.
20. Planning Practice Guidance recognises that where local authority and plan-making boundaries do not align, an alternative approach will have to be used and that this will need to be determined locally. In this case the Plan area excludes a portion of the National Park which lies within the district. The Council have used the figure arrived at from the SM and then deducted 125 dwellings to account for need within the National Park (SDNP) and outside the Plan area. The figure of 125 dwellings was arrived at using the best available information for the SDNP<sup>1</sup> and uses the 2014-based CLG Household Projections which are also used in the SM.
21. I note that the appellant has not disputed the identified requirement of 125 within the National Park. Although the process for arriving at a housing requirement within the SDNP during the production of the SDNPLP predates the SM, and so may not be entirely aligned, in the absence of a prescribed methodology for calculating the requirement in these circumstances, the approach taken by the Council is a pragmatic and reasonable one.
22. Instead, the appellant's concern is related to unmet need. The Council and the SDNP have a SoCG<sup>2</sup> dating from 2018 which identifies an unmet need of 44 dwellings a year within Chichester District which have not been provided for in the SDNPLP. The appellants' view is that 44 dwellings per annum should therefore be added to the current requirement in Chichester District.
23. Paragraph 61 of the Framework sets out that the needs of neighbouring areas that cannot be met can be taken into account in addition to local housing need. Paragraph 74 of the Framework requires a local planning authority to provide a minimum of five years' worth of housing against their housing requirement set out in either their adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. It differentiates here between a housing requirement in a strategic policy (which may differ from housing need) and local housing need where policies are absent or out of date. The apportionment of

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<sup>1</sup> Within the SDNP HEDNA (Appendix 1 of the Council's rebuttal proof on Housing Land Supply), table 5, page 39 which sets out that the demographic need for the SDNP within Chichester is 125 dpa

<sup>2</sup> Appendice to the Appellant's Planning Rebuttal

unmet need should therefore not be confused with any assessment of the housing need within the district. The Council is not obliged to accept unmet need in the absence of an up-to-date strategic policy which includes it as part of the housing requirement. In this regard the SoCG makes explicit that the Council will assess its ability to accommodate the unmet need in its Local Plan Review, which is on-going.

24. There will be a number of factors which the authority and ultimately the local plan Inspector will need to grapple with to determine housing need within the district and to arrive at an appropriate housing requirement figure within the Plan, one of which will be, consistent with the aims of sustainable development, the extent to which the district can practically accommodate unmet need from the National Park<sup>3</sup>. In the absence of a consideration of all relevant factors, a S78 Inquiry is not an appropriate forum for arriving at a proxy decision in relation to unmet need. In the interim, I am satisfied that the locally arrived at figure for housing need put forward by the Council is an appropriate basis on which to determine this appeal. I therefore conclude that the housing requirement for the district is 670dpa, or 3,350 dwellings over the five-year period 2021 to 2026.

### Housing Supply

25. The parties disagree in relation to the sites included in the supply. At the base date of April 2021, the Council contended a 5.28 year supply of housing land with 3536 dwellings within the supply. The appellant disputes a number of elements within the supply.

#### *Sites that have expired*

26. The supply includes 27 dwellings for which planning permission has expired since the base date. Whilst they were deliverable at the point of inclusion, as permissions for minor development without permission now, they no longer fall within the definition of deliverable within the glossary to the Framework. This results in a loss of 27 dwellings from the supply.

#### *Windfall sites*

27. The Council's calculation of supply includes an allowance for major windfall sites in addition to an allowance for minor windfalls. This is based on an analysis of past trends for major site delivery in the district<sup>4</sup> which concludes that an allowance of 140dpa or 280 dwellings for major windfalls in years 4 and 5, should be included within the housing supply.
28. I have carefully reviewed the evidence, including the methodology on which it is based. It is clear that the district has had a history of delivering major development sites which have not been allocated in an adopted development plan. As such, the "windfall" rate in the district has historically been high. An understanding of the factors that led to these sites coming forward would provide some indication as to whether past windfall rates are likely to continue, and so whether it is reasonable to make an allowance for this within the housing supply.
29. The Council's evidence includes an analysis of major windfall sites since 2009. It considers the size and previous use of windfall sites and in projecting forward likely future trends it removes any "outliers" which are sites which it considers to be unlikely to be repeated. In calculating average rates of delivery, it removes years with very high or very low levels of delivery to ensure these do not skew the

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<sup>3</sup> Paragraph 35 of the Framework

<sup>4</sup> C3 Critical Friends Review – Lambert Smith Hampton

overall trend. As an overall approach this seems to me to be a reasonable and pragmatic one and so I see no reason to dispute the Council's assumptions in relation to minor windfall sites.

30. In relation to major windfalls the study also purports to take into account other factors that may have impacted upon past trends, including the status of the development plan and the presence or absence of a 5-year supply of housing<sup>5</sup>. This is important because if windfall sites are shown to have come forward because of an absence of a 5-year supply, it cannot be assumed that this level of windfall delivery will continue when normal adopted planning policies are in place. Table 12 within the report compares completions with the status of the development plan at that time. Taking into account a time lag the Council concludes that there was no correlation between the status of the development plan and housing completions.
31. However, housing can in some cases be completed many years after being first granted permission, particularly if the initial application was an outline permission, made on a speculative basis, or a large site. Instead, I am of the view that to reach any reasonable conclusion as to whether the status of the development plan and windfall delivery is correlated, or not, a comparison should be made as to the date the permissions were granted and the factors that led to their approval at that time. The study does not do this, and the Council was unable to provide any substantive evidence in this regard at the Inquiry. I take account of the fact that the study does not rely on outlying years and that this has had the effect of reducing potential windfall supply. I also take into account the views of the Inspector at the Raughmere Drive decision<sup>6</sup> but given the evidence put to me, including the answers given to my questions at the housing land supply round table session, and in the absence of a cogent analysis of the factors influencing previous permissions, I cannot be assured that an absence of five-year supply was not a factor which influenced windfall rates in the past and so cannot conclude on the evidence before me that large windfall sites will continue to provide a reliable source of supply.
32. At the Inquiry the appellant provided an analysis of historic windfall sites within the district since 2012<sup>7</sup>. It purported to provide details on the circumstances in which major schemes were granted permission. The document was not prepared by the appellant and so I am unable to be assured of its accuracy in relation to individual sites. Nevertheless, it draws to my attention the fact that some of the sites which have been counted as windfalls may have been sites granted on appeal when the Council could not demonstrate a 5-year supply, or sites which were draft allocations in either emerging neighbourhood plans or the emerging local plan. Whilst I note that the IPS seeks to increase the supply of housing, this is not an adopted plan and so I have no surety that the Council will continue to apply the policies within it. These are not factors which the Council's report analyses and so I do not know if sites of this type historically made up a significant proportion of windfalls, or if they will continue to come forward as windfalls following the adoption of the emerging local plan. Consequently, on the basis of what is before me, I have no firm basis for concluding that an allowance for major windfalls as proposed should be included within the 5-year supply. This removes 280 dwellings from the supply.

### *Major Sites*

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<sup>5</sup> Table 12 p17

<sup>6</sup> Appeal Ref: APP/L3815/W/21/3284653

<sup>7</sup> ID11 Appellants HLS Rebuttal appendix

33. The parties also dispute the delivery of 4 sites within the supply. Land at Highgrove Farm, Bosham had a valid consent at the base date that has since expired. However, I am advised it is also an allocation in the Local Plan and that it also forms part of a site with an outstanding planning application for 300 houses which is currently under consideration. Therefore, although the site does not have planning permission at this time, the site for 50 houses is clearly considered to be a suitable location for housing and the planning application for full permission by a major national housebuilder would appear to indicate that there is a realistic prospect of the site yielding 50 dwellings within 5 years. I therefore consider the inclusion of 50 dwellings from this site within the supply to be justified.
34. Land East of Manor Road, Selsey has full permission for 119 dwellings, and outline permission for a further 74 dwellings under a hybrid application which was approved in 2021. The appellant disputes the inclusion of the 74 dwellings within the supply. I am advised that there are no impediments in terms of ownership and that the applicant, a major housebuilder, is progressing with phase 1 of the development and intends to proceed with phase 2 on completion of phase 1. Whilst the 74 dwellings have only outline permission, and are subject to outstanding conditions, given the clear synergy between this part of the site and phase 1, I am satisfied that there is a reasonable prospect of delivery within 5 years and the inclusion of this site within the supply is justified.
35. Land North of Cooks Lane, Southbourne has outline permission for 199 dwellings. The site is subject to a recently submitted reserved matters application and is not believed to have any major constraints. Taking into account the application, which is by a major housebuilder, I consider that there is a clear intention to develop the site on the part of the applicant and a reasonable prospect of this taking place within 5 years. The Council consider that a site of this size would normally begin to deliver housing within 11 months of first permission. The assessment of 130 dwellings is based on delivery at a rate of 43 units a year. Taking into account the likely time needed for permission to be granted and pre-commencement conditions to be discharged, commencement early in 2023/24 is optimistic. However, the delivery rate used is below the rate anticipated by the applicant and is a cautious one. It therefore seems to me that taken in the round and based on information available at this time, there is a realistic prospect of delivery of around 130 dwellings in the five-year period and this inclusion is justified.
36. Tangmere SDL is a strategic allocation in the LP. The site is being progressed by a major housebuilder who have entered into a development agreement with the Council. Although the Council has resolved to grant outline planning permission at the time of writing this has not yet been granted. The site is subject to CPO proceedings which I am advised are well advanced, but the CPO is not yet complete and the legal agreement for the site has also not been completed. The site is very large and although phasing could allow some development to go ahead in advance of major road infrastructure works I am also not aware of how far matters to be covered in the full application have been advanced, or how far the phasing of development has been agreed. The Council project that development will start to be delivered on site half-way through 2024/2025, in around 30 months from now.
37. I am satisfied that the site will eventually deliver housing in the district and given the size of the site and the potential to use multiple outlets, I am also satisfied that delivery rates, when they commence, will be at a higher level than anticipated on smaller sites. However, the date of first completions seems to me to be overly optimistic. Notwithstanding the evidence of the appellant in this regard, I am not

of the view that it is likely to start delivering within the 5-year period. This would lead to a loss of 180 dwellings to the supply.

38. Removing the above reductions from the identified supply for the period 2021-2016 would leave the supply at around 3,049 dwellings or around **4.6 years**<sup>8</sup>.
39. The National Planning Policy Framework (the Framework) directs in paragraph 11(d) that where a five-year supply of housing land cannot be demonstrated, the presumption in favour of sustainable development requires the application of the "tilted balance"<sup>9</sup> in decision making. I return to this below.

#### *Character and Appearance*

40. The Council considers that because of its quantum and density the proposed development would lead to a significant addition beyond the settlement boundary, which would not respect or enhance the landscape character and appearance of East Wittering, and so would have an adverse visual effect on the countryside around the site.
41. The layout and appearance of the development is not a matter for consideration at this stage. Nevertheless, the application is accompanied by an indicative layout plan (PL02 G) which includes a landscape buffer to the north of the site, on land adjoining the development. This is secured as part of the legal agreement which accompanies the application. I have therefore taken the landscaping into account when considering the visual impacts of the development.
42. The appeal scheme would comprise up to 70 dwellings with associated landscaping, open space and surface drainage features. The site lies in open countryside to the north of the existing settlement. It is adjoined by open fields to the north, east and west, and by the relatively recent development of Sandpiper Walk to the south, which forms the northern edge of the village of East Wittering.
43. In coming to a view as to the landscape and visual effects of the proposal I have had regard to the methodology set out in GLVIA3<sup>10</sup>. This sets out that the landscape and visual effects of development can be quantified by identifying the magnitude of change a development will bring about over time (or nature of the effect) in relation to the value and quality of the receiving landscape and its sensitivity to change. By quantifying these variables, which will require some value judgements, a picture of the likely landscape and visual effects of development can be arrived at. Landscape effects can be defined as the effects of the proposal on the landscape as a resource in itself, and visual effects are the effects of a development on views and visual amenity as experienced by people.

#### Landscape Effects

44. The site lies within the "wider Furzefield Western Coastal Plain (Sub-area 106)" Landscape Character Area (LCA), as defined in the 2019 Chichester District Landscape Capacity Study. This extends roughly north-south from the AONB south of Birdham in the north to the settlement edge of East Wittering. The site lies at the southern end of this area and forms part of the transitional landscape setting to the village. Whilst the wider area is described as being open arable land with a generally rural and undeveloped character, the study also recognises the effect of

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<sup>8</sup> 4.550 years rounded up.

<sup>9</sup> Any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, taken as a whole

<sup>10</sup> I01

built form on the landscape. Therefore, whilst the wider area will have a relatively high sensitivity to change, the area around the site is less sensitive due to the urbanising influence of the settlement edge.

45. I noted during my site visits that the modern development of Sandpiper Walk with its tall evergreen boundary treatment provided a stark edge to the settlement which was visible across flat open fields on the approach from the north. In views towards the north and east, the built form of the industrial estate at Church Farm Lane and the cluster of housing at Furzefield punctuated otherwise open views. The urban edge of East Wittering is notable in almost all views or is perceived as being nearby.
46. The site itself is flat and punctuated with hedgerow and hedgerow trees. The Council consider that the development would result in a major/moderate effect on landscape character. I do not agree with the Council's characterisation. In available views from Sandpiper Walk in the south the countryside would be obscured by the proposed development and in these views the level of change would be very high. However, the extent of these views would be relatively limited. Whilst the field itself would undoubtedly experience a very high degree of change due to development, this change will be experienced in the context of the immediate surroundings of the site, which includes the urban edge of the village itself and in almost all views other than from the south, the development would be seen against the foil of that existing development.
47. The Council and the appellant agree that views of the site are relatively localised, and I consider that taken as a whole the effects of the proposal on the surrounding landscape would be relatively limited.

#### Visual Impacts

48. Visual effects are normally taken to mean the effects of a proposal on those who would see the development, such as local residents in their homes, walkers, or those driving in the area. The scheme is submitted in outline form but is accompanied by indicative drawings<sup>11</sup> showing the likely extent of development on site. These show development of 2 storeys in height. Whilst I am mindful these are illustrative only, I note that the design and access statement and the appellant's assessment of visual effects state that development on site will be 2 storeys in height<sup>12</sup>. I have also carried out my assessment of visual effects on this basis.
49. The "Zone of Theoretical Visibility" (ZTV) of the proposed development, would be relatively limited due to existing trees and 2 storey housing development to the south, trees and Church Farm Lane Industrial Estate to the east and by housing at Furzefield to the north-east. The site is also generally screened or filtered in most close-range views by established hedges and hedgerow trees. As a result, the potential impact of the proposal would be confined to a relatively small area of countryside to the north and east of the village, as the effects of the development would diminish with distance to the north-west and west.
50. In immediate views of the site from the south there would be a very high magnitude of change for occupiers and visitors at Sandpiper Walk. The existing view of an open field which is available through the conifers would be replaced by that of built development. In views at the proposed access to the site, on Church Road, the magnitude of change would also be very high and whilst for vehicular

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<sup>11</sup> 6840PL02G and SK 03 B

<sup>12</sup> D14 section 5.54 p44 and D22 para 4.3 p46

users this would be a transient view, it would be very apparent for those on foot. The effect of this change would lessen over time as the development and associated landscaping became established. Nonetheless, the extent of change would remain high and would be adverse.

51. In views from the east, from Church Farm Lane, intervening vegetation would filter views and new development would be partly seen in the context of existing development to the south of the site. As such, the development would have only a moderately harmful impact on the quality of the existing view. The impact would be greater from Church Lane and although views of the development would be screened by the existing and proposed boundary planting, the development would reduce the perception of openness that is currently enjoyed from this viewpoint. This would be apparent in views south eastwards from the Thatched Tavern. The Council advised that they did not consider that the scheme would result in coalescence, and it is evident that the scheme would be separated from development to the north by a relatively narrow band of open field. However, I am mindful that the close proximity of Furze field and the industrial estate would intensify the sense of "urban creep". The visual change would lessen over time as the development and associated landscaping became established but nevertheless would be moderately adverse.
52. In views from Piggery Hall Lane and also from Furze field, available views would be reduced by increased distance from the site and would be more glimpsed, in gaps in the hedgerow. The same reduction in openness perceived from Church Lane would be apparent but to a lesser degree. For users of Footpath 14, looking south, the development would be more clearly apparent. In these views the development would be seen against the backdrop of existing development and so would have a no more than slight to moderately harmful effect on views.
53. In views from the north from Footpath 14, the visibility of the development would increase as the walker travelled south. These views would on occasion be filtered by intervening vegetation, but sustained views would be available along open stretches of the path. These views would in part be shared by those using the field for recreation or by users of the adjoining Scotts Farm Camping Site. In some of these views the new dwellings would be clearly visible above the proposed planting. The visual impact of this would be lessened by the existing backdrop of built development at Sandpiper Walk. Nevertheless, the sense of urbanisation would be increased and would lead to moderate harm in these views, diminishing to a low level of harm over time as the proposed landscaping became established.
54. In available views from further afield, from the Footpaths 14 and 15, from the direction of Elms Lane in the north, the site would not be clearly perceived against the existing backdrop of built form due to the distance from the site. Accordingly, the development would have a negligible effect on views.
55. It was put to me by the Council that the amount of development proposed on the site, and its consequent density, would have an impact on both the wider landscape and the character and appearance of the local area. Having viewed the adjoining development at Sandpiper Walk and the illustrative site layout plan, I can see little difference between the density, or urban grain of the proposed development, and that on the adjoining site. Whilst I note that some of the plots along Church Road in the vicinity of the site are marginally larger than others along the road, to my mind the properties are all still relatively closely spaced. The defining characteristic of properties along the frontage is the distance to which they are set back from the

road and the illustrative layout indicates that the development could be designed to reflect this. I therefore find no basis for the view that the proposal, by reason of the amount of development proposed, would be any more intrusive than any other residential development on the site.

56. The development would be sensitively landscaped. The extent of the development follows the existing field pattern and the existing hedgerow around the site would be extensively supplemented, providing a soft edge to the development and a visual buffer to the northern boundary which would provide a sensitive edge to the settlement. Once established the scheme would be comfortably assimilated into the existing built fabric. In this regard it would respect the form and character of the existing settlement and the wider landscape character of the surrounding area.
57. All these factors lead me to the view that although the scheme would have a limited impact upon the wider landscape it would have a significant, albeit localised effect on the appearance of the countryside in this location. These effects would lessen over time as landscaping around the site became established. Nevertheless, the loss of open views would have a significantly harmful effect on the rural character of the area around the site. As a result, the proposal would conflict with guidance in the Framework which seeks to recognise the intrinsic character and beauty of the countryside.
58. The development would not conflict with the requirement in Policy 2 for new development to respect the setting, form and character of settlements but as the site lies within open countryside it would conflict with the part of the Policy 2 and Policy 45 which seeks to restrict new development in the countryside to that which requires a countryside location. As the LP policies are out of date, I attribute limited weight to this conflict.
59. The Council allege conflict with Policy 33. The policy relates to new residential development and whilst the loss of the field has led to some visual harm, this would be inherent in the development of almost any such residential scheme, and I am satisfied that the scheme could ultimately be integrated into the existing settlement.
60. Insofar as the proposal would impact upon the rural character of the location, the proposal would conflict with Policy 48 of the LP. There would also be some limited conflict with IPS5 which requires development that does not have an adverse impact on wider landscape character.
61. The proposal would fail to comply with IPS1, as it would not be located adjacent to the settlement boundary. However, I note that the settlement boundary in this case does not accurately reflect the extent of the built-up area, as it does not include Sandpiper Walk, a well-established part of East Wittering, and I attribute no weight to this conflict. There would also be no conflict with IPS4, which requires development which respects the character and appearance of the settlement and for the reasons set out above I also find no conflict with IPS3, with regard to coalescence. The Council have also referred to IPS2 but as this does not relate to the visual impact of the development, I do not consider it relevant in this case.

#### *Accessibility to Local Services*

62. The Council considers the development would not represent sustainable development as it would not be in an accessible location, with a lack of accessible key local services and employment provision. I noted during my site visits that the site

lies less than 10 minutes easy walk from the village centre, along a flat paved footpath. The village has an impressively varied range of local facilities for a settlement of its size, owing to the local tourist trade. I note that future residents would have to travel into Chichester to visit a private dentist, or to access a larger supermarket. Nevertheless, I am of the view that the available facilities in East Wittering would meet the day to day needs of most residents.

63. With regard to education, the local primary school, which currently has capacity, lies to the north of the village, between the site and the village centre and is easily accessible on foot from the site. Secondary school children would need to travel into Chichester for education, a trip of around 8 miles which is served by a school bus service. This is not an unreasonably long distance to travel for secondary education, and I noted on site that a number of young people make the trip.
64. With regard to access to employment and social and recreational opportunities, whilst there will be some jobs and entertainment on the peninsula it is likely that some future residents will travel to Chichester, and beyond, for work or leisure. However, I note that the distance involved is relatively short, and that some opportunities are available by public transport, with a regular bus service, albeit one which may not facilitate a late evening trip back from Chichester. These observations are consistent with the designation of East Wittering in both the adopted plan and emerging plan as a "settlement hub", which is a settlement capable of providing a range of workplaces, and social and community facilities to meet identified local needs. I am aware that travel times during peak hours and during peak holiday season could be subject to delays. However, this matter on its own does not appear to me to be prohibitive, and I have no reason to consider that it would preclude access to education or other higher order services.
65. At the Inquiry I heard from local residents who had concerns regarding the effects of the proposal on local health care services. The Clinical Commissioning Group (CCG) have advised that the surgery is at capacity and that best practice is for the CCG to be advised of strategic plans for housing development so that additional capacity can be provided as part of new development. Where this is not possible, they advise that provision should be made through CIL. Although, I have some sympathy with the concerns of residents, in relation to the recruitment and retention of medical staff, I have no evidence that the extent of development before me would place an additional insurmountable burden on local healthcare facilities. I am also satisfied that the Council and CCG will together have at their disposal the ability to make further provision in the local area if this is shown to be necessary.
66. The reason for refusal also refers specifically to the sustainability of the amount of development proposed within the Manhood Peninsula being unable to serve the service and employment needs of the new community. However, the scheme is for 70 houses, and East Wittering is identified in the adopted and emerging Local Plan as a "settlement hub". The evidence base for the emerging plan confirms this<sup>13</sup>. It seems to me to be very clear, having heard the evidence of many members of the public, that the underlying concern relates to both the effects of the development proposed and the cumulative impacts of a number of proposed developments on the Peninsula and indeed the district, a matter which has led to delays in progressing the emerging plan. It was also put to me at the Inquiry that substantial levels of development had already occurred in East Wittering, over and

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<sup>13</sup> ID35

above the 180 dwellings anticipated in policy 24 of the Local Plan, and that further development would be beyond the scope of that anticipated within the development strategy set out in policy 2.

67. The adopted local plan is out of date, and so policies 2 and 24 carry reduced weight. Furthermore, policy 24 relates to the neighbourhood plan for East Wittering, which has not been advanced, and which would, in any case is not applicable to the development site, which lies beyond its plan area. The Council did not, in the event, refer to it in the reasons for refusal. I have not therefore attributed it any meaningful weight in relation to the determination of this appeal. It remains to be seen how much development the emerging local plan will allocate on the Peninsula. In the interim, and in the absence of an up-to-date plan, decisions on individual applications will need to be based on the merits and circumstances of each individual case.
68. On the third matter I therefore conclude that the proposal would be in an accessible location with good access to most facilities and services. The Council have referred to policies 1, 2 and 45 of the LP. The site lies within open countryside and so, As outlined above, would offend the requirement in policies 2 and 45 to resist development in restrict development in the countryside to that which requires a countryside location. Nevertheless, due to its accessible location it would not be inconsistent with the settlement hierarchy and taking into account that the policy is out of date, I attribute only limited weight to the identified conflict. I also find the proposal consistent with the requirement in the Framework to ensure new development has accessible services.
69. With regard to the IPS, the proposal would not conflict with IPS2, which requires the scale of development proposed to have regard to the settlement's location in the settlement hierarchy and the range of facilities available. As outlined above the proposal would conflict with the requirement that new development be contiguous with an identified settlement boundary in IPS1. However, as the settlement boundary does not accurately reflect the built form on the ground, I attribute limited weight to this conflict.

## **Other Matters**

### *Highways*

70. The effects of the proposal with regard to highway safety are a concern for a number of residents. The application was supported by a Transport Assessment (TA) which used trip generation rates that were agreed with the Local Highways Authority (West Sussex County Council WSCC). This concluded that the impacts of the development on the highways network could be accommodated without a significantly adverse impact upon existing traffic flows.
71. It was put to me at the Inquiry that the trip generation rates were flawed. However, I note that these were accepted by WSCC, and National Highways and I have been provided with no persuasive evidence that they under-represent the likely numbers of vehicles leaving the site at peak hours. It was also put to me that there are marked differences in seasonal traffic flows on the peninsula. Whilst I have no reason to doubt that this is the case, I am also satisfied that the modelling of background traffic flows was carried out in accordance with government guidance, using September as a "neutral" month, and note that WSCC and National Highways were also satisfied that the modelling to inform the transport assessment is robust.

72. It was also put to me that trip generation rates were based on outdated rates of employment on the peninsula and that this would impact upon the direction of travel from the site during peak hours. The rates are derived from figures from 2011<sup>14</sup> which are the best available at this time. It may well be that more up to date figures show a shift towards out-commuting and so would result in more vehicles heading north. Junctions outside the site were not modelled, in line with the view of WSCC that this was not necessary, and it was put to me that the background modelling for the B2179 roundabout was also inaccurate. However, even if both these matters were to be the case, the overall numbers of vehicles involved<sup>15</sup> would not lead to a severe impact on the functioning or safety of the highways network. This is confirmed by traffic data provided for the A286 which shows that the traffic generated from the development would have a fractional effect on wider traffic flows.
73. Having regard to the comments of WSCC I am satisfied that the scheme as proposed can be safely accessed. I was advised at the Inquiry of traffic accidents in the local area, and I noted on site that Piggery Hall Lane/Church Lane had some sharp bends. Nevertheless, the access geometry would provide acceptable visibility in both directions and the traffic flows from the site would not lead to an increase that would prejudice highway safety.
74. I note the concerns of residents with regard to construction traffic, but I am satisfied that subject to an appropriate condition, a construction management plan would mitigate the impact of construction activity on the wider highways network.
75. Furthermore, in relation to the effects of the proposal on the A27. I am advised that the delivery of A27 improvements works has been a concern of the Council in the formulation of the Chichester Local Plan and that at present it is unclear whether there is sufficient external funding to deliver a full package of A27 improvements, sufficient to serve the entire predicted housing need for the district. Nevertheless, in relation to the development before me, Highways England have indicated that they are satisfied that a financial contribution in line with Chichester District Council's SPD<sup>16</sup> would mitigate the potential effects of the development in relation to the cumulative impacts of traffic arising from the development. Therefore, in the interim, whilst the extent of planned development in the district and any necessary highways works is being decided upon, I am satisfied that the contribution is sufficient to mitigate the impacts of the development to the A27 and will enable those works to take place once their extent have been finalised.
76. I have been asked by residents to consider the cumulative effects of the development in association with other proposed schemes in the area. However, whilst it is appropriate that the cumulative impacts be taken into account, this can only be the case for committed schemes. At this time, I cannot assume that any other proposed schemes will go ahead and so must base my decision on development which I know is likely to occur, as must the decision maker on any subsequent development.
77. In conclusion, in relation to matters of highways safety, I am satisfied that this matter does not weigh against the proposal in the planning balance and I find no conflict with Policy 8 - transport and accessibility, Policy 9 - development and

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<sup>14</sup> The Office for National Statistics (ONS) Census origin-destination data from 2011

<sup>15</sup> Transport Proof of Evidence – Mr Stephen Evans

<sup>16</sup> Supplementary Planning Document (SPD) 'Approach for securing development contributions to mitigate additional traffic impacts on the A27 Chichester Bypass'

infrastructure provision or Policy 39 transport, accessibility and parking which together seek to mitigate the effects of development in relation to infrastructure provision, including roads, and to ensure that new development can be safely accessed. It would also not conflict with policies IPS7 and IPS10 which have similar aims.

*Biodiversity*

78. The site lies within a short distance of a number of designated and non-designated nature conservation sites including Bracklesham Bay Site of Special Scientific Interest (SSSI), Chichester Harbour SSSI, Chichester and Langstone Harbours Special Protection Area (SPA) SSSI and Ramsar site. These sites lie within the area known collectively as The Protected Sites Around the Solent. The site also lies around 5km from Pagham Harbour Ramsar, SPA and SSSI.
79. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) I am required as competent authority to undertake an Appropriate Assessment of the proposal on the basis of its likely significant effects on European Sites. The habitats present within the site do not support any qualifying species of the Solent Maritime SAC or the Pagham Harbour SAC. Furthermore, wintering bird surveys were conducted to assess "functional linkages". Of the 15 species requiring assessment for functional linkage between the site with Pagham Harbour SPA and/or Chichester and Langstone Harbours SPA, no species were recorded, and the site is not considered to be functionally linked.
80. The Solent SAC includes species which are sensitive to pollution. A drainage ditch on site discharges into the Bracklesham Bay SSSI. The proposed development would include a SUDs scheme which would ensure run-off at greenfield rates. It is therefore considered that provided the SUDs system is implemented and maintained, and impacts during construction are managed, ground and surface water conditions would not alter as a result of the scheme.
81. With regard to recreational disturbance the site lies within the Zone of Influence for the Chichester and Langstone Harbour SPA but falls outside the Zone of Influence for the Pagham Harbour SPA. Therefore, the proposal would give rise to a likely significant effect with regard to recreational disturbance during occupation (alone and in-combination).
82. A number of mitigation measures are proposed to address these effects which, having regard to the advice of Natural England, I am satisfied would adequately mitigate the effects of the development to ensure there would be no adverse effect on the integrity of any European sites. The mitigation would be achieved through planning obligations submitted with the appeal and through planning conditions. These would comprise:
- A contribution towards a Solent-wide mitigation strategy;
  - A Construction Environmental Management Plan and a SUDs maintenance plan, to be secured via planning condition;
83. I have considered the effects of the proposal in relation to nutrient outputs during occupation. Within the local area the issue of nutrient neutrality only applies to developments where the treated effluent discharges into any Solent international sites (Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar, Portsmouth Harbour SPA and Ramsar, Chichester and Langstone Harbours SPA and Ramsar), or any water body (surface or groundwater) that subsequently discharges

into such a site. In this case the site lies outside the catchment for these areas<sup>17</sup> and as such the development of the site is unaffected by this requirement.

84. Lastly, the effects of sewerage discharge on the Pagham Harbour European Protected Sites is also a concern of residents. Foul drainage from the site would be treated at Sidlesham Waste Water Treatment Works (SWWTW) which I am advised discharges to Pagham Harbour. In this regard, after the Inquiry closed I was provided with a draft report from JBA Consulting, prepared for Natural England<sup>18</sup>. The report post-dates the preparation of the Ecological Impact Assessment and the Habitats Regulation Assessment Screening Report and identifies that within the Pagham Harbour Maritime Conservation Zone (MCZ) there has been a decline in the extent of intertidal seagrass beds which are a designated feature of the MCZ. Features of the MCZ could, in some circumstances, support qualifying species within the SPA. However, the report does not make any recommendation in relation to this finding. The production of the draft report in January also predates my latest correspondence with Natural England who have not altered their advice in relation to the site in the light of it. I therefore have no basis for concluding that the development, in combination with other development, as a result of the operation at Sidlesham WWTW, would have a likely significant effect on the European site.
85. I have also considered the effects of the proposal on local wildlife outside European protected areas. The application was accompanied by an ecological assessment<sup>19</sup> which found that provided adequate mitigation was provided, the effects of the proposal on local wildlife were likely to be minimal. This is largely due to the fact that the site is predominantly arable land, with the retention of existing hedgerow, other than a short stretch along Church Lane to facilitate access. Enhanced planting is proposed along the site boundaries as part of the proposed landscaping which would facilitate biodiversity enhancements. The scheme was subject to a number of ecological surveys in relation to protected species including bats, water voles, badgers, reptiles and Great Crested Newts. The Council have identified that additional mitigation may be required, particularly in the case of water voles and potentially badgers, but that these matters would not preclude development on site.
86. Having regard to the Ecological Impact Assessment<sup>20</sup> submitted with the application, I am satisfied that subject to the mitigation measures set out within it, which can be secured by condition, the proposal would not have a detrimental impact on the biodiversity of the site, including protected species. I therefore find no conflict with Policies 49 and 50 which together seek to protect local wildlife and to ensure that the effects of new development are appropriately mitigated.

#### *Flooding and Surface Water Drainage*

87. The site lies within Flood Zone 1, with the exception of a small portion of the site which lies within Flood Zone 3. The proposed development shows this area is not proposed for built development. The site is also within land identified within the Council's Strategic Flood Risk Assessment 2018 (SFRA) as being located within a 2115 tidal event zone. Land within this area was initially discounted from inclusion in the Housing and Employment Land Availability Assessment 2020 (HEELA) on this basis. However, the Environment Agency have subsequently advised<sup>21</sup> that this

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<sup>17</sup> D32 figure 3

<sup>18</sup> Condition data review of Pagham Harbour Designated Sites – Draft Report JBA Consulting – March 2022

<sup>19</sup> Land South of London Road Leybourne, Kent Ecological Impact Assessment July 2019

<sup>20</sup> D41

<sup>21</sup> EA response to West Wittering Parish Council (21.06.2021)

model has been superseded and that the site is not considered to be at risk of coastal flooding.

88. The Agency have also advised that the site is at low risk from surface water flooding and high risk from groundwater flooding. The Flood Risk Assessment<sup>22</sup> accompanying the development acknowledges this and advises that there may be a residual risk of groundwater emergence to some lower parts of the site. As such, mitigation measures may be required, in addition to a period of groundwater monitoring to ensure any risk to the proposed development can be managed appropriately.
89. In order to ensure the proposed development does not increase the risk of flooding elsewhere the scheme includes proposals to restrict surface water discharge from the site to an equivalent greenfield runoff rate. This would be achieved through the implementation of a Sustainable Urban Drainage Scheme (SUDs) on site. I am satisfied that the site is large enough to accommodate such a scheme and that it could include measures to take account of groundwater flooding<sup>23</sup>. The requirement for a SUDs scheme to be implemented and maintained could be secured by a suitably worded planning condition. I therefore do not consider that the proposal would be at risk of flooding, or that it would increase the risk of flooding to residents elsewhere.

#### *Foul Drainage*

90. During the Inquiry many residents raised concerns with regard to how foul drainage would be dealt with in the development and I was advised of the difficulties of some properties in the area in achieving appropriate foul drainage. In addition, recent incidents where Southern Water had been found to be making illegal discharges into Chichester Harbour were brought to my attention.
91. After initially objecting to the development Southern Water have stated that there is capacity at the Sidlesham Waste Water Treatment Works (SWWTW) and an available connection from the site to serve the development. Southern Water has identified Sidlesham as one of 7 WWTWs that requires improvement as part of their process<sup>24</sup> for identifying where strategic investment needs to be made in their catchment.
92. As the statutory undertaker Southern Water are obliged by The Water Industry Act 1991 to accept flows and provide the necessary capacity to drain property within their area and new connections charges are paid to provide any upgrades needed to serve new development. Southern Water as statutory undertaker have confirmed that they have capacity to facilitate the development. Notwithstanding the evidence of residents, I have no compelling basis for concluding that Southern Water are unable to treat the sewage arising from the proposal, or that the scheme would lead to a repeat of the recent illegal activity of the operator. Should Southern Water fail to meet their obligations under the Act, the industry regulator, OFWAT is obliged to take appropriate action and to ensure necessary work is carried out. Therefore, whilst I understand the strongly held views of residents in this regard, I cannot conclude that sewage from the development will not be adequately dealt with.

#### *Housing Type*

93. The proposal would provide 21 affordable homes, the size and type of which would meet local needs. I was provided at the Inquiry with a great deal of evidence in

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<sup>22</sup> D20

<sup>23</sup> Oral evidence – questions from the Inspector to Mr Allum-Rooney

<sup>24</sup> ID38

relation to the need for such housing, and whilst I note that East Wittering has been provided with affordable housing through recent development in the area, I see no reason to doubt that affordable homes provided as part of this development would meet an urgent need in the district. This weighs in favour of the proposal in the planning balance.

94. At the Inquiry I was also advised of the pressures brought by increasing numbers of second homes<sup>25</sup> and the emerging WWNP proposes a policy which aims to control levels of second homes within new development. In this regard the appellant has indicated that they would be no objection to a condition limiting occupation of the dwellings to that of a primary residence. However, the emerging policy is some way from being adopted, and whilst I recognise the issues that vacant property out of season will raise for local communities, I note that East Wittering, where the site is located, has a lower proportion of second homes than West Wittering. Furthermore, a significant proportion of the properties would be affordable, and so their occupation would be controlled in any case. I therefore do not consider that there is a sufficient case for imposing such a condition in this case and this matter does not weigh in the planning balance.
95. I am also advised that the location is popular with retirees, and that as such, there is a local need for bungalows. The design and access statement accompanying the proposal expresses the intention for a proportion of the development to be made up of single storey properties, which would reflect the development pattern in the wider area, where I note that single storey property (albeit in some cases with roof conversions) are a local feature. The appellant's indicative housing mix would also assist in ensuring that the range of accommodation on site meets local needs. Therefore, having regard to the relatively high proportion<sup>26</sup> of the local population who are over 65, I am satisfied that the provision of such accommodation would help provide an appropriate housing mix on site.

#### *Heritage Assets*

96. There are 5 listed buildings within the wider area around the site. The Church of the Assumption of St Mary the Virgin (Grade II\*), Hale Farmhouse (Grade II), Piggery Hall (Grade II) and East Wittering Windmill (Grade II) and The Thatched Tavern (Grade II).
97. The Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest when considering whether to grant planning permission for development which affects the setting of a listed building. This duty is reflected in the Framework which subsequently goes on to categorise any harm to the significance of a heritage asset as either '*substantial harm to or total loss of significance of an asset*' or '*less than substantial harm to the significance of an asset*'.
98. The first 4 assets above are all located some distance from the site, and the intervening buildings and vegetation ensure that there is no visual link between the site and the assets. Taking into account the nature of the assets and the distances involved, I am satisfied that the proposal would not impact on the significance of these assets.

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<sup>25</sup> The West Wittering Neighbourhood Plan states that 22% of homes in West Wittering are second homes compared to only 3.45% in Chichester City and 10.5% in East Wittering

<sup>26</sup> B18 West Wittering Neighbourhood Plan paragraph 2.20 – 42.1% of the resident population are over 65 compared to 16% across England – 2011 Census

99. The Thatched Tavern sits on Church Lane to the north-east of the site. It is an 18<sup>th</sup> century thatched pub with a modern 20<sup>th</sup> extension to the rear. The building sits within a small beer garden and is adjoined to the rear by the Briar Cottage Caravan Park. Despite alteration, and the significant erosion of its immediate setting, its appearance is indicative of its origins as an isolated rural building. The significance of the asset is therefore derived from its origins as a remaining example of a building of its type and in the contribution the appearance of the front elevation makes to the character of the wider area.
100. I have considered the extent to which the wider setting of the Tavern contributes to this significance. The building would originally have been set in open countryside, but this has been greatly reduced by the introduction of residential development to the north at Furzefield and the industrial estate to the south, and in the immediate surrounds of the site in the form of the caravan park. The development would lead to a reduction in the open fieldscape to the south-west of the site. However, the edge of East Wittering is a feature that is already part of the wider setting of the asset and open fieldscape in the vicinity of the site would be retained. Taking into account the extent to which the setting of the asset has already been significantly altered, the development proposed would not, to my mind, materially alter how the asset is currently appreciated.
101. The construction of the proposed development would impact upon any archaeological remains which may be present. The submitted archaeological assessment indicates that any remains that are likely to be present would be of local archaeological value. In this regard I am satisfied that archaeological interests would not preclude the grant of consent and that a condition requiring a written scheme of archaeological investigation would ensure that any archaeological matters that arise are appropriately considered.
102. I am therefore satisfied that the development would not harm the significance of nearby heritage assets and find no conflict with the Framework, which seeks to sustain and enhance such assets.

#### *Agricultural Land*

103. The site is made up of 4 hectares of Grade 3a agricultural land. Local residents have expressed concerns in relation to the loss of this asset. Policy 48 of the LP requires development schemes to demonstrate that poorer quality agricultural land has been fully considered in preference to best and most versatile land. The appellant has not carried out a comparative assessment to indicate that no lower grade land is suitable and available. Although the Framework does not require a sequential test, it recognises the economic and other benefits of maintaining a supply of such land. This matter weighs against the proposal in the planning balance.

#### *Other Matters*

104. I have considered the potential impacts of the development with regard to air quality. The site does not lie within an Air Quality Management Area, and I have no compelling evidence that pollution from vehicles or on site plant is likely to impact upon the living conditions of residents. The application was accompanied by a sustainable construction and design statement which sets out the applicant's intention to implement measures to better the building regulations in relation to low carbon energy use and to provide EV charging points. These measures could be secured by condition, as could a further condition to tackle dust during

construction, thus ensuring that the development does not significantly impact upon existing air quality.

105. I have considered the impact of lighting from the development on the local area. I note that parts of the peninsula, particularly within the AONB, are noted for their dark skies and that the area is known as a destination for enjoying astronomy. The development would be located adjacent to the existing settlement and so would not significantly increase the spread of lighting into previously unlit areas. Furthermore, planning conditions, intended to mitigate the effects of lighting on local wildlife would also contain the amount of lighting derived from the site. In light of this I am satisfied that the development would not lead to significant harm in this regard.
106. The indicative layout includes details of how the development could make provision for a play area and open space to serve the development. These matters are also addressed in the planning obligation, to secure delivery of these, along with a number of other matters. For the reasons set out below I am satisfied these address the direct impacts of the scheme. I note the comments of some respondents who consider that CIL revenue from the development should be directed towards East Wittering Parish, to which the development is directly related, rather than West Wittering Parish, within which the development falls. The matter of how CIL is appropriately spent is one which rests with the Council and not a matter which I consider having any bearing on the merits or otherwise of the scheme.
107. Finally, I note the comments of some local residents in relation to the design of the development and who fear that the proposal may impact on the living conditions of adjoining residential occupiers. The layout of the development is not a matter before me. Nevertheless, I am satisfied that the layout of the development could respond to any such concerns at reserved matters stage. and so, this matter does not weigh against the proposal.

### **The Planning Balance**

108. Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that applications should be determined in accordance with the provisions of the Development Plan unless other material considerations indicate otherwise.
109. For the reasons outlined above I find no conflict with Policies 8, 9 and 39 of the LP with regard to the need to mitigate the effects of development in relation to infrastructure provision including roads, and to ensure that new development can be safely accessed. I find no conflict with Policies 49 and 50 which together seek to protect local wildlife and to ensure that the effects of new development are appropriately mitigated in this regard. I also find no conflict with Policies 52 and 54 which seek to ensure that new development provides adequate open space and recreation facilities to meet the needs of existing and future residents. For the reasons outlined above the proposal would also not conflict with Policy 33 of the LP.
110. The Framework indicates that where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites the policies in the development plan are to be considered out of date. In such cases planning permission should be approved without delay unless any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the scheme. Policy 1 of the LP reflects the presumption in favour of sustainable development within the Framework.

111. The proposal would cause harm to the rural character and appearance of the countryside and in this regard would conflict with Policy 48 of the LP. As the site lies outside the settlement boundary, within open countryside, the proposal would conflict with Policies 2 and 45 of the LP and IPS1 and IPS5 of the IPS. The harm identified would be localised and would lessen as the development became established. Furthermore, policies 2 and 45 are out of date and the IPS is not adopted policy. Accordingly, I attribute this harm moderate weight in the planning balance.
112. The proposal would lead to the loss of almost 4 hectares of Best and Most Versatile Agricultural Land and so would conflict with Policy 48 of the LP in that regard.. Having regard to the amount and grade of the land affected, I attribute this matter no more than moderate weight in the planning balance.
113. The proposal would provide 70 homes in an accessible location, some of which would be bungalows and 21 of which would be affordable. Having regard to the need for housing nationally, including affordable housing, and the need for affordable housing in the district, I attribute the provision of housing substantial weight in the planning balance.
114. The proposal would also bring some economic benefits through construction and through the additional spend generated by new residents, who would also help to sustain local services, and this carries some moderate weight, commensurate with the size of the development.
115. The proposal would lead to a loss of a short stretch of hedgerow but would include extensive planting as part of the finished development. This would result in Biodiversity Net Gain as required by national policy. Having regard to the size of the site and the extent of ecological improvement that will result, I attribute this only limited weight in favour of the proposal.
116. It would also provide open space and provision for play in accordance with policies 52 and 54 of the Local Plan. These elements of the scheme are necessary to meet the needs of residents of the proposed development and are likely to be predominantly used by them. Given the location of the site, I accept that it could be used by other local residents or visitors to the area. Nevertheless, I've been provided with no quantification of the extent to which this might occur and having regard to the size and nature of the likely provision I attribute it only limited weight as a benefit.
117. The proposal would include a financial contribution towards improvements to the A27. Having regard to the constraints of the CIL Regulations which precludes contributions which are not necessary to mitigate the impacts of the scheme, it seems to me that if these contributions gave rise to any benefits to other members of the community these would be likely to be peripheral, small in scale and by their nature difficult to quantify. I have been provided with no evidence of the extent of the benefit these contributions would make to existing members of the community, and this limits the weight I am able to attribute to them. This matter is therefore a neutral matter which does not weigh in the planning balance.
118. The harm that would arise due to the loss of agricultural land and harm to the rural character of the area would not significantly and demonstrably outweigh the very substantial collective benefits that the scheme would provide in relation to housing provision and the other identified benefits of the scheme.

119. The proposal would therefore amount to sustainable development when assessed against the Framework and accordingly would not conflict with Policy 1 of the LP. This is a material consideration which would outweigh the identified conflict with policies 2, 45 and 48 of the adopted development plan and policies IPS1 and IPS5 of the IPS. Planning permission should therefore be granted.

### **The Planning Obligation**

120. The application is accompanied by a planning agreement made under Section 106 of the Town and Country Planning Act 1990 (as amended).

121. The agreement makes provision for the delivery of affordable housing, including the provision of first homes. It also makes provision for open space, a play area and a landscape buffer at the site, along with a management company to maintain the managed land within the development. For the reasons set out above I am satisfied that these elements are necessary to make the development acceptable in planning terms, that they are directly related to the development and are fairly and reasonably related in scale and kind to the development.

122. The agreement also makes provision for sums to be paid towards improvements to the A27 and for a sum to be paid to monitor the Travel Plan. These measures are necessary to mitigate the effects of the development on the wider highways network and I am satisfied that they are directly related to the development and are fairly and reasonably related in scale and kind to the development.

123. Finally, the agreement also makes provision for a habitats mitigation payment to be made to enable works to be carried out to mitigate the effects of the development on the Solent Maritime SAC. This payment is necessary to mitigate the effects of the development and to make the development acceptable in planning terms. Having regard to the precautionary principle implicit in any consideration of the effects of development on nature conservation sites of this type, I am also satisfied that the payment is proportionate and so is fairly and reasonably related in scale and kind to the development.

### **Conditions**

124. The suggested Schedule of Conditions was agreed by the Council and the appellant and was discussed at the Inquiry. I have made some small amendments to ensure that they meet the requirements set out in the Framework paragraph 56, particularly in the interests of precision and enforceability. The conditions now set out in the Schedule annexed to this decision are necessary to make the development acceptable and meet the tests set out in the Framework.

125. For clarity I have imposed conditions to define the reserved matters (condition 1) to identify the approved plans (condition 2) and to set the timescale for submission of reserved matters and implementation (condition 3). I am satisfied that the reduced timescale for submission of reserved matters of two years is necessary to ensure that the housing is delivered quickly to meet identified need. Condition 4 relates the provision of details of levels within the finished development and is necessary in order to secure a satisfactory relationship between the development and adjacent land.

126. Condition 5 ensures that construction on site will take place in accordance with provisions laid out in a Construction and Environment Management Plan (CEMP). This is necessary to ensure that construction takes place having regard to impacts on highway safety and the amenity of nearby residents. It is also necessary to

ensure that construction does not lead to environmental pollution. Conditions 10,11 and 12 require that contamination investigation is carried out and that remediation is undertaken if any contamination is encountered during construction. Condition 26 required that any works in this regard are verified. These conditions are necessary to protect human health and to protect groundwater.

127. Conditions 28, 31 and 25 relate to measures outlined in the ecological impact assessment and the provision of lighting within the development. Conditions 13 and 14 require additional survey work to be undertaken to determine if mitigation is required in relation to the effects of the development on water voles and badgers. I have amended Condition 13 in the interests of clarity. Condition 32 requires that clearance of vegetation takes place outside the bird breeding season. All these conditions are required to ensure the implementation of the development does not have a harmful impact upon wildlife habitats on or off site. In order to ensure that the scheme of mitigation is effective I have amended the agreed condition to include a requirement for details of a scheme for maintenance for an appropriate period of at least 5 years.
128. Condition 9 is necessary to protect trees on site during construction. Condition 19 relates to the provision of a scheme of hard and soft landscaping for the site, including details of how pedestrian permeability is to be achieved through the development. This condition is necessary to ensure an acceptable appearance for the scheme and to ensure an acceptable residential development for future residents. As it will inform, and in turn be informed by the layout of the development it should be submitted prior to the submission of reserved matters. To be effective it should also include proposed finished levels or contours, pedestrian access and circulation areas and details and samples of the hard surfacing materials.
129. Conditions 22, 23, 33 and 34 relate to the implementation of highway and footpath design details and are necessary in the interests of highway safety. Condition 16 requires the provision of electric vehicle charging points within the development and is necessary to enable the use of low emission transport in the interests of air quality and carbon reduction. Condition 29 relates to the provision and implementation of a Travel Plan and is necessary in order to encourage and promote sustainable transport also in the interests of air quality and carbon reduction. Condition 18 requires the provision of a sustainable design and construction statement, demonstrating how CO2 emissions saving of at least 19% improvement in energy performance over the requirements of the Building Regulations (2013) are to be met within the development and is also necessary in the interests of carbon reduction.
130. Condition 27 requires details of the location, installation and ongoing maintenance of fire hydrants and is necessary in the interests of public safety. Condition 21 requires that before occupation all dwellings are connected to all relevant utilities and service infrastructure and is necessary to enable an appropriate standard of amenity for future occupiers. Condition 20 seeks to protect existing and future residents from the effects of noise and is necessary in the interests of residential amenity.
131. In order to ensure the satisfactory treatment of surface water and to limit surface water run-off from the site in order to reduce flood risk, Condition 7 requires the provision of a SUDs Scheme within the development and Condition 15 requires its on-going maintenance. Condition 30 sets a minimum floor level for

dwellings within the development and is necessary to reduce the risk of flooding to the proposed development and future occupants. Condition 6 requires the provision of a suitable scheme for foul drainage and is necessary in order to ensure the development has adequate provision in this regard. Condition 24 requires water efficiency measures within the new dwellings, which is necessary to reduce the impacts of water extraction within the catchment in accordance with policy 40 of the LP.

132. Condition 8 is required to ensure that the archaeological investigation takes place in accordance with a Written Scheme of Investigation. This is necessary to ensure the proper investigation and recording of the site, which is potentially of local archaeological interest.
133. Condition 17 requires that 10% of the open market dwellings within the development be provided as bungalows and is necessary to achieve an appropriate mix of development on site to meet local housing needs.

### **Conclusion**

134. For the reasons given I conclude that the appeal should succeed.

*Anne Jordan*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Christopher Young QC  
assisted by Sioned Davies, of Counsel

Kathryn Ventham, BSc (Hons) MSc MRTPI - Barton Willmore now Stantec  
Stephen M Evans BA (Hons) MA CMILT, MCIHT MTPS - Pell Frischmann  
Stephen Kirkpatrick (BSc BLD CMLI) - Scarp Landscape Architecture Ltd  
Ben Pycroft BA(Hons), Dip TP, MRTPI - Director of Emery Planning  
Annie Hamilton Gingell BSc (Hons) MSc MRTPI, Tetlow King Planning  
Daniel Allum-Rooney BSc (Hons) MSc CIWEM, Pell Frischman

### For Conditions Session

Caroline Featherston, BSc (Hons) MSc MRTPI – Barton Willmore now Stantec  
John Reid BA LLB

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Alex Jelley, BA MSc MRTPI – Alpine Planning Ltd  
Mr Alex Roberts BSc MPhil MRTPI – Lambert Smith Hampton

### For Conditions Session

Jane Thatcher BA MSc MRTPI  
Jo Bell BA MA MSc MRTPI

### INTERESTED PARTIES:

Claire Tester BA (Hons) Dip TP MSc MRTPI on behalf of West Wittering Parish Council  
Sam Tate on behalf of East Wittering and Bracklesham Parish Council  
Graham Campbell on behalf of Birdham Parish Council  
Cllr Graeme Barrett - Ward Councillor Chichester District Council  
Dr Carolyn Cobbold Phd on behalf of the Manhood Peninsula Partnership  
James Birkett - Local Resident  
Cllr Pieter Montyn – Ward Councillor West Sussex County Council  
Dr Peter Collinson - Local Resident

Carey McKinnon – Local Resident

Mr Burdett – Local Resident

Jill Sutcliffe – Manhood Wildlife and Heritage Group

John Williams on behalf of Earnley Parish Council

Chris Hardy – Local Resident

Trish McKinnon – Local Resident

Bob West – Local Resident

Mr G D Bellamy BSc CEng, MICE - Highways consultant on behalf of East Wittering and Bracklesham Parish Council and West Wittering Parish Council

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- ID01 – Statement from Birdham Parish Council
- ID02 – Statement from Ms Sutcliffe
- ID03 – Statement from Chris Hardy
- ID04 – Statement from Cllr Montyn
- ID05 – Statement from Trish Mackinnon
- ID06 – Statement from Carey Mackinnon
- ID07 – Statement from Ms Tester
- ID08 – Statement from Dr Cobbold
- ID09 – Statement from Cllr Barratt
- ID10 – Appellant’s 5YHLS Rebuttal
- ID11 – Appellants 5YHLS Appendix
- ID12 – Council’s Planning Rebuttal
- ID13 – Council’s Character and Landscape Rebuttal
- ID14 – Appellant’s Planning Rebuttal
- ID15 – Appellant’s Landscape Rebuttal
- ID16 – S106 unengrossed (agreed draft version)
- ID17 – Council’s 5YHLS Rebuttal
- ID17a – Council’s 5YHLS Rebuttal Appendices
- ID18 – Appellant’s Opening Statement
- ID19 – LPA’s Opening Statement
- ID20 – Statement from Audrey Backhouse
- ID21 – Acceptance of Revised Scheme
- ID22 – Revised Statement from Ms Sutcliffe
- ID23 – Revised Statement from Mr Hardy
- ID24 – Email from Cllr Barrett regarding W.Wittering Population
- ID25 – Answer to question regarding formal designation for bird sites
- ID26 – Climate Change 2022 – Impacts, Adaption and Vulnerability

ID27 – Statement from Mr Burdett

ID28 – Further Statement from Ms Sutcliffe

ID29 – Soham Appeal Decision – 3282449

ID30 – Planning SOCG

ID31 – Bus Times

ID32 – Affordable Housing SOCG

ID33 – Supplemental Affordable Housing Statement of Annie Hamilton Gingell

ID34 – CDC Letter to Parish Councils

ID35 – CDC Local Plan Review: Background Paper Settlement Hierarchy (Dec 2018)

ID36 – Statement from Mr James Birkett

ID37 – Solent Waders and Brent Goose Strategy 2020

ID38 – Manhood Peninsula Destination Management Plan 2018-2023

ID39 - Title Plan of site owner

ID40 – Council’s Closing Statement

ID41 – Appellant’s Closing Statement

ID42 – Schedule of Conditions

#### Documents Submitted Post Inquiry

Appeal Ref: APP/L3815/W/21/3284653 – Raughmere Drive

Condition data review of Pagham Harbour Designated Sites – Draft Report JBA Consulting  
– March 2022

## SCHEDULE OF CONDITIONS

1. Approval of the details of the "layout of the site", "scale of the buildings", "appearance of the buildings or place" and the "landscaping of the site" (hereinafter called "reserved matters") shall be obtained from the Local Planning Authority before any development is commenced.

Plans and particulars of the reserved matters referred to above, relating to the layout of the site, the scale of the buildings, the appearance of the buildings or place, and the landscaping of the site shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.

Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of two years from the date of this permission.

2. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
3. The development hereby permitted shall not be carried out other than in accordance with the approved plans:
  - PL-01 (Location Plan),
  - 103606-T-005/RevA (Proposed Site Access and Refuse / Large Car Swept Path),
  - LLD1869-ARB-DWG-003/Rev0 (Tree Retention and Protection Plan),
  - LLD1869-ARB-DWG-001/Rev01 (Tree Constraints Plan 1/2),
  - LLD1689-ARB-DWG-002/Rev01 (Tree Constraints Plan 2/2), and
  - PL-06/RevA (Landscape Parameter Plan).
4. No development shall commence until plans of the site showing details of the existing and proposed ground levels, proposed finished floor levels, levels of any paths, drives, garages and parking areas and the proposed completed height of the development and any retaining walls have been submitted to, and approved in writing by, the Local Planning Authority. The details shall clearly identify the relationship of the proposed ground levels and proposed completed height with adjacent buildings. The development thereafter shall be carried out in accordance with the approved details.
5. No development shall commence, including any works of demolition, until a Construction and Environmental Management Plan (CEMP) comprising a schedule of works and accompanying plans for that Phase has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period unless any alternative is agreed in writing by the Local Planning Authority. The CEMP shall provide details of the following:
  - the phased programme of demolition and construction works,
  - the anticipated number, frequency and types of vehicles used during construction,

- the location and specification for vehicular access during construction,
  - the provision made for the parking of vehicles by contractors, 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 location of any site huts/cabins/offices,
  - the provision of road sweepers, wheel washing facilities and the type, details of operation and location of other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
  - details of public engagement both prior to and during construction works, including a named person to be appointed by the applicant to deal with complaints who shall be available on site and contact details made known to all relevant parties,
  - measures to control the emission of dust and dirt during construction, to include where relevant sheeting of loads, covering and dampening down stockpiles and restriction of vehicle speeds on haul roads. A dust management plan should form part of the CEMP which includes routine dust monitoring at the site boundary with actions to be taken when conducting dust generating activities if weather conditions are adverse,
  - measures to control the emission of noise during construction,
  - details of all proposed external lighting to be used during construction and measures used to limit the disturbance of any lighting required. Lighting shall be used only for security and safety,
  - appropriate storage of fuel and chemicals, in bunded tanks or suitably paved areas,
  - measures to reduce air pollution during construction including turning off vehicle engines when not in use and plant servicing, and
  - waste management including prohibiting burning,
  - provision of temporary domestic waste and recycling bin collection point(s) during construction.
6. Notwithstanding any details submitted, no development shall commence, until details of a system of foul drainage of the site have been submitted to and approved in writing by the Local Planning Authority. Thereafter all development shall be undertaken in accordance with the approved details and no occupation of any dwelling, shall take place until the approved details for that dwelling have been completed. The foul drainage system shall be retained as approved thereafter.
7. No development shall commence, until details of the proposed overall site wide surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal as set out in Approved

Document H of the Building Regulations and the SUDS Manual produced by CIRIA. Winter ground water monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. The surface water drainage scheme shall be implemented as approved unless any variation is agreed in writing by the Local Planning Authority. No building shall be occupied until the complete surface water drainage system serving that property has been implemented in accordance with the approved surface water drainage scheme.

8. No development/works shall commence on the site until a written scheme of archaeological investigation of the site, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for an initial trial investigation and mitigation of damage through development to deposits of importance thus identified. It shall also include a schedule for the investigation, and the recording of findings and subsequent publication of results. Thereafter the scheme shall be undertaken fully in accordance with the approved details, unless any variation is first submitted to and agreed in writing by the Local Planning Authority.
9. No development shall commence on the site, including demolition, until protective fencing has been erected around all trees, hedgerows, shrubs and other natural features not scheduled for removal in accordance with the recommendations of BS5837:2012. Thereafter the protective fencing shall be retained for the duration of the works, unless otherwise agreed in writing by the Local Planning Authority. No unauthorised access or placement of goods, fuels or chemicals, soil or other materials shall take place inside the fenced area; soil levels within the root protection area of the trees/hedgerows to be retained shall not be raised or lowered, and there shall be no burning of materials where it could cause damage to any tree or tree group to be retained on the site or on land adjoining at any time.
10. No development shall commence until a scheme to deal with contamination of land and/or controlled waters has been submitted to and approved in writing by the Local Planning Authority. Unless the local planning authority dispenses with any such requirement specifically in writing the scheme shall include the following, a Phase 1 report carried out by a competent person to include a desk study, site walkover, production of a site conceptual model and human health and environmental risk assessment, undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11.
11. If the Phase 1 report submitted pursuant to Condition 10 above identifies potential contaminant linkages that require further investigation then no development shall commence until a Phase 2 intrusive investigation report has been submitted to and approved in writing by the LPA detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011+A1:2013 - Investigation of Potentially Contaminated Sites - Code of Practice. The findings shall include a risk assessment for any identified contaminants in line with relevant guidance.
12. If the Phase 2 report submitted pursuant to Condition 11 above identifies that site remediation is required then no development shall commence until a Remediation Scheme has been submitted to and approved in writing to the Local Planning Authority detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. Any ongoing monitoring shall also be specified. A

competent person shall be nominated by the developer to oversee the implementation of the Remediation Scheme. The report shall be undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11. Thereafter the approved remediation scheme shall be fully implemented in accordance with the approved details.

13. No development shall commence until an updated Water Vole Survey has taken place within Ditch D1, as detailed within the submitted Water Vole Survey (October 2019), by The Ecology Partnership. If water voles are found, no works can commence until a mitigation strategy has been agreed in writing with the Local Planning Authority; The mitigation strategy shall subsequently be carried out in accordance with the approved details.
14. No development shall commence, until a badger survey has been undertaken to ensure badgers are not using the site. If a badger sett is found on site, Natural England should be consulted and a mitigation strategy produced and carried out in accordance with the approved details.
15. No development shall commence on the Sustainable Urban Drainage System (SUDS), until full details of the maintenance and management of the SUDS system, set out in a site-specific maintenance manual, has been submitted to and approved in writing by the Local Planning Authority. The manual shall include details of financial management and arrangements for the replacement of major components at the end of the manufacturers recommended design life. Upon completed construction of the SUDS system, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
16. No development shall commence above ground level, until the developer has provided details of how the development will accord with the West Sussex County Council: Guidance on Parking at New Developments (September 2020 or any superseding document) in respect of the provision of Electric Vehicle (EV) charging facilities. These details shall be approved in writing by the Local Planning Authority and carried out as approved. Specifically, the development shall provide passive provision through ducting to allow EV charging facilities to be brought into use at a later date for the whole site. Active EV charging facilities shall be provided in accordance with the table at Appendix B of the West Sussex County Council: Guidance on Parking at New Developments (September 2020 or any superseding document) and no dwelling which is to be provided with an active charging facility shall be first occupied until the EV charging facility for that dwelling has been provided and is ready for use.
17. Any future reserved matters submissions shall include for the provision of 10% of the open market dwellings to be provided as bungalows.
18. A detailed Sustainable Design and Construction statement, demonstrating how CO2 emissions saving of at least 19% improvement in energy performance over the requirements of the Building Regulations (2013) are to be met for the approved development and shall be submitted with the first application for reserved matters and any subsequent applications for reserved matters shall demonstrate how the proposal complies with the approved details. The statement shall also include the proposed location, form, appearance and technical specification of any air source heat pumps (including acoustic performance). The development thereafter shall be carried out in accordance with the approved details.

19. Notwithstanding the illustrative landscaping details submitted with the application, a detailed scheme of hard and soft landscaping for the whole site shall be submitted for approval as part of reserved matters to the Local Planning Authority. The scheme shall include a scheme for pedestrian permeability through the site and shall demonstrate substantial compliance with the approved Landscaping Parameter Plan (ref. PL-06/RevA) and shall include a planting plan and schedule of plants noting species, plant sizes and proposed numbers/densities, and shall include a program/timetable for the provision of the hard and soft landscaping. In addition, all existing trees and hedgerows on the land shall be indicated including details of any to be retained, together with measures for their protection during the course of development. The scheme shall make particular provision for the conservation and enhancement of biodiversity on the application site and boundary fencing shall include gaps underneath to enable the passage of small mammals. The hard landscaping shall include the proposed finished levels or contours, pedestrian access and circulation areas, details and samples of the hard surfacing materials. The works shall be carried out in accordance with the approved details and planting timetable and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice. Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved unless otherwise first agreed in writing by the Local Planning Authority.
20. A scheme for protecting the proposed development from noise; including noise from external mechanical plant and neighbouring commercial activities, shall be submitted with the first application for reserved matters and any subsequent applications for reserved matters shall demonstrate how these details are to be implemented, in accordance with an approved noise mitigation scheme. Any site wide noise mitigation measures shall be implemented prior to first occupation of the site and any noise mitigation specific to an individual dwelling shall be implemented prior to the first occupation of that dwelling, unless alternative implementation arrangements are agreed. The noise mitigation measures shall be maintained as approved thereafter. The applicant's attention is drawn to the attached informative which offers clarification with regard to the specific requirements of this Condition.
21. Before first occupation of any dwelling, full details of how the site will be connected to all relevant utilities and services infrastructure networks (including fresh water, electricity, gas, telecommunications and broadband ducting) shall be submitted to and be approved in writing by the Local Planning Authority. These details shall demonstrate the provision of suitable infrastructure to facilitate these connections and the protection of existing infrastructure on the site during works. The development will thereafter only proceed in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.
22. No part of the development hereby permitted shall be first occupied until such time as the vehicular access serving the development has been constructed in accordance with the details shown on the drawing titled 'Proposed Site Access and Refuse / Large Car Swept Path' (plan no. 103606-T-005/RevA).
23. No part of the development shall be first occupied until visibility splays have been provided in accordance with drawing number 103606-T-005/RevA. Once provided the splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metre above adjoining carriageway level or as otherwise agreed.

24. The dwellings hereby permitted shall be designed to ensure the consumption of wholesome water by persons occupying a new dwelling must not exceed 110 litres per person per day, as set out in in G2 paragraphs 36(2) and 36(3) of the Building Regulations 2010 - Approved Document G - Sanitation, hot water safety and water efficiency (2015 edition with 2016 amendments) and any subsequent amendments. No dwelling hereby permitted shall be first occupied until the requirements of this condition for that dwelling have been fully implemented, including fixtures, fittings and appliances.
25. Before first occupation of any dwelling details of any proposed external lighting of the site shall be submitted to and be approved in writing by the Local Planning Authority. This information shall include a layout plan with beam orientation and schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance with the approved details, unless the Local Planning Authority gives its written consent to any variation. The lighting scheme shall take into consideration the presence of bats in the local area and shall minimise potential impacts to any bats using trees and hedgerows by avoiding unnecessary artificial light spill through the use of directional lighting sources and shielding. Any proposed external lighting system should comply with the Institute of Lighting Engineers (ILE) guidance notes for the Reduction of Light Pollution.
26. The development hereby permitted shall not be first occupied, until a verification report for the approved contaminated land remediation has been submitted in writing to the Local Planning Authority. The report should be undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11.
27. Prior to first occupation of any dwelling hereby permitted, details showing the precise location, installation and ongoing maintenance of fire hydrants to be supplied (in accordance with the West Sussex Fire and Rescue Guidance Notes) shall be submitted to and be approved in writing by the Local Planning Authority in consultation with West Sussex County Council's Fire and Rescue Services. The approved fire hydrants shall be installed before first occupation of any dwelling and thereafter be maintained as in accordance with the approved details.
28. Notwithstanding any details submitted, no part of the development hereby permitted shall be first brought into use, until a scheme of ecological mitigation based on the recommendations of the submitted Preliminary Ecological Appraisal (by the ecology partnership, April 2019), the submitted Ecological Impact Assessment (by the ecology partnership, September 2020) and the comments of the CDC Environmental Strategy Unit (dated: 04.11.2020); together with a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority. The scheme of ecological enhancements shall include consideration of:
  - Any trees removed should be replaced at a ratio of 2:1.
  - Filling any gaps in tree lines or hedgerows with native species.
  - Bat and bird boxes installed on the site.
  - Grassland areas managed to benefit reptiles.
  - Log piles provided on site.

- Gaps are included at the bottom of the fences to allow movement of small mammals across the site.
- Two hedgehog nesting boxes provided on the site.
- Wetland area for the benefit of water voles.
- Flower rich margins

The scheme shall include a scheme for maintenance for an appropriate period of at least 5 years. Thereafter the strategy shall be implemented fully in accordance with the approved details and timescale.

29. No part of the development hereby permitted shall be first occupied, until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority in consultation with West Sussex County Council as the Local Highway Authority. The Travel Plan once approved shall thereafter be implemented as specified within the approved document and in accordance with the agreed timescales. The Travel Plan shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport or as advised by the Highway Authority.
30. No dwelling hereby permitted shall have a Finished Floor Level lower than 4.9m AOD.
31. The implementation of this planning permission shall be carried out strictly in accordance with the mitigation and enhancement strategy detailed in the submitted Great Crested Newt Survey (October 2019) and the Reptile Presence/Likely Absence Survey (October 2019), by the Ecology Partnership.
32. Any works to the trees or vegetation clearance on the site shall only be undertaken outside of the bird breeding season (which takes place between 1st March to 1st October). If works are required within this time an ecologist must check the site before any works take place (within 24 hours of any work).
33. Prior to the first occupation of the development, a footpath through the open space to the north-east corner of the site (as shown on plan no.PL-06/RevA), linking to the existing footway to the north-east along the eastern side of Church Road shall be constructed, surfaced and drained in accordance with plans and details that shall first have been submitted to and approved in writing by the Local Planning Authority, in consultation with WSCC PROW and Highways.
34. The proposed development hereby permitted shall not be occupied until the approved works, to be secured via a Section 278 (S278) agreement, have been completed generally in accordance with drawing no. [103606-T-005/RevA (as included in the Pell Frischmann Transport Assessment (ref: 103606) dated 25 September 2020)].



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## Costs Decision

Inquiry held on 1 March 2022

Site visits made on 3, 7 and 8 March 2022

**by Anne Jordan BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 22 April 2022**

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### **Costs application in relation to Appeal Ref: APP/L3815/W/21/3286315 Land to the West of Church Road, West Wittering, West Sussex, PO20 8FJ**

- The application is made under section 78 of the Town and Country Planning Act 1990 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Wellbeck Strategic Land IV LLP for a full award of costs against Chichester District Council.
  - The Inquiry was in connection with an appeal against refusal of planning permission for residential development of 70 dwellings (some matters reserved except for access).
- 

### **Decision**

1. The application for an award of costs are allowed in the terms set out below.

#### **The submissions for Wellbeck Strategic Land IV LLP**

2. The appellant contends that the Council acted unreasonably because:
  - They failed to adequately substantiate their reasons for refusal, particularly in relation to the matter of location and accessibility and matters of infrastructure capacity;
  - Relied on out of date information in forming a view on the weight to be attached to policies relating to development outside the settlement boundary;
  - Failed to adequately substantiate their case on whether the Council had a five year supply of housing land;
  - In doing so it is alleged that the Council delayed development which should clearly have been permitted.

#### **The response by Chichester District Council**

3. The Council responds that:
  - The Council refused the development on legitimate planning grounds;
  - The evidence supplied to support those grounds was not unreasonable;
  - With regard to the matter of infrastructure capacity the Council did not call any evidence on the issues discussed for the third reason for refusal, and the Appellant did not present any evidence of their own, so no costs can have been incurred;

- The Council's stance in relation to 5 year supply is reasonable and based on sound assumptions;
- The appellant's contention that the refusal of the scheme was a "product of public pressure" is entirely unsubstantiated.

### **Reasons**

4. Planning Practice Guidance advises that costs may 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. Planning Committee Members are not bound to accept the recommendations of their officers. Nevertheless, reasons for refusal should be substantiated and based on relevant evidence.
5. The Council refused the proposal for three reasons, the last of which related to matters subsequently resolved by the provision of the legal agreement and so fell away. These were matters without which the permission could not have been granted, which the appellant does not dispute. The parties also disputed whether a 5 year supply of housing land could be demonstrated in the district. In the event I have found this not to be the case but do not consider the Council to have been unreasonable in the case put to me.
6. The second reason for refusal related to the impact of the proposal on the character and appearance of the area and the local landscape. Whilst I note that the reason for refusal was based on an outdated assessment of settlement boundaries, it was nonetheless not unreasonable for the Council to reach the view that some harm would arise to the character and appearance of the countryside as a result of the development, and to apportion weight to it. I have also found some harm in this regard and whilst I ultimately reached the decision that the harm identified was outweighed by the benefits of the scheme, this was a matter of planning judgement. I therefore do not consider the Council to have been unreasonable in apportioning more weight to this matter than I myself did.
7. In relation to the first reason for refusal the Council did not dispute that the village was generally well served by facilities but cited a small number of local facilities that were absent. In essence the case for the Council was largely based on the argument that travel to higher order services would involve travel off the Peninsula. Due to the particular constraints in peak hour and seasonal travel, and the Council's views on the distance travelled, this was considered to be unsustainable.
8. The settlement is identified in both the adopted and emerging local plan as a settlement hub, which is defined as a settlement which provides a reasonable range of employment, retail, social and community facilities serving the settlement and local catchment areas. It was therefore unsurprising that the Council was unable to provide substantive evidence to the contrary. At the time of refusal the Council would have been aware that there is nothing in national guidance to indicate that all new development must be served by a full range of services and facilities. The Council would also have been well aware at the time of the decision that housing numbers set out in the adopted Plan were out of date and so would also have been aware that any previous target set out in the Plan was also out of date. Furthermore, the Council provided no substantive evidence to me during the Inquiry that there was anything about

the proposed quantum of development, as put forward by this proposal, that rendered it unsustainable.

9. Therefore, whilst I appreciate the reason for refusal reflected the views of many local residents, I cannot conclude that the actions of councillors in disregarding the professional advice of officers were reasonable. Furthermore, I accept that this was a matter on which the appellant will have felt obliged to seek some clarity through the appeals process. In doing so the appellant will have had to support a case at appeal in relation to the first reason for refusal and so would have been likely to incur expense which could not have been avoided.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs, in relation to the first reason for refusal<sup>1</sup>, is justified.

### **Costs Order**

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Chichester District Council shall pay to Wellbeck Strategic Land IV LLP, the costs of the appeal proceedings described in the heading of this decision insofar as they relate to the Council's first reason for refusal of application WW/20/02491/OUT, dated 28 September 2020.
12. The applicant is now invited to submit to Chichester District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

*Anne Jordan*

INSPECTOR

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<sup>1</sup> Planning application ref WW/20/02491/OUT