



Ministry of Housing,  
Communities &  
Local Government

Beth Gascoyne  
Cripps LLP  
Number 22, Mount Ephraim  
Tunbridge Wells  
Kent TN4 8AS

Our ref: APP/D3830/W/16/3152641  
Your ref: BXG/EST/WA50691.000477

1<sup>st</sup> March 2018

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY WATES DEVELOPMENTS LTD  
LAND SOUTH OF SCAMPS HILL/SCAYNES HILL ROAD, LINDFIELD, WEST SUSSEX  
APPLICATION REF: DM/15/4457**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBC, who held a public local inquiry on 16-19 May 2017 into your client's appeal against the decision of Mid Sussex District Council to refuse your client's application for outline planning permission for 200 dwellings, a 9.54ha Country Park and land for a ½ Form Entry Primary School, together with associated access road, car parking, landscaping and open space at land south of Scamps Hill/Scaynes Hill Road, Lindfield, West Sussex, in accordance with application ref: DM/15/4457, dated 4 November 2015.
2. On 8 December 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal should be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, but disagrees with his recommendation. The Secretary of State has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters arising since the close of the inquiry**

5. The Secretary of State invited the main parties to comment on the implications, if any, of new material or evidence which became available after the close of the inquiry. The table below describes the matters upon which he sought the parties' views:

<b>Date of Secretary of State's letter</b>	<b>New material/evidence</b>	<b>Date circulated to parties</b>
24 October 2017	<p>a) The document titled 'Consideration of Options to Strengthen the Five Year Housing Supply' for the public consultation on the Main Modifications of the emerging Mid Sussex District Plan.</p> <p>b) The Secretary of State's letter of 24 October 2017 to Natural England seeking their formal advice on the need for the Secretary of State to undertake an appropriate assessment.</p>	17 November 2017
17 November 2017	Natural England's letter of 14 November 2017	14 December 2017

A list of post-inquiry representations received by the Secretary of State, including those received in response to the above letters, is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the saved policies of the Mid Sussex District Local Plan 2004 (MSLP) and the Lindfield and Lindfield Rural Neighbourhood Plan 2016 (NP) made in 2016. Like the Inspector, the Secretary of State considers that the development plan policies of most relevance to this case are MSLP Policy C1 and NP policy1 (IR8-10).
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

### *Emerging plan*

9. The submission version of the Mid Sussex District Local Plan 2014-2031 (MSDP) contains policies which are potentially relevant to the appeal, including policies relating to housing, the countryside, the Ashdown Forest Special Protection Area (SPA)/Special Area of Conservation (SAC), infrastructure and transport. It was submitted to the Secretary of State in August 2016, has been through Examination, and consultation on the Main Modifications document ended in November 2017. However, the Local Plan Inspector's key conclusion was that the minimum housing requirement for the Plan period

should be uplifted from 800dpa to 1,026dpa. He therefore convened a further hearing on 5 February 2018 to consider the issues relating to a new site allocation on land north of Clayton Mills, Hassocks, intended to contribute to meeting the minimum housing requirement. Thus, having regard to all three of the parameters set out in paragraph 216 of the Framework<sup>1</sup>, the Secretary of State concludes that great uncertainty remains so that the emerging DP should be given limited weight.

## **Main issues**

### *Character and appearance*

10. The Secretary of State has carefully considered the Inspector's analysis of Northland's Brook and the Valley Bottom (IR77-82) and, for the reasons given therein, he agrees that there is no reason why the scheme would not eventually produce an attractive, if different, environment both alongside the transformed setting to the Brook and from the limited number of viewpoints towards it from beyond the site. The Secretary of State therefore agrees with the Inspector at IR95 and IR102 that there would be limited harm to the character and appearance of the area, to which he gives little weight.
11. The Secretary of State has also carefully considered the Inspector's analysis of Walstead (IR83-86), and agrees with his conclusion at IR87 that, although the harm to the landscape which the residential development would cause would be significant, it could, and should, be overcome at reserved matters stage. The Secretary of State therefore agrees with the Inspector at IR87 that the effect of the proposals on the character and appearance of Walstead should not be a bar to development, and he gives it limited weight (IR102).

### *Sustainable development*

12. For the reasons given at IR88-90, the Secretary of State agrees with the Inspector's conclusion at IR91 that the proposed scheme would recognise the intrinsic character and beauty of the countryside, secure high quality and inclusive design and would not harm any valued landscape. The Secretary of State gives moderate weight to these benefits.

### *Development Plan*

13. For the reasons given at IR 92-93, the Secretary of State agrees with the Inspector that MSLP Policy C1 and NP Policy 1 are out of date and not in conformity with paragraph 47 of the Framework.
14. With regard to housing land supply, the position described by the Inspector at IR 94 has now been superseded as described in paragraph 9 above. Nevertheless, the fact remains that, as the Inspector concludes at IR94, there is less than a 5-year housing land supply so that only little weight should be given to MSLP Policy C1 and NP Policy 1.
15. Turning to LP Policy B1 (IR96), the Secretary of State agrees with the Inspector that full weight should be given to LP Policy B1(a), in support of the scheme. The Secretary of State also agrees with the Inspector (IR97) that, as the NP does not allocate any sites for housing, the WMS of 12 December 2016 does not apply.

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<sup>1</sup> that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework,

## *Habitats Regulations Assessment*

16. The Secretary of State agrees with the Inspector (IR98) that, at the time of the Inquiry, the possibility could not have been ruled out that the proposal, in combination with other plans and projects, could have had the potential to result in significant adverse effects on the Ashdown Forest SAC/SPA.
17. However, following receipt of the IR, the Secretary of State sought advice from Natural England (NE) on the current state of play on that matter. They responded that they consider that the increased Annual Average Daily Traffic (AADT) expected from this proposal would be significantly below the threshold for potential significance and they considered it to be nugatory and indistinguishable from background variations. They therefore advised that the appeal scheme can be screened out as having no likely significant effect on the Ashdown Forest SAC and SPA, either alone or in combination with other plans or projects, and a full Appropriate Assessment is not required.
18. The Secretary of State has taken account of the Inspector's precautionary approach at IR103, but is now satisfied as the competent authority, and on the advice given by NE as his statutory adviser, that the scheme can be regarded as sustainable development and the appeal should be allowed.

### **Planning conditions**

19. The Secretary of State has given consideration to the Inspector's analysis at IR66-67, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex B should form part of his decision.

### **Planning obligations**

20. Having had regard to the Inspector's analysis at IR70-75, the planning obligation dated 9 June 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR74-75 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

### **Planning balance and overall conclusion**

21. For the reasons given above, the Secretary of State considers that the appeal scheme is not on accordance with MSLP Policies C1 and NP Policy 1 and so is not in accordance with the development plan overall. However, he considers that these policies are inconsistent with the Framework and out of date and therefore carry limited weight. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
22. In the absence of a 5-year supply of housing land, paragraph 14 of the Framework indicates that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits when assessed against policies in the Framework as a whole; or (b) specific policies in the Framework indicate development should be restricted.

23. The Secretary of State considers that the housing benefits of the proposal carry substantial weight, and the economic, social and environmental benefits each carry moderate weight. He has taken account of the Inspector's precautionary approach with regard to his duties under the Habitat Regulations, but is satisfied on the advice of NE that the proposal is unlikely to give rise to significant affects requiring him to undertake a full, Appropriate Assessment.
24. Overall, therefore, the Secretary of State concludes that material considerations indicate that, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be determined otherwise than in accordance with the development plan.
25. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

### **Formal decision**

26. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for 200 dwellings, a 9.54ha Country Park and land for a ½ Form Entry Primary School, together with associated access road, car parking, landscaping and open space at land south of Scamps Hill/Scaynes Hill Road, Lindfield, West Sussex, in accordance with application ref: DM/15/4457, dated 4 November 2015.
27. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
29. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
30. A copy of this letter has been sent to Mid Sussex District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by the Secretary of State to sign in that behalf

**Schedule of representations****Representations received in response to the Secretary of State's letter of 24 October 2017**

<b>Party</b>	<b>Date of letter/e-mail</b>
Beth Gascoyne, Cripps LLP	7 November 2017
Sally Bloomfield, MSDC	13 November 2017
Marian Ashdown, Natural England	14 November 2017
Asher Ross, GL Hearn	14 November 2017

**Representations received in response to the Secretary of State's letter of 17 November 2017**

Marian Ashdown, Natural England	29 November 2017
Richard Barnby, East Grinstead Post Referendum Campaign	12 December 2017
Sally Bloomfield, MSDC	12 December 2017
Beth Gascoyne, Cripps LLP	12 December 2017

**Further representations received by the Secretary of State**

Beth Gascoyne, Cripps LLP	10 January 2018
Marian Ashdown, Natural England	12 January 2018
East Grinstead Post Referendum Campaign	15 January 2018
Kelvin Williams, Wealden District Council	26 January 2018
Beth Gascoyne, Cripps LLP	12 February 2018

**List of conditions**

1. Approval of the details of the appearance, layout, scale and landscaping of the site (hereinafter called the "reserved matters") shall be obtained from the Local Planning Authority (LPA) for any phase of development, prior to the commencement of development on site.  
Application for approval of the reserved matters shall be made to the LPA before the expiration of 3 years from the date of this permission.  
The development hereby permitted must be begun before the expiration of 2 years from the date of approval of the last of the reserved matters.
2. No development shall take place, including any works of demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the LPA. Thereafter the approved CMP shall be implemented and adhered to throughout the entire construction period. The CMP shall provide details as appropriate, but not necessarily be restricted to, the following matters:
  - the anticipated number, frequency and types of vehicles used during construction,
  - the method of access and routing of vehicles during construction,
  - the parking of vehicles by site operatives and visitors,
  - the loading and unloading of plant, materials and waste,
  - the storage of plant and materials used in construction of the development,
  - the erection and maintenance of security hoarding,
  - the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
  - details of public engagement both prior to and during construction works,
  - scheme to minimise dust, dirt and noise emissions from the site during the period of construction,
  - hours of construction/working.
3. The development hereby permitted shall not proceed until details of the proposed foul water drainage and means of disposal, including a Drainage Management and Maintenance Plan have been submitted to and approved in writing by the LPA and no building shall be occupied until all approved drainage works have been carried out in accordance with such details. The drainage scheme shall be maintained thereafter in accordance with the approved Drainage Management and Maintenance Plan for the lifetime of the development.
4. The development hereby permitted shall not proceed until details of the proposed surface water drainage and means of disposal, including proposed swales and wetland, have been submitted to and approved in writing by the LPA and no building shall be occupied until all drainage works have been carried out in accordance with the approved details. The details shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. Maintenance and management during the lifetime of the development shall be in accordance with the approved details.

5. Prior to the commencement of the development hereby permitted, an air quality assessment shall be submitted to and approved in writing by the LPA in accordance with the Sussex Air Quality and Emissions Mitigation Guidance 2013 guidance document<sup>2</sup>. The assessment shall include details of any scheme necessary for the mitigation of potential impacts on air quality.
- The assessment shall include the following:
- An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the reduction of emissions. The assessment should quantify what measures or offsetting schemes are to be included in the development which will reduce the emissions from the development during construction and when in operation.
  - All works, which form part of the approved scheme, shall be completed before any part of the development is occupied and shall thereafter be maintained in accordance with the approved details.
6. (i) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the LPA before development commences or within such extended period as may be agreed with the LPA:
- a) A desk study report documenting all the previous and existing land uses of the site and adjacent land in accordance with best practice including BS10175:2011+A1:2013 - Investigation of potentially contaminated sites - Code of practice. The report shall contain a conceptual model showing the potential pathways where exposure to contaminants may occur both during and after development; and, unless otherwise agreed in writing by the LPA,
  - b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk study created in accordance with BS10175:2011+A1:2013 and BS8576:2013 -Guidance on investigations for ground gas - Permanent Gases and Volatile Organic Compounds (VOCs). The laboratory analysis should be accredited by the Environment Agency's Monitoring Certification Scheme where possible; the report shall refine the conceptual model of the site and state either that the site is currently suitable for the proposed end-use or that will be made so by remediation; and, unless otherwise agreed in writing by the LPA,
  - c) A remediation method statement detailing the remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. For risks related to bulk gases, this will require the production of a design report and an installation report for the gas as detailed in BS8485:2015 - Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings. The scheme shall consider the sustainability of the proposed remedial approach. It shall include nomination of a competent person to oversee the implementation and completion of the works.
- (ii) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the LPA verification by the competent person approved under the provisions of condition (i)c that any remediation scheme required and approved under the provisions of conditions (i)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of the LPA in advance of implementation). Unless otherwise agreed in writing by the LPA such verification shall comprise a stand-alone report including (but not be limited to):

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<sup>2</sup> Available at <http://www.sussex-air.net/>



- a) description of remedial scheme,
- b) as built drawings of the implemented scheme,
- c) photographs of the remediation works in progress,
- d) certificates demonstrating that imported and/or material left in-situ is free of contamination, and records of amounts involved.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under conditions (i)c.

7. No development shall take place until details of existing and proposed site levels have been submitted to and approved by the LPA. Development shall not be implemented otherwise than in accordance with such details.
8. No development shall commence until details of the play area(s) to be provided on site have been submitted to and approved by the LPA. The details shall include the layout, drainage, equipment, landscaping, fencing, timetable for construction and future management of the areas to be provided. The development shall only be implemented in accordance with the approved details and shall thereafter be retained at all times for their designated use.
9. No development shall take place until the applicant, or their agents or successor in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation and timetable which has been submitted to and approved by the LPA.
10. Prior to the commencement of development, plans and details of how the proposed road(s), footways and casual parking areas serving the development are to be constructed, surfaced and drained shall be submitted to and approved in writing by the LPA. The scheme shall only be implemented in accordance with the approved plans and details.
11. Prior to the commencement of development a comprehensive plan of biodiversity compensation measures and enhancements, including new hedgerows, woodland, thicket and scrub to compensate for the loss of hedgerow and other dormouse habitat, as well as other habitat features and enhancements as set out in the Ecological Appraisal report by Aspect Ecology, dated October 2015 (ref ECO2512.EcoApp.vf1) and shown on the illustrative Landscape Management Areas Plan by Catherine Shelton Associates Limited (Ref 826/L22) shall be submitted to and approved in writing by the LPA. The development shall only be implemented in accordance with the approved details.
12. No development shall commence until details of a lighting plan showing measures to be used to minimise light pollution of the surrounding habitats and open green space have been submitted to and approved in writing with the LPA.  
The development shall only be implemented in accordance with the approved lighting plan, unless first agreed in writing with the LPA, and shall be retained thereafter in accordance with the approved details.
13. No development shall take place until a detailed Landscape Management Plan, based on the Outline Landscape Management Plan submitted in support of this application including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to and approved in writing by the LPA. The landscape management plan shall

be carried out as approved and any subsequent variations shall be agreed in writing by the LPA.

14. No dwelling shall be occupied until the access to the site from the public highway has been constructed in accordance with details to be submitted to and agreed in writing by the LPA. The development shall only be implemented in accordance with the approved details.
15. No dwelling shall be occupied until the car parking spaces serving the respective dwellings have been constructed in accordance with plans and details to be submitted to and approved in writing by the LPA. These spaces shall thereafter be retained at all times for their designated use.
16. No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved by the LPA. These spaces shall thereafter be retained at all times for their designated use.
17. No development shall commence until the vehicular access onto Scaynes Hill Road serving the development and East Mascalls Lane has been realigned in accordance with details indicatively shown on drawing number ITL3139-GA-023 Revision E and a detailed construction specification submitted to and approved in writing by the LPA.

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# Report to the Secretary of State for Communities and Local Government

by David Nicholson RIBA IHBC

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

Date 18 July 2017

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TOWN AND COUNTRY PLANNING ACT 1990

MID SUSSEX DISTRICT COUNCIL

APPEAL MADE BY

WATES DEVELOPMENTS LTD.

Inquiry held on 16-19 May 2017

Land south of Scamps Hill/Scaynes Hill Road, Lindfield, West Sussex RH16 2QG

File Ref: APP/D3830/W/16/3152641

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**File Ref: APP/D3830/W/16/3152641**

**Land south of Scamps Hill/Scaynes Hill Road, Lindfield, West Sussex  
RH16 2QG<sup>1</sup>**

- 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 Wates Developments Ltd. against the decision of Mid Sussex District Council.
- The application Ref. DM/15/4457, dated 4 November 2015, was refused by notice dated 19 April 2016.
- The development proposed is: *Outline application for the development of land to the south of Scamps Hill, Lindfield, West Sussex so as to accommodate up to 200 dwellings, a 9.54ha Country Park and land for a ½ Form Entry Primary School, together with associated access road, car parking, landscaping and open space.*

**Summary of Recommendation: the appeal should be dismissed.**

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**Procedural Matters**

1. The appeal was recovered by the Secretary of State (SoS) for his own determination by way of a direction dated 8 December 2016<sup>2</sup>. The reason for this direction was that the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares (ha), which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
2. The application to which the appeal relates was made in outline form except for access. All other matters (appearance, landscaping, layout and scale) were reserved. The application was refused by the Council for two reasons<sup>3</sup>. Reason one related to: landscape character, increase in built form, impact on the existing character and appearance of the hamlet of Walstead; and infrastructure and affordable housing (AH). The first reason also refers to sustainable development for the purposes of the National Planning Policy Framework (NPPF).
3. An Agreement was submitted under section 106 of the Town and Country Planning Act 1990 (s106)<sup>4</sup>. I deal with the contents and justification for this below. The Council subsequently advised that it was not submitting any evidence to support its second reason for refusal concerning infrastructure contributions in the absence of a s106 Agreement. A Statement of Common Ground (SoCG) was agreed between the main parties<sup>5</sup>. This lists the drawings on which determination of the appeal should be based and confirms the consultation with regard to amended plans showing additional land for a one form entry primary school. The Inquiry sat for 4 days from 16-19 May 2017. I conducted an accompanied site visit on 18 May 2017<sup>6</sup>.

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<sup>1</sup> An Ordnance Survey map of the site and surroundings is at Fig 1 of the Landscape and Visual Impact Assessment (LVIA) Core Document (CD)/4/5

<sup>2</sup> Main file

<sup>3</sup> CD/4/16

<sup>4</sup> Inquiry Document (ID)21

<sup>5</sup> Signed version at ID20

<sup>6</sup> Roughly following the route on ID11 including the positions where the parties' photographs were taken

4. In my opening<sup>7</sup>, I invited the parties to submit information on the likely effects of the scheme on the Ashdown Forest (AF) Special Area of Conservation (SAC) taking into account the recent judgment in *Wealden*<sup>8</sup>. I asked for evidence with regard to possible in combination effects on the AF SAC following which an agreed note was submitted at the Inquiry (ID13). I welcomed the note but added that this did not fully answer my questions. Indeed, the agreed note does little more than set out the parties' view of the legal position and, despite being asked specifically, the parties declined to even identify the relevant factors<sup>9</sup>. I was then told<sup>10</sup> that there was lots of work still to be done, no available list to put before me of which factors should be taken into account, and no other information in relation to any Habitats Regulation Assessment (HRA) on which I could report.

### The Site and Surroundings

5. The site lies approximately 1.7km from Lindfield Village centre, 1.8km from Scaynes Hill and around 2.5km from Haywards Heath town centre. It is not within any statutory landscape, or other designated area<sup>11</sup>, whereas much of the district is within the High Weald Area of Outstanding Natural Beauty (AONB) or the South Downs National Park<sup>12</sup>. Further details, maps and general photographs are in the Design and Access Statement (DAS)<sup>13</sup> which also identifies the field numbers, F11-F13 and F17-F23<sup>14</sup>, areas of treebelt and other features. There was no dispute that the Verified Views<sup>15</sup> were reliable. It was common ground that there is an accurate description of the appeal site in the Officer's Report<sup>16</sup>. In short, it is in agricultural and informal recreational use and covers approximately 25 ha and 10 separate parcels of land outside the built up area of Lindfield as defined by the Mid Sussex Local Plan (LP) and the Lindfield and Lindfield Rural Neighbourhood Plan (NP). It is characterised by undulations with a difference of around 30m between the highest point, where there is a minor ridgeline by Snowdrop Lane, and the lowest parts alongside Northlands Brook<sup>17</sup>.
6. The site is bounded by Scamps Hill, part of the A272, Snowdrop Lane and the woodland belt along Northlands Brook beyond which is the recently built Heathwood Park estate and a site with planning permission off Gravelye Lane<sup>18</sup>. The appeal site is separated from Lyoth Lane by a paddock, but with existing public access, and includes a triangle of land on the other side of Scamps Hill

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<sup>7</sup> As well as the matters of dispute agreed between the main parties in the SoCG, I raised other issues on which I would be looking for evidence, including: *the concerns raised by the Lindfield Preservation Society with regard to the Ashdown Forest*. I raised the matter again following the evidence of Kennedy and on two further occasions.

<sup>8</sup> *Wealden District Council v. Secretary of State for Communities and Local Government, Lewes District Council and South Downs National Park Authority* [2017] EWHC 351 (Admin). Although not a CD or submitted as an ID, the main parties agreed that the Judgment was readily accessible.

<sup>9</sup> ID13 §§7 and 13

<sup>10</sup> By Fisher, agreed by Boyle

<sup>11</sup> ID20: SoCG §4.2 and as confirmed by Ellis in cross-examination (XX)

<sup>12</sup> Shelton §2.33 and §4.51 – referring to the Gravelye Lane Officer's Report

<sup>13</sup> CD/4/1 s2

<sup>14</sup> Ibid s2.9 p17

<sup>15</sup> In Shelton's Appendix 11 (bound as a separate document) accepted by Fisher

<sup>16</sup> CD/4/15: pp92-93

<sup>17</sup> See Topography at CD/4/1 DAS p45 §5.6

<sup>18</sup> See Ellis Rebuttal Appendix A

adjoining East Mascalls Lane close to Jubilee and Tichborne Cottages<sup>19</sup>. The site abuts existing residential properties on Snowdrop Lane and along its Scamps Hill frontage. The latter becomes Scaynes Hill Road near the junction with East Mascalls Lane<sup>20</sup> before the Walstead Nursing Home. It is also near to, or abutting, Walstead. The evidence regarding Walstead was not agreed and is set out in the parties' cases below. The site lies within Landscape Character Area (LCA) 43: Haywards Heath Eastern High Weald in a 2007 Study<sup>21</sup> the western side of which includes Heathwood Park and the Gravelye Lane site. The appeal site roughly equates to Site 483: Land to the east of Northlands Brook and south of Scamps Hill, Lindfield in the Mid Sussex District Council (MSDC) Strategic Housing Land Availability Assessment (SHLAA) Review<sup>22</sup> and the more detailed MSDC SHLAA Assessed Sites<sup>23</sup>. An informal recreation area, or wilderness, near Lyoth Lane was laid out as a requirement of the Heathwood Park estate.

7. SACs are European protected sites. AF is a European site designated pursuant to the Habitats Directive, a position that the *Wealden* Judgment<sup>24</sup> affirmed. The designation for the AF was given for a number of reasons, including the SAC's extensive areas of lowland heath, which (amongst other things) is vulnerable to nitrogen dioxide pollution including from motor vehicles. The AF SAC covers some 2,729 ha and lies wholly within the area of Wealden District Council. Two major roads pass through or close to the SAC: the A22 runs more or less from north to south, and travels across the western side of the SAC; the A26, more to the east, runs alongside the south-eastern boundary of the SAC. The A272, which runs past/through the site, joins into the A26 and A22. The boundary of the AF is either some 6 or 8.5km from the site<sup>25</sup>.

## Planning Policy

8. The development plan for the area includes the LP, adopted in 2004<sup>26</sup>, and the NP, made in 2016<sup>27</sup>. Other than those policies relating to matters in the s106 Agreement, it was common ground that the only relevant LP policies are B1(a) and C1<sup>28</sup>. LP policy B1 expects a high standard of design, construction and layout. Criterion (a) requires all proposals to: *demonstrate a sensitive approach to urban design by respecting the character of the locality in which they take place, especially to neighbouring buildings, their landscape or townscape setting ... . Regard should be given to the proposal's contribution to a sense of place.*
9. LP policy C1 states that: *Outside built-up area boundaries, as detailed on the Proposals and Inset Maps, the remainder of the plan area is classified as a Countryside Area of Development Restraint where the countryside will be protected for its own sake. Proposals for development in the countryside, particularly that which would extend the built-up area boundaries beyond those*

<sup>19</sup> See Cooper Appendix H

<sup>20</sup> See Peacock Appendix D viewpoints 01a, 01b and 02

<sup>21</sup> CD/3/9: Hankinson Duckett Associates Mid Sussex Landscape Capacity Study – July 2007

<sup>22</sup> CD/3/8: LUC: Review of Landscape and Visual Aspects of Site Suitability – January 2015

<sup>23</sup> CD/3/6: MSDC's SHLAA – Lindfield and Rural Lindfield Assessed Sites – June 2015

<sup>24</sup> See §4

<sup>25</sup> See SoCG and evidence of Kennedy below

<sup>26</sup> CD/3/1

<sup>27</sup> CD/5/1

<sup>28</sup> SoCG §6.3

*shown will be firmly resisted ...*. This policy was based on boundaries to accommodate development to 2006.

10. NP policy 1 only supports development within the built up area boundaries of Lindfield and Scaynes Hill. NP Policy 6 designates Local Green Spaces including: *viii. Recreation area of Lyoth Lane, Lindfield Rural. Proposals which would not be ancillary to the use of Local Green Spaces for public recreational purposes ... will be resisted unless it can be shown that there is an exceptional public interest need.* The NP independent examiner found that policies 1 and 2 were flawed due to: insufficient regard to the emerging District Plan; insufficient provision for future housing and affordable housing; the built-up area boundary not reflecting the established situation on the ground; and the lack of allocation of potential sites based mainly on the fact that local landowners did not promote them<sup>29</sup>. He concluded that, unless amended, the LNP would not comply with national policy and recommended 9 amendments including the allocation of a site in the draft SHLAA<sup>30</sup>. Nevertheless, the NP proceeded to referendum on 28 January 2016 without this allocation, was accepted by the majority who voted, and formally 'made' by the Council on 23 March 2016.
11. A Judicial Review (JR) was issued against the making of the Plan. The JR was withdrawn 'by consent' as no longer expedient<sup>31</sup>. Item 2 of the Schedule of Reasons reads: *Since the claim was issued, the [SoS] confirmed that Policies 1 and 2 of the [NP] should be afforded greatly reduced weight in the determination of planning applications.* With regard to LP policy C1 and NP policy 1, both parties referred to the requirements of NPPF §14(2)<sup>32</sup>, regarding the presumption in favour of sustainable development, as the 'tilted balance'. They also referred to the outcome of the Supreme Court Judgment in *Hopkins*<sup>33</sup>. It should be noted that the SoCG, and proofs of evidence, predate this Judgment.
12. The emerging Mid Sussex District Plan (DP) was submitted for examination in August 2016. There has been correspondence between the Examining Inspector and the Council<sup>34</sup> and the appellant highlighted delays and the number of objections. Amongst other things, the DP Inspector calculated that the housing requirement should be increased significantly to accommodate neighbouring Crawley's unmet needs. In reply to my questions, there was a wide divergence of views over the extent of housing land supply (HLS)<sup>35</sup> but agreement that the Council could not demonstrate a 5 year supply. The DP Inspector also identified the SHLAA's failure to study potential mitigation including through highways and footway improvements, selective development of parts of sites, the incorporation of green buffers and other measures<sup>36</sup>. None of the policies in the DP is referred to in the Council's decision notice. I was told at the Inquiry that Hearing sessions are due to resume towards the end of July 2017.

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<sup>29</sup> CD/5/2 §65

<sup>30</sup> Ibid §§96 and 98

<sup>31</sup> SoCG Appendix A

<sup>32</sup> Or, more specifically, the 4<sup>th</sup> bullet point under NPPF §14

<sup>33</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council* [2017] UKSC 37; see also ID1

<sup>34</sup> SoCG Appendix 2, between 20 February 2017 and 31 March 2017, and Ellis Appendix 3

<sup>35</sup> See Ellis Appendix 3 p43 document MSDC15 attached to letter dated 7 April 2017 and ID5

<sup>36</sup> CD/3/3 letter dated 20 February 2017 p9

13. It was common ground that the Written Ministerial Statement (WMS)<sup>37</sup> on Neighbourhood Planning does not apply as the NP makes no allocations. The letter from the former Minister of State for Housing and Planning to the Planning Inspectorate (PINS) dated 27 March 2015 is capable of being a material consideration<sup>38</sup>. A number of supplementary planning documents (SPDs) are also relevant including the Lindfield Village Design Statement (VDS)<sup>39</sup>. There have been various landscape studies including the 2007 Hankinson Duckett Associates (HDA) Landscape Capacity Study<sup>40</sup>, the 2014 Land Use Consultants (LUC) Capacity of Mid Sussex to Accommodate Development Report<sup>41</sup>, the 2015 LUC SHLAA: Review of Landscape and Visual Aspects of Site Suitability<sup>42</sup>, and the SHLAA: Lindfield and Lindfield Rural Assessed Sites<sup>43</sup>.
14. The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) transpose into UK legislation the protection given by the Habitats Directive<sup>44</sup> and the Wild Birds Directive<sup>45</sup>. The Habitats Regulations include general provisions for the protection of European sites and European offshore marine sites. Regulation 61 places a specific duty on the competent authority to consider if the plan or project would have likely significant effects (LSE) on a European site. In the event of LSE where the plan or project is not directly connected with or necessary to the management of that site, the competent authority must make an appropriate assessment (AA) of the implications for the site in view of the site's conservation objectives. Furthermore Regulation 61(2) states that *'a person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required'*.
15. Under the Habitats Regulations<sup>46</sup>, where LSE on a SAC cannot be excluded, the competent authority shall undertake any screening exercise and any subsequent AA. If there is a negative AA for a site the competent authority can only proceed to determine in favour of development subject to the requirements of Regulation 62 and considerations of overriding public interest. This introduces three tests which should apply in determining whether the project can proceed. The three tests are that: there are no alternative solutions; there are imperative reasons of overriding public interest (IROPI); and all necessary compensatory measures are taken. NPPF §119 directs that the presumption in favour of sustainable development (found in NPPF §14) does not apply where development requiring appropriate assessment is being considered, planned or determined.
16. In formulating the principal point at issue in *Wealden*, the Judge emphasised the phrase "in combination with" as lying at the heart of the case. The claimant did

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<sup>37</sup> CD/1/4 dated 12 December 2016 by former Minister of State for Housing & Planning

<sup>38</sup> Ellis appendix 4

<sup>39</sup> CD/5/5 adopted as a Supplementary Planning Document on 10 October 2011

<sup>40</sup> CD/3/9

<sup>41</sup> CD/3/10

<sup>42</sup> CD/3/8

<sup>43</sup> CD/3/6

<sup>44</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive')

<sup>45</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (as codified) (the 'Birds Directive')

<sup>46</sup> Habitats Directive Article 6(3)



not suggest that deleterious environmental effects were likely to have a significant effect on the SAC were they to be considered in isolation. The point was that they must properly be considered in tandem with another (and earlier) Joint Core Strategy. The essential contention made was that if relevant data and findings are properly amalgamated, as they should be, the effects of increased traffic flows near the SAC would not have been ignored at the first screening or scoping stage of the process<sup>47</sup>. The Judgment repeats the precautionary principle<sup>48</sup> that *where there is a risk of significant adverse effects to a protected site, there should be an appropriate assessment; and such a risk exists "if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned"; and "in case of doubt as to the absence of significant effects such an assessment must be carried out.*

### Planning History<sup>49</sup>

17. There have been no relevant planning applications for the appeal site. Fields F11 and F12<sup>50</sup> were put forward with the adjacent Heathwood Park site for allocation in the Council's Core Strategy. Planning permission<sup>51</sup> was granted for 230 dwellings on land to the North of Lyoth Lane known as the Heathwood Park development. The western part of field F17 in the south-west part of the appeal site was set aside, and granted planning permission<sup>52</sup> for informal recreation.
18. An appeal by Taylor Wimpey against the refusal of an outline application for up to 130 dwellings off Gravelye Lane (the Gravelye Lane site) was withdrawn following the grant of outline planning permission<sup>53</sup> for the same development.

### The Appeal Proposals

19. The application details and supporting documents, and the agreed appeal drawings, are listed in the SoCG<sup>54</sup>. Of particular relevance to the issues in this appeal are the Design and Access Statement (DAS)<sup>55</sup>, the Landscape and Visual Impact Assessment (LVIA)<sup>56</sup> and the Zone of Visual Influence (ZVI)<sup>57</sup>. The revised illustrative drawings reflect the change in location of the school. The review of the LVIA<sup>58</sup> concluded that, overall, the LVIA and accompanying landscape strategy and management plan were thorough documents.
20. The proposal for up to 200 houses on around 8 ha (or about a quarter of the site) would roughly equate to a density of 25 dwellings per ha of which 30 per cent would be affordable. There would be a new access from Scamps Hill, close to its western junction with East Mascalls Lane, which would be realigned to form a staggered four arm junction, the details of which are part of the application,

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<sup>47</sup> *Wealden* Judgment §6

<sup>48</sup> *Ibid* §44 referring in turn to the Decision of the ECJ in *Waddenzee* (C-127/02)

<sup>49</sup> SoCG s3

<sup>50</sup> See CD/4/5: LVIA Fig5

<sup>51</sup> 12/04316/FUL in 2013

<sup>52</sup> 13/02746/COU

<sup>53</sup> Ref. DM/16/5648 dated 7 March 2017 - See officer's report at Ellis Rebuttal Appendix A

<sup>54</sup> §§2.7-2.13

<sup>55</sup> CD/4/1

<sup>56</sup> CD/4/5

<sup>57</sup> Peacock Appendix E.3

<sup>58</sup> By LUC: CD/4/13

using the triangle of land within the appeal site<sup>59</sup>. A length of boundary hedge would be removed for visibility splays and indicative/illustrative drawings for Field 12 show that houses would be set back behind new landscaping. Subject to reserved matters, a *village green* style arrangement could be introduced<sup>60</sup>.

21. The houses would be positioned in a broad band alongside Northlands Brook in the lower parts of the site. The illustrative plans show that they would be set back a little from Scamps Hill and ridge heights could be lower than those on Heathwood Park<sup>61</sup>. A new one form entry primary school<sup>62</sup> would be located on the only flat area of the site, near the Walstead Nursing Home, and 9.54ha of the higher areas of the site would be given over to a new country park. It is proposed to include a secure dog walking area of approximately 4ha. The 3.2ha wilderness area, previously provided as required for the Heathwood Park estate, would be replaced by a 9.54ha country park which would be made available in perpetuity and encompasses a 4.06ha area of informal recreational open space and a secure dog walking area of 4.18ha<sup>63</sup>.
22. The Transport Assessment<sup>64</sup> sets out pedestrian improvements between the vehicular entrance, the nearest bus stop and Lindfield; two pedestrian and cycle connections, including emergency access, would link the development to Heathwood Park; two pedestrian routes through the country park which would connect the houses to Snowdrop Lane and an existing footpath beyond; and a further pedestrian access would link up with the footpath to Lyoth Lane<sup>65</sup>.
23. It was common ground that the appeal proposals would provide a number of economic, social and environmental benefits including: expenditure and employment during construction, economic output and local expenditure by future residents, new homes including AH, and a country park. In recommending approval, the officer's report<sup>66</sup> acknowledged the representations on the AF but its conclusions were silent on this matter.

### **The Case for Wates Developments Ltd.**

The gist of its case was as follows.

24. The appeal site lies outside, but immediately adjacent to, the settlement boundary for Lindfield, categorised as a village in the LP, and which in turn is contiguous with Haywards Heath. The site is well located in terms of its access to services and facilities by sustainable modes of transport. The Council has no 'in principle' objection to development of land outside the adopted settlement boundary of Lindfield but does pursue a landscape objection in its one remaining reason for refusal. The second reason is no longer maintained having been overcome by the s106 obligation.

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<sup>59</sup> Summarised in the DAS §5.12 pp57-58

<sup>60</sup> the Urban Design Officer found that a village green style arrangement would provide an attractive threshold to the development and maintain or enhance the rural character beyond the knot of houses on Scamps Hill

<sup>61</sup> Shelton §6.34 referring to the DAS CD/4/1 s4.0 p34

<sup>62</sup> Increased from ½ form entry in the original description

<sup>63</sup> ID20: SoCG §3.3 and 5.3

<sup>64</sup> CD/4/2 §5.3

<sup>65</sup> CD/4/1: DAS §2.11 p19 and CD/4/2: Transport Assessment (TA) Appendix M Drawings: ITB3139-GA-032 Rev C, ITB3131-GA-026 Rev C and ITB3139-GA-027 Rev D

<sup>66</sup> CD/4/15

25. The Supreme Court Judgment in *Hopkins* was handed down less than a week before the Inquiry opened. In overturning the 'wide' interpretation of NPPF §49, in favour of a 'narrow' one, it has caused the two main policies at issue, LP C1 and NP Policy 1 to be re-categorised. However, these were in any event out of date by reference to NPPF §215 on account of the change in circumstances since they came into force. It is therefore agreed that NPPF §14(2) is still engaged and the *Hopkins* Judgment does not alter this position.
26. It was common ground that the Council raised no objection with regard to design and gave no evidence on connectivity or legibility, which are covered in the illustrative layout plans and transport statement, and which will be considered in detail at the reserved matters stage when circulation arrangements, architectural signposting and green infrastructure can be refined.
27. Following the 'narrow' definition required by the *Hopkins* Judgment, LP Policy C1 and NP Policy 1 are not subject to the provisions in NPPF §49. Nevertheless, the housing policies are out of date and so NPPF §14(2) is engaged in any event<sup>67</sup>. Moreover, Policy C1 may still be out of date due to changed circumstances, or planning policy, since it is based on settlement boundaries which were adopted in 2004, prior to the NPPF, for needs up to 2006 and is therefore out of date<sup>68</sup>. The same applies to NP Policy 1. While both remain part of the development plan, the significant point from the *Hopkins* Judgment is that the tilted balance in NPPF §14(2) applies.
28. The Council is now pursuing its emerging District Plan (DP). The Interim Findings<sup>69</sup> concluded that the housing requirement is likely to be 1,026 dwellings per annum (dpa) and that the DP will need to give a strategic indication of the distribution by settlement<sup>70</sup>. The timing of delivery, and the implications of the AF SAC, remain unresolved<sup>71</sup> but in any event the requirement will be significantly higher than the pre-NPPF figure of 530 dpa. With regard to distribution, the Council has indicated to NP fora that their NPs should be delayed or that existing ones will need to be reviewed. The actual HLS figure should be somewhere between 2.40 and 4.27 years but, with reference to *Phides*<sup>72</sup>, this cannot be relied upon. The written ministerial statement is not relevant as the NP makes no allocations and there is no prospect of this being resolved before the SoS's Decision is made.
29. The NP Examiner identified that the initial draft would be in conflict with NPPF §184<sup>73</sup> and recommended that it should only proceed after post-2004 development sites and SHLAA site 6 (the Gravelye Lane site) were included. Nevertheless, the NP was made without these changes and so it was accepted at *Birchen Lane*<sup>74</sup> that it was out of date as soon as it was made. Although the Gravelye Lane site has now been permitted, this does not alter the fact that Policy 1 never provided for development needs. Moreover, since then the likely district requirement has moved, from 530 dpa to 656 to 800 to 1,026 dpa in the

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<sup>67</sup> Following *Phides*

<sup>68</sup> Acknowledged by Ellis and confirmed in the Council's closing §12

<sup>69</sup> CD/3/3: letter from the examining Inspector, dated 20 February 2017

<sup>70</sup> Ibid p11

<sup>71</sup> Following the Judgment in *Wealden*

<sup>72</sup> *Phides Estates (Overseas) Ltd v SSCLG* [2015] EWHC 827 (Admin) – see Appellant's closing

<sup>73</sup> CD/5/2 §96

<sup>74</sup> CD/2/1 Inspector's Report (IR) §15

Interim Findings, together with a requirement for a strategic distribution. It follows that *quite apart from paragraph 49*<sup>75</sup> the NP Policy 1 boundaries are out of date and, following NPPF §215, of limited consistency so that its weight should be reduced. In summary, the Council does not have a 5 year housing land supply (5YHLS) and the NP is based on failing to provide what was even then an out of date figure but which should now be much greater.

30. The overall conclusion on housing policy should be that NPPF §14(2) should be engaged with additional weight given to the provision of 200 houses, of which 30% would be affordable, and that NP Policy 1 is out of date due to its continued conflict with the NPPF regardless of housing supply.

#### *Character and appearance*

31. The Council's allegations, with regard to character and appearance by encroaching beyond the valley bottom, and to impact on Walstead, appeared to somewhat merge. The context is important and the Council conceded<sup>76</sup> that it is not arguing any in-principle objection to development outside the settlement boundary and in the countryside. It would be inappropriate to refuse permission by reference to out of date settlement boundaries<sup>77</sup>. While the objections are based on landscape, the policies cited are both in conflict with the NPPF as they disallow any proposals outside settlement boundaries on the ground of harming the landscape. By contrast, the NPPF §17.5 principle of recognising *the intrinsic character and beauty of the countryside* requires either a *valued landscape*<sup>78</sup> (NPPF §109.1) or *criteria based policies* (NPPF §113). This nuanced approach is at odds with LP Policy C1 and NP Policy 1 which should be given reduced weight under NPPF §215 as should the weight to any landscape harm.
32. It is also important to assess the area over which any landscape impact would be experienced. While the site itself would experience significant change, that applies to all greenfield development. However, it is a tribute to the landscape led approach that that the only appreciable off-site changes would be immediately around the entrance<sup>79</sup>. Moreover, any landscape harm must be balanced by the very significant landscape benefits arising from the 9.54ha Country Park and site planting as a whole. Roughly  $\frac{3}{4}$  of the site's most sensitive landscape areas would be improved compared with that to be developed.
33. Although the development would cross the Brook into the valley bottom, this is an area of landscape which now adjoins Lindfield. These features were taken into account in the LVIA<sup>80</sup> and neither the Brook nor the areas of adjoining treebelt would be affected as landscape receptors. While the landscape character of the site would be altered, this has been twice identified as having capacity for development<sup>81</sup>. The landscape-led approach would position development down into the less prominent, lower lying parts of the site<sup>82</sup> and this was endorsed by

<sup>75</sup> To quote from *Hopkins*

<sup>76</sup> Ellis in XX and Ross in XX

<sup>77</sup> See London Road, Hassocks CD2/4: DL16; IR192

<sup>78</sup> See Stroud DC [CD2/5] Peacock is silent on this point

<sup>79</sup> Peacock Appendix E, Fig E.3

<sup>80</sup> As acknowledged by Peacock in XX

<sup>81</sup> By HDA in CD/3/9 and LUC in CD/3/10, CD/3/6 and CD/4/13

<sup>82</sup> Shelton Figs 11 and 11A

LUC<sup>83</sup>. Neither the Brook nor the tree belt have any historical background as a settlement boundary, this having been recently extended by Heathwood Park, and such expansion is entirely characteristic of the settlement pattern. Under The Land Trust<sup>84</sup>, the new Country Park would become an inviolable eastern boundary.

34. The magnitude of change would be no more than moderate<sup>85</sup> and even where the change would be prominent along Scamps Hill, it would not be incongruous. Of the three sustained landscape objections<sup>86</sup>, field F12 is in fact in the lower lying part of the site. The gateway objection turned into more of a processional route, or enclosed green corridor, and the scheme would have no effect on the knot of houses on Scamps Hill. Indeed, the Council argued<sup>87</sup> that the Gravelye Lane scheme would have no effect on this gateway due to its set back and tree belt while opposing a similar frontage treatment for the appeal proposals.
35. Finally, the part of the site with a relationship to Walstead is precisely that which the LUC study<sup>88</sup> found to be most suitable for residential development. The Heathwood Park and Gravelye Lane developments will join Lindfield with the knot of houses along Scamps Hill while the balance of the site would not impinge on Walstead at all. The treatment of field F12 was supported by the Urban Design Officer<sup>89</sup> and found by LUC to preserve Walstead's character<sup>90</sup>.
36. While various documents refer to the *hamlet* of Walstead, none of them identifies or characterises where it is, or of what it comprises, and nor could the Council, eventually deferring to the historical evidence<sup>91</sup>. Without identifying what a settlement is, it is not possible to assess its character or impact on it. The history and development of an area are key to assessing current character and the nearest to what might be called a *hamlet* is the knot of houses which relate to the road and turn their backs on the rural area beyond. In fact, Walstead comprises 3 discrete areas in the landscape<sup>92</sup>. Against this background, the *village green* proposals would be an appropriate response.
37. As above, the approach to Scamps Hill was endorsed by LUC as preserving the rural character of Walstead and by the Urban Design Officer who encouraged the village green. Although there is an illustrative proposal<sup>93</sup>, this is a matter for the detailed stage. The Council did not make a design objection but tried to invoke LP Policy B1(a) and NPPF §61 to support an objection to frontage development. However, if maintained, this could be accommodated at reserved matters stage by, if necessary, removing the 15 houses in Area B and redistributing them within the developable area or reducing the overall number. Given the extremely

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<sup>83</sup> CD/4/13 §3.2

<sup>84</sup> Shelton Appendix 7 and ID9: letter from The Land Trust dated 15 May 2017

<sup>85</sup> See LVIA [CD/4/5] Appendix 1 'methodology' Table 3 'Magnitude'

<sup>86</sup> Relationship to Walstead'; an important gateway; and field F12 being elevated. Counsel confirmed that coalescence was not part of its case

<sup>87</sup> Peacock in XX

<sup>88</sup> CD/3/8

<sup>89</sup> CD/4/14

<sup>90</sup> CD4/13, §3.2

<sup>91</sup> Peacock deferred to Cooper in XX

<sup>92</sup> Cooper in XX

<sup>93</sup> Shelton Appendix 9

limited ZVI, compared with the Council's indicative extent of Walstead<sup>94</sup>, there would not be a significant effect on this wider area either.

38. Whether defined narrowly or widely, there would be no unacceptable harm to the character and appearance of the area and the scheme would successfully *preserve the rural character of Walstead*<sup>95</sup>. The Council's case rejects not only the thorough LVIA but also the opinions of the planning officer<sup>96</sup> and the urban design officer<sup>97</sup> as well as the landscape consultant<sup>98</sup>.

#### *Sustainable development*

39. The proposals would amount to sustainable development. Even without the support of the test in NPPF §49, the relevant policies are out of date judged against NPPF §215. The development plan still applies but through the prism of NPPF §14(2) which is engaged. Permission should only be refused if *the adverse impacts would significantly and demonstrably outweigh the benefits*. The benefits were not disputed and comprise the substantial weight to be given to housing and AH on a sustainably located site with no 5YHLS, a 1 form entry (FE) primary school, public open space; economic development, biodiversity and landscape benefits to nearly three quarters of the site including a 9.54ha country park.
40. The only harm alleged is to the landscape affecting only 27% of the lower, less visible, part of the site which itself is an undesignated and ordinary landscape and would only be experienced from adjacent roads. Permission should be granted.

#### *Planning balance*

41. The starting point is s.38(6). The proposals would breach LP policy C1 and NP policy 1. Neither is drafted in accordance with NPPF §113 and must be given reduced weight. Of the material considerations, the most pertinent is the tilted balance in NPPF §14(2). To refuse permission would be to prevent sustainable development in direct opposition to government policy. Even without the tilted balance, the scheme should be allowed.

### **The Case for Mid Sussex District Council**

The gist of its case was as follows.

42. The appeal site is outside the settlement area of Lindfield next to the hamlet of Walstead. It is not proposed for development in the current or emerging development plan. Although contrary to recommendation, after careful consideration the proposals were correctly refused by the committee because of the significant adverse landscape and visual effects and the unacceptable impact on the existing character of Walstead.
43. Following the statutory presumption, the appeal should be determined in accordance with the development plan unless material considerations indicate

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<sup>94</sup> Peacock Appendix E.2 and E.3

<sup>95</sup> CD/4/13: LUC Consultation response at §3.2

<sup>96</sup> CD/4/15

<sup>97</sup> CD/4/14

<sup>98</sup> CD/4/13

otherwise. Here, the proposals would fail to comply with LP policies (C1 and B1) and NP Policy 1 and so permission should be refused. Following the Judgment in *Hopkins*, Policy C1 is not a relevant policy for the supply of housing under NPPF §49 and is not therefore out-of-date for those purposes. The appellant contended that, as the development boundary is out of date and reflects housing targets from an old structure plan, Policy C1 is still out of date against NPPF §215 and so should attract significantly reduced weight. However, that does not make Policy C1 out of date for all purposes and a more nuanced approach is needed.

44. Following *Daventry*<sup>99</sup>, it is not enough to give a restrictive countryside policy, seeking to protect it for its own sake, reduced weight purely for that reason. The submissions rejected by the Court of Appeal are essentially the same as those before this Inquiry. Rather, it is necessary to consider compliance with the NPPF as a whole<sup>100</sup> and the weight to be attached to Policy C1 should be case specific depending on the degree of harm to the countryside. If there would be no significant harm, the policy should be given little weight<sup>101</sup>. In the light of the evidence here for substantial harm, Policy C1 should attract significant weight.
45. LP Policy B1 merits full weight<sup>102</sup>. The only disagreement was whether it applies at the outline stage but, if achieving a design that would respect the townscape or landscape could not be resolved through reserved matters then clearly it would<sup>103</sup>. The same should apply to the requirements of NPPF §61. Here, the impact from an increase in built form adjacent to the hamlet of Walstead would fail to respect the character of the locality and its landscape setting contrary to Policy B1(a). It would be unreasonable to require the built form, shown adjacent to Walstead in field F12<sup>104</sup>, to be removed as the developable areas have been defined in the appeal. Screening with belts of trees would be equally unacceptable.
46. The reason the scheme would fail to respect the character of Walstead is that the appellant has failed to accept that Walstead is a hamlet. The erroneous approach<sup>105</sup> of looking at individual receptors rather than a coherent settlement has led to a design without regard to the contribution that field F12 makes to the character of the hamlet of Walstead and so a breach of Policy B1(a) that cannot be resolved by reserved matters.
47. NP Policy 1 sets a spatial plan for the parishes within a recently made plan. The supporting text explains that: *Whilst it does not necessarily rule out proposals outside of the built up area boundary the policy expects the countryside policies of the Mid Sussex development plan and of the NPPF will continue to apply significant policy constraints to development in the open countryside.* The Conformity Reference confirms that this complies with LP policies G2, C1 and C2 and NPPF §17, §55 and §109. After *Hopkins*, it is agreed that NP Policy 1 is not a

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<sup>99</sup> *Gladman Developments v Secretary of State for Communities and Local Government and Daventry District Council* [2016] EWCA Civ 1146

<sup>100</sup> *Ibid* §§41 and 42

<sup>101</sup> As was the approach of the Inspector in London Road, Hassocks CD/2/4, DL §16 and IR191-192; and as adopted by the Council in granting permission at Gravelly Lane - See officer's report at Ellis Rebuttal Appendix A

<sup>102</sup> As acknowledged in Ross §6.70

<sup>103</sup> Ross in XX

<sup>104</sup> As identified in the DAS p36

<sup>105</sup> By Cooper and Shelton, confirmed in XX

relevant policy for the supply of housing. It should not instead be deemed out of date, for not providing the LP's development requirements, when over the last 8 years planning permission has been granted in Lindfield for more than 575 homes on large sites<sup>106</sup>. In fact, including the site at Scaynes Hill, there have been permissions for 626 dwellings over this time.

48. At the draft NP examination, when the planning permissions for Lindfield stood at 415 dwellings, the report recognised that Lindfield had *done its bit* but also *that the provision of land for housing in the [NP] is significantly less than the need indicated*, and so not *the positive planning sought by the Framework*<sup>107</sup>. The Inspector's only objection to NP Policy 1 could have been overcome by the allocation of the Gravelly Lane site. Since that report, the NP has been made and this site, and sites for another 91 homes<sup>108</sup>, have been permitted. It follows that the reasons for reducing the weight to be given to NP Policy 1 in previous Decisions no longer apply. To conclude on the development plan, even if LP Policy C1 or NP Policy 1 were to be found out of date, the breaches of these policies remain significant matters which must be given due weight even when conducting the 'tilted balance' within NPPF §14(2).
49. The district's housing requirement has not yet been settled by the DP Examination process. Until then, the Council accepts that it does not have, and is not seeking to rely on, a 5YHLS. However, following the Inspector's request, the Council has advised that the current position is between 2.4 and 5.25 years<sup>109</sup>. It has certainly improved since recent appeal Decisions<sup>110</sup>. Although this means that NPPF §14(2) applies, this does not alter the primacy of the development plan. Indeed, compliance with it is part of the 'tilted balance'. In this appeal, the breach should be given significant weight.
50. The Council accepts that, of itself, such a policy breach would not significantly and demonstrably outweigh the benefits without real-world harm. The appellant<sup>111</sup> also accepted that a landscape and visual impact objection can, in principle, lead to refusal if the harm would significantly and demonstrably outweigh the benefits. This would apply whether or not a landscape is designated and is supported by the reference to *the intrinsic character and beauty of the countryside* in NPPF §17 and the Minister's letter<sup>112</sup>.
51. Some parts of the countryside are more suitable for development than others, regardless of national and local designations. Such matters are always site specific and the strategic land reviews provide objective evidence that does not suggest that the appeal site is suitable for the scale of development proposed.
52. In the first of these, the 'broad brush' 2007 Study<sup>113</sup>, the site falls within the medium landscape capacity area LCA43 for the Hayward Heath High Weald but this notes itself that some parts are more or less suitable for development. The

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<sup>106</sup> Ellis proof §§5.14 and 5.21

<sup>107</sup> CD/5/2 §§48, 55 and 60

<sup>108</sup> 40 homes at Birchen Lane and 51 at Barn Cottage

<sup>109</sup> See full explanation in Council's closing §§28-34, in response to Inspector's questions (IQ)

<sup>110</sup> Ellis in chief (IC) referring to the previous supply of 1.9-2.2 years

<sup>111</sup> Ross in XX

<sup>112</sup> Ellis Appendix 4

<sup>113</sup> By Hankinson Duckett at CD/3/9



- 2014 Report<sup>114</sup> maintained the verdict of medium capacity but was also broad brush, not site-specific, and pre-dated the most recent permissions.
53. The 2015 SHLAA was the first to look at sites specifically and concluded that the majority of the appeal site had a low suitability for development. It noted settlement setting and separation as the key concerns and these are the basis for the Council's main reason for refusal. It acknowledged that the Heathwood Park estate had extended the town to the valley floor but felt that: *Development to the east of the valley floor would nonetheless still mark a significant change in the extent of the town, diminishing the hilltop character of the Lyoth Common suburb, and the wooded valley floor (left undeveloped as a wilderness nature reserve) would disconnect any new development from existing.*
54. With regard to the impact on settlement separation, it commented that *development would have a sizeable impact on the separate character of Walstead.* Contrary to the appellant's evidence<sup>115</sup>, the 2015 SHLAA did look at variations across the site but found only two sub-areas that were more suitable for development. Otherwise, it concluded that landscape suitability was low, and that most of the site was unsuitable for development, unlike the Gravelye Lane site. The review of the LVIA restated the key sensitivities related to settlement setting and separation<sup>116</sup>, questioned the appellant's conclusion of moderate adverse landscape impact, and noted that the change within the built part could be of high magnitude.
55. The elements of the site that take it above the *common garden variety* of countryside are: its association and contribution to the setting and separate character of Walstead, its contribution to the *gateway* to Lindfield<sup>117</sup>, and its role as a natural boundary to built development on Northlands Brook. These align with the 2015 SHLAA review and are capable of making the site part of a valued landscape.
56. Recent expansion<sup>118</sup> has now reached its natural boundary defined by the woodland belt along Northlands Brook. This distinguishes between the rural landscape character, the local valley side plateau, where Walstead lies, and the suburban character of Lindfield on rising ground to the west. The scheme would change the natural tree-lined skyline to the south, and the rising fields, so that both are replaced with roofscapes. The existing woodland belt is a relatively strong settlement boundary<sup>119</sup> and the Village Design Statement (VDS) expects schemes to work with such key features. Extending beyond this would result in a disconnected development.
57. The landscape is one of high sensitivity and, even with development limited to the lower western parts, the extension beyond Northlands Brook would have a major adverse effect. The north facing slopes of development would be visible from the high sensitivity receptors along Scamps Hill Road and would not be acceptable in landscape terms.

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<sup>114</sup> CD/3/10: Land Use Consultants (LUC): The Capacity of Mid Sussex to Accommodate Development

<sup>115</sup> Shelton proof 2.27 and appendix 3

<sup>116</sup> By LUC: CD/4/13 dated December 2015 following a site visit on 8 October 2105

<sup>117</sup> Including rural views across the site identified by Peacock, the NP CD/5/1 §2.3 and Village Design statement CD/5/5 p5

<sup>118</sup> At Gravelye Lane/Lyoth Lane and Heathwood Park

<sup>119</sup> Acknowledged by Shelton in XX

58. The appellant's position on the impact on Walstead is to argue that it doesn't exist. While there could be different views as to whether it is a *hamlet* or a *settlement*, on its boundaries or the extent to which effects might be experienced, one cannot deny that Walstead exists. Indeed, the LVIA, and DAS refer to the *settlement of Walstead*, the NP, Examiner's report and VDS to it as a *hamlet*, the SHLAA refers to a *rural settlement*, and the Ordnance Survey map marks it as a *settlement*.
59. It is not necessary for Walstead to have a firm boundary to assess the impact on its character and appearance as the only issue over visibility is from Scamps Hill Road. What is necessary is an appraisal of the effects on the settlement as a whole. By erroneously taking the view that it does not have a separate character, and only looking at individual receptors, the overall effect has been undervalued. That is not to say that potential coalescence has been overlooked as this is not the same as affecting separate settlement character.
60. The historical analysis<sup>120</sup> says little about the *existing* character which is the focus of the reason for refusal regarding Walstead. It ignored the significance of the rural landscape in favour of the buildings and so it is not surprising that the scheme would be insensitive to its character and appearance. As well as fields F12, F13 and F19, the formidable buildings of Walstead Manor and Walstead Place, the adjacent terraces with large oak trees and managed hedgerows, and the triangular area of pasture, also define its character.
61. The proposed buildings on field F12, the removal of roadside hedges and a new T-junction into the historic triangular shaped field would all complicate the neat junction with new alignments and introduce a new complexity that would be out of keeping. It would fundamentally alter the rural character of Walstead and any separate character from Lindfield. It is wrong to argue that these can be addressed at reserved matters stage, or screened out by trees, as they would fundamentally alter the existing context, remove key views and extinguish the separate rural character.
62. The planning balance must be applied as NPPF §14(2) but this is not a trump card. The proposals would be contrary to the development plan and this, taken with the landscape harm and that to the character and appearance of Walstead, is sufficient to significantly and demonstrably outweigh the benefits. The scheme would be contrary to the local and neighbourhood plans which set out a positive vision for the future of the area.
63. Comparisons with the adjacent Gravelye Lane site are misguided as these are not comparable and it would be wrong in law to conclude that a heritage objection necessarily outweighs a landscape one. The appeal should be dismissed.

### **Interested parties<sup>121</sup>**

64. Councillor Dumbleton<sup>122</sup> spoke on behalf of Lindfield Rural Parish Council to argue that the scheme would harm Walstead and Lindfield Village contrary to the NP and provide more than the 5 year needs on one site alone. He highlighted the

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<sup>120</sup> By Cooper

<sup>121</sup> The full statements are listed as IDs below.

<sup>122</sup> ID6

efforts in producing the NP, the nature of Walstead, and the effect of 2 years of construction, and the primary school, on the Walstead Nursing Home.

65. Mr Kennedy spoke for 650 local residents of the Lindfield Preservation Society. He emphasised the number of developments in the area in recent years and drew particular attention to the Judgment in *Wealden*<sup>123</sup>, the concern over *in combination* effects on the Ashdown Forest<sup>124</sup> and claimed that the appellant had failed to provide findings that were *properly amalgamated*<sup>125</sup>. He explained<sup>126</sup> that the A272 which runs past the site joins into the A26 and A22 which run through the AF. He thought that the boundary of the AF was 6km from the site.

## Written Representations

66. A summary of the 333 representations in response to the original application is found in the Officer's Report to committee<sup>127</sup>. The letters written directly to PINS generally highlighted matters covered above. One new point from Ben Larkin concerned the creation of a footpath entrance to the country park alongside Snowdrop Lane and a possible increase in parking as a result.
67. A letter signed by a number of those opposed to the appeal, but unable to attend, was submitted to the Inquiry<sup>128</sup> highlighting what it put as the potentially life changing 500% increase in housing to the community.

## Conditions

68. A list of conditions<sup>129</sup> and reasons for their inclusion was discussed at the Inquiry. Unless stated, I find that the suggested conditions would satisfy the tests in the Community Infrastructure Levy (CIL) Regulations 2010 and the NPPF. Except as below, or modified for clarity, I recommend that if the appeal is allowed, and planning permission is granted, for the accompanying reasons, the Conditions listed in the Schedule below should be attached.
69. Condition 1 sets out the time limits including reserved matters. Conditions 2-5 require a Construction Management Plan and control drainage and air quality in the interests of amenity including for residents of the adjacent nursing home. Potential contamination risk is covered by condition 6. So that the development is carried out as intended, conditions 7-11 are needed to control the ground levels, require play areas, protect any archaeological remains, require footways and protect biodiversity. To protect ecology and visual amenity, lighting and landscape management should be controlled by conditions 12 and 13. Although access is not reserved and drawings for this are part of the application, in the interests of highway safety site access, parking, cycle parking and realignment on East Mascalls Road require further control through conditions 14-17.

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<sup>123</sup> *Wealden District Council and (1) SoSCLG, Lewes District Council, South Downs National Park Authority and - Natural England* [2017] EWHC 351 (Admin)

<sup>124</sup> In what was rather more of a statement than XX, Boyle advised that he had no evidence on the AF, would address me on *Wealden*, that the SoS is the competent person with regard to any Habitats Regulations Assessment (HRA) and that I only needed to report what was available at that time.

<sup>125</sup> *Wealden* §6

<sup>126</sup> In answer to IQs

<sup>127</sup> CD/4/15 4<sup>th</sup> page (not numbered)

<sup>128</sup> ID12

<sup>129</sup> ID15 – Agreed planning conditions with track changes

## Planning obligation<sup>130</sup>

70. I have assessed the s106 Agreement<sup>131</sup> in the light of the CIL Regulations which set 3 tests<sup>132</sup> for such obligations which are reflected in NPPF §§203-204. From April 2015, CIL Regulation 123(3) also restricts the use of pooled contributions that may be funded via a s106 obligation if five or more obligations for that project or type of infrastructure have already been entered into since April 2010 which could have been funded by the levy. It was common ground that as a result of the s106 Agreement the scheme would not be contrary to relevant infrastructure policies but would meet the tests in the CIL Regulations, the NPPF and LP policies G3 and H4<sup>133</sup>. Justifications for the provisions were provided by the Council<sup>134</sup> and by West Sussex County Council (WSCC)<sup>135</sup>.
71. The s106 Agreement would oblige 30% of the dwellings to be a mix of AH<sup>136</sup> in locations to be approved by the Council. It would require details for the transfer of the proposed country park to the charity The Land Trust<sup>137</sup> together with a substantial endowment for it to manage the park in perpetuity. It would secure the transfer of the Primary School land to WSCC, implementation of a Travel Plan and adoption of the estate roads.
72. There would be financial contributions to the Council towards: formal sports improvements at Lindfield Common, a Community Building Contribution to make improvements at Scaynes Hill Millennium Centre, a Local Community Infrastructure contribution towards either a new public toilet facility at Lindfield Common and/or new allotment provision in Scaynes Hill, and a Health Infrastructure contribution towards improvements at the Lindfield Medical Centre and/or improved facilities at Northlands Wood Surgery.
73. Financial contributions to WSCC would go towards: Primary and Secondary Education for construction on the appeal site and expansion at Oathall Community College, library services at Haywards Heath library, and highway works and junction works as detailed in the application. A SoCG on education sets out the detailed requirements and justification<sup>138</sup>. With regard to the library contribution, a further email confirms that there is a planned scheme to extend the Haywards Heath library and remodel the internal layout<sup>139</sup>. Turning to the health contribution, I was told that no particular project was in place but that details were being worked on.
74. For the reasons set out in detail in the justifications, discussed and agreed at the Inquiry, and agreed in the SoCG, while I would like to have seen more detail regarding the proposed health contribution, I note that there is a repayment

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<sup>130</sup> See summary at updated ID8

<sup>131</sup> ID21: signed and dated 9 June 2017

<sup>132</sup> These are: *necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.*

<sup>133</sup> ID20 SoCG §8.1

<sup>134</sup> Ellis appendix 6: Written justification by MSDC

<sup>135</sup> ID10

<sup>136</sup> including a mix of Affordable Rented Units/Social Rented Units and Shared Ownership Units (as set out in the Agreement in Part Two of the Second Schedule)

<sup>137</sup> See ID9

<sup>138</sup> Signed and dated by the appellant and WSCC on 27 April and 2 May 2017 respectively

<sup>139</sup> ID16

clause<sup>140</sup> and overall I am persuaded that all these obligations would satisfy the NPPF tests and recommend that the SoS reach the same conclusion. The Schedule shows that, at the time of the Inquiry, there had been at most 4 pooled contributions towards any item and that those put forward would therefore comply. However, if much time passes between the close of the Inquiry and issuing the Decision, the SoS may have to satisfy himself that this remains the case.

75. Clause 16.9 of the Agreement states that should the SoS find that any of the obligations are non-compliant with the 3 tests in CIL Regulation 122, and expressly states within the Decision Letter that this is the case, that or those obligations will not be enforceable and cease to have effect. This is without prejudice to the remainder of the Agreement. For all the above reasons, I consider that all the provisions of the s106 Agreement would satisfy the relevant tests and should be unaffected by Clause 16.9.

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<sup>140</sup> ID21 Fourth Schedule §2.1

## **Inspector's Conclusions**

From the evidence before me, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

### *Main considerations*

76. Following the submission of a signed and dated s106 Agreement, the main considerations remaining in this appeal are as follows:
- (i) the effect of the proposals on the character and appearance of the area with particular regard to the landscape around Northland's Brook and the valley bottom, and to Walstead;
  - (ii) whether, on balance, the proposals would amount to sustainable development as defined in the NPPF;
  - (iii) whether, on balance, the proposals would comply with the development plan as a whole,
  - (iv) the implications of complying with the Habitats Regulations.

### *Character and appearance*

#### **NORTHLAND'S BROOK AND THE VALLEY BOTTOM**

77. The appeal site lies just outside Lindfield within LCA 43 in the 2007 Study which includes the recently constructed Heathwood Park estate and the Gravelye Lane site. The western boundary of the site runs alongside Northland's Brook, and the lowest part of the site, across the Brook from Heathwood Park. The appeal proposals would develop most of the land alongside the valley bottom with new houses. The wilderness area created as part of the Heathwood Park estate would be redeveloped but reinstated in a different form within a much larger country park. [5-7,24,33,42,51]
78. There can be no doubt that the development would harm the rural agricultural landscape qualities alongside the valley bottom by permanently altering the other half of its countryside setting into built development as well. On the other hand, the proposals would retain existing landscape features alongside the Brook, such as hedgerows, woodlands and trees, enhance these where appropriate, and have extensive new landscaping. Unlike much of the district, none of the site has any landscape designation. While it may still have value, the balance of evidence at the Inquiry and the site visits did not support the argument that any of the areas of the site proposed for development should benefit from protection as valued landscapes under NPPF §109. [5,31-33,53,55]
79. The existing woodland belt around Northland's Brook and the valley bottom is currently a relatively strong natural boundary to built development. However, it is also a very recent one, only becoming a boundary as a result of the Heathwood Park estate. Extending beyond the Brook would result in a slightly disconnected development when seen from the air but, on the ground, the loss of this recent boundary would only register outside the site around the point of the access and from the Heathwood Park estate with which it would not be out of character. [5-7,32,53]
80. Of the various landscape studies, the 2007 Study is now of some age, pre-dates the NPPF, was a general report which only gave indications of likely acceptability

and/or constraints, and warned against reaching any site specific conclusions. It is of limited assistance in this appeal. The 2014 Capacity Report looked again at the district, and at LCA 43, but was also 'broad brush'. Even the two most recent and detailed June 2015 SHLAA studies, which identified the area as site 483 and found that the majority of the site had a low suitability for development, only looked at the existing situation and made simplistic assumptions. These included the impact from extending beyond Northlands Brook and on Walstead which became the two elements of the Council's main reason for refusal. [6,7,15,33,52-54]

81. The studies did not consider the extent to which potential harm could be overcome and potential benefits enhanced. The DP Inspector referred to the degree to which landscape capacity and other issues might be resolved or mitigated against. For site 483, an appreciation of the landscape and appropriate siting, the potential advantages of a country park and pedestrian links were not considered. Indeed, the SHLAA assumed that *the wooded valley floor (left undeveloped as a wilderness nature reserve) would disconnect any new development from existing*. Under the appeal scheme, this area would be relocated with the double benefit of a larger overall area of recreation and closer ties, including two foot/cycle paths, between the proposed houses and the existing development at Heathwood Park. It also identified a lack of screening compared with the site to the west without considering new landscaping. [7,15,17,22,32-33,52-55]
82. The overall design of the scheme has been led by the landscape and topography and this has produced the potential for ridge heights below those in Heathwood Park, to the country park proposal for the higher ground, and the very limited ZVI. Consideration has also been given to views from Snowdrop Lane and the older properties along it. This is all significant. As a result of the high quality of the overall landscape design, other than immediately around the entrance (see below) few of the changes within the site would be appreciable beyond its boundary. The LUC Review confirmed the thoroughness of the LVIA, and identified significant change within the site and for some properties, but agreed that impacts on users of public footpaths and road would be unlikely to be significant. Subject to close scrutiny by the Council (and probably by concerned neighbours) at reserved matters stage, there is no reason why the scheme would not eventually produce an attractive, if different, environment both alongside the transformed setting to the Brook and from the limited number of viewpoints towards it from beyond the site. [19-21,32,54,57,66]

#### WALSTEAD

83. Much of the evidence regarding Walstead centred on whether it should be defined as a *hamlet*, a *settlement* or a *rural area* with some buildings within it. Although it is important to understand the nature of the area that has been variously referred to as Walstead, whether or not it meets any particular definition adds little. What is important, as identified in the SHLAA, is its *separate character* and whether or not this character, including the mixture of settled and rural parts, would be unacceptably altered. The site visits, including time spent at each of the viewpoints from which photographs were taken, confirmed that the ZVI is limited to Scamps Hill/Scaynes Hill Road and East Mascalls Lane. With one exception, the visits and the submitted analysis demonstrate that most of the proposed development would be out of sight from anywhere that contributes

significantly to the character or appearance of Walstead. Consequently, whatever definition is used, and whether considering individual viewpoints or the cumulative impact, the effect of the scheme on the character and appearance of Walstead would be limited. [6,21,35-38,45-46,58-61,64]

84. Turning to the exception, the indicative/illustrative drawings for the development in Field 12, alongside Scamps Hill, completely ignore, or fail to appreciate, this character but suggest a scheme for anonymous, *anywhere* housing development behind initially modest landscaping. Taken with the removal of roadside hedges, and a new T-junction into the triangular shaped field, this would neither address the knot of houses around Jubilee and Tichborne Cottages, and other existing built forms along the B2111, nor would it be readily screened from them. This would apply whether considering the ZVI or the contribution that field F12 makes to the character of Walstead. Notwithstanding the argument that this criticism might show some inconsistency with the approach at Gravelye Lane, for several years at least the new houses would be visible behind any new planting. Whether assessed as the combination of a number of individual receptors, or as an overall character as seen from Scamps Hill Road, if the development followed the illustrative drawings the houses would be an intrusion into the existing character including its rural aspects and that of the existing houses. The appellant's claim that the treatment of field F12 was supported by the Urban Design Officer is not borne out by the more limited reference there to a village green. [5-8,21,34-37,59-60]
85. The scheme would therefore introduce an unwelcome suburban note into what is at present a rather abrupt change from a rural area to the more urban line of houses experienced along Scamps Hill and in the approach to Lindfield. As a result, this part of the design would fall between two stools being neither out of sight nor well related to existing development along the road. It would fail to heed policy in NPPF §60 to either promote or reinforce local distinctiveness. [5,21,34,45,60]
86. However, although the parties agreed on the drawings on which the appeal should be determined, many of these remain illustrative or indicative and should be interpreted as such providing that any changes would be controlled by reserved matters conditions. While the developable areas would limit the extent of new built form, they are not a requirement to build on every square metre of this, particularly given that the suggested density of around 25 dwellings per ha would be relatively low for new development. There is no good reason why reserved matters should not relocate these proposed dwellings to the south or omit them. Alternatively, subject to details not before me, it might be equally acceptable in design terms for development to echo the existing ribbons of housing along Scamps Hill as well as a village green style arrangement as identified by the Urban Design Officer. Contrary to the Council's argument, the illustrative drawings are just that and reserved matters could include an appropriate design of housing along the road or none. In neither case would this breach the indicated limits to development in the application. [37,45]
87. On this issue, the harm that the residential development, as illustrated adjacent to Scamps Hill, would cause to the landscape would be significant but could, and should, also be overcome. Consequently, whether Walstead is considered a hamlet, a settlement or a rural area with some development, the potential harm that would follow from the indicative scheme would be the same and could be



avoided at reserved matters stage. On this issue, the effect of the proposals on the character and appearance of Walstead should not be a bar to development. [2,37,45,69]

### *Sustainable development*

88. Although the quantum of HLS in the district was disputed, it was common ground that the tilted balance in NPPF §14 should apply and that any potential adverse impacts would need to significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. For the reasons set out below, on the evidence at the Inquiry this cannot be correct. NPPF §7 identifies three dimensions to sustainable development. There was no dispute that expenditure during construction and by future residents would have economic benefits; that there would be social advantages from new housing, AH and a new school all with accessible local services; and that a country park would bring environmental benefits and more than offset any recreational and ecological harm. Balanced against this would be the loss of the smaller wilderness area and the potential risk of unacceptable harm to the appearance of the area from beyond the site. [1,23,39,62]
89. Contrary to the appellant's assertion, design is relevant to this outline application. As above, the SHLAA did not look at the potential for design to radically alter the ability of proposals to amount to sustainable development. The ability of the scheme to accommodate development, in accordance with NPPF §58·3, through the contributions in the s106 Agreement to improve links and other infrastructure, is a matter of design to be resolved at outline stage. The NPPF §61 requirement to address *the connections between people and places and the integration of new development into the natural, built and historic environment* should also be applied to outline proposals. [40,45,73]
90. As detailed in the SoCG on Transport, the site would be connected by several foot and cycle routes. This pedestrian/cycle network would provide safe, direct, convenient and interesting routes through the site. There would also be an emergency vehicular connection to Heathwood Park. The details on connectivity and legibility can be refined, together with circulation arrangements, architectural signposting and green infrastructure, at the reserved matters stage. With regard to layout, subject to details, the pedestrian and cycle links would overcome some of failings of the scheme as a result of a single vehicular access. While the indicative layout suggests that legibility could be difficult, as it would be based on a single spine road, there would be an opportunity to improve this and the list of other issues raised by the Urban Design Officer through reserved matters. There was no evidence that the proposed footpath link to Snowdrop Lane would lead to additional parking or, if it did, that any highway safety issues would arise from this. From a design standpoint, the outline scheme would amount to sustainable development and this merits considerable weight. [22,66,69,73]
91. For all these reasons, the scheme would recognise the intrinsic character and beauty of the countryside, secure high quality and inclusive design, and would not harm any valued landscape. It would accord with policies in NPPF §17.5, §61 and §109. [31,47]

### *Development plan*

92. The LP reflects an out of date housing requirement. When considering the NPPF as a whole, as is required by *Hopkins*, development needs must be considered as well as environmental and amenity considerations. Regardless of NPPF §49, as LP Policy C1 is a restrictive policy, based on boundaries to accommodate development to 2006, it is inconsistent with NPPF §47. Nor is it a criteria based policy as required by NPPF §113. The same applies to NP Policy 1 which has development boundaries which were agreed to be out of date. The Council characterised this position as one where the weight to the policy should depend on the extent of harm to the countryside. The weight to any conflict with policy should certainly be related to harm but that is a different matter to weight as a result of consistency or otherwise. With regard to the policies themselves, NPPF §§214-215 and *Hopkins* set out the approach. The extent of inconsistency with the NPPF, and the exhortation in NPPF §47 in particular, to boost significantly the supply of houses, and the way that these policies function, means that LP Policy C1 should be given reduced weight relative to the extent of shortfall as expressed as a preference in *Phides*. The same applies to NP Policy 1 and this is consistent with the reasons for withdrawing the JR. [8-10,12,27,31,43]
93. With regard to NP Policy 1, the Council argued, pointing to the conformity reference that it is consistent with NPPF §17, §55 and §109, that permissions for very many houses have been granted including on the Gravelly Lane site, and that any conflict with it should be given limited weight. While it is true that the Examining Inspector's objections at that time have essentially been overcome by the latter permission, time has also moved on so that a further year's housing requirement is needed. While it conforms in other regards, there was no claim that NP Policy 1 conforms to NPPF §47. It cannot be said with any confidence what an Examining Inspector would say now faced with the same situation of a NP which makes no allocations. [10-11,27,29,47-48]

### HOUSING LAND SUPPLY (HLS)

94. The Council advised that the current HLS position is likely to be between 2.4 and 5.25 years but also accepted that it is less than 5 years so that the tilted balance applies. Following *Phides* this wide range is not helpful, even if the reasons for it are understandable, since the greater the shortfall the more weight should be given to the benefit of increasing the supply of housing. The differences are as a result of the current discussions over objectively assessed needs (OAN) and deliverability. Although still unresolved, the correspondence between the Examining Inspector and the Council suggests that the DP Inspector may allow some of the requirement to be accommodate Crawley's unmet needs to be found later in the plan period, favouring a lower OAN initially. The Inquiry did not hear detailed evidence on delivery but NPPF footnote 11 deems that sites with permission should generally be considered deliverable while it is reasonable to consider that those sites still at the allocation stage are unlikely to be delivered within 5 years. On this balance, the HLS position is around 4 years and only little weight should be given to LP Policy C1 and NP Policy 1. [13,28,48-49]
95. Few areas in the district are without primary constraints such as the National Park or AONB. The appeal site is one of these. Nevertheless, in principle, landscape harm could still be found to significantly and demonstrably outweigh such a benefit and the impact of development on the landscape can be important outside National Parks and AONBs. However, for the above reasons and subject

to reserved matters conditions, there would be little or no harm to the character or appearance of the area, including Northland's Brook, the valley bottom, and Walstead, and limited conflict with the countryside protection aspect of LP Policy C1 beyond the boundaries of the developable areas within the site. [9,31,38,44,50]

#### OTHER POLICIES

96. Different considerations apply to LP Policy B1 where it was agreed that only criterion (a) was relevant and to which full weight could be attached. The Council is correct that this is undoubtedly relevant at the outline stage, particularly given that the access is not reserved, but in any event as the possibilities for access and connectivity, links to services and public transport, the general lie of the land, and the potential design response to these goes far beyond reserved matters. For the reasons given above, full weight should be given to Policy B1(a) but, subject to reserved matters, in support of the scheme rather than against it. [8,37,45]
97. The SoCG also refers to NP Policy 6, regarding Local Green Spaces. Although the informal recreation area would be lost it would be more than replaced by the country park and so by any sensible interpretation there would be no breach of this policy. As the NP does not allocate any sites for housing, the 3YHLS rule in the WMS does not apply to the NP in this case. It is unlikely that the emerging DP will be in place by the time that the SoS will be expected to reach his Decision. [10,13,14]

#### *Habitats Regulations Assessment (HRA)*

98. Following the Judgment in *Wealden*, the possibility that the proposal would, in combination with other plans and projects at the time of approval, have the potential to result in significant adverse effects on the AF SAC cannot be ruled out. As the competent authority it falls on the SoS to undertake any screening exercise and any subsequent AA under the Habitats Regulations if necessary. As above, NPPF §14 does not apply where development requiring AA is being considered, planned or determined. [4,7,14-16]
99. Ideally, to assist the competent authority (the SoS) to fulfil his obligations under the Habitats Regulations, these conclusions would set out an assessment of the factors that need to be taken into account. However, as above, the agreed note does little more than set out the legal position without even identifying the relevant factors. Consequently, there was not enough information at the Inquiry, as required of the appellant by Regulation 61(2), to exclude LSE on the AF SAC. Similar requirements would apply to SPA. Without this assessment it would not be lawful to grant planning permission. [4,14-16,28,65]
100. Nevertheless, certain matters should be noted. First, to comply with case law, the presumption should be that adverse effects would occur. Unless LSE can be excluded, NPPF §119 applies and the scheme cannot be found to be sustainable development. Second, it is likely that the following information will be required:
  - a) a robust understanding of the increase in vehicle movements generated by the plan/proposed development along route corridors in proximity to the European site alone and in combination with other plans and projects;
  - b) an understanding of the AF SAC's sensitivity to changes in air emissions and specific pollutants of concern. The main effects from traffic emissions are

increased eutrophication (nutrient enrichment) and acidification. Sensitivity to these effects varies between habitat types and should be explained in the context of the AF SAC and its conservation objectives;

- c) an understanding of the likely additional air emissions that will occur at the European site resulting from the predicted increase in vehicle transport movements;
  - d) an understanding of the background level of the relevant pollutant and the current 'headroom' (if any) with regard to the likely affected habitats' Critical Load factor;
  - e) an understanding of any uncertainties that exist in the modelling information and the effect they may have on the conclusions being reached;
  - f) a clear conclusion from the LPA/appellant as to the absence of LSE;
  - g) a consultation response from Natural England confirming that the information required above is sufficient and that the conclusions drawn are supported;
  - h) whether the country park would act as mitigation, either as replacement habitat or to reduce nutrient enrichment, for example by acting as an alternative for dog walkers;
  - i) an understanding of the Judgment in *Wealden*.
101. With regard to the 3 tests under the Habitats Regulations, given the paucity of housing land in the district and in adjoining planning authorities, it could be argued that there are no feasible alternative solutions to the proposed development in the district as all other possible sites would be required to meet the shortfall in 5YHLS as well (and likely to have similar impacts on traffic). Unless any of the features of the SAC are Priority habitats or species (as identified in Annex I and II of the Habitats Directive) the social and economic benefits of meeting this lack of housing might also amount to IROPI. On the third test, there was no evidence that any suitable compensatory measures (usually the creation or re-creation of replacement habitat) would or could be secured and, on the evidence at the Inquiry, on this test alone the proposals should fail. [13,15,21]

## **Overall conclusions**

102. For all the above reasons, and having regard to all other matters raised, on considerations (i) to (iii), substantial weight should be given to the benefits of the scheme whereas, subject to conditions and mitigation through the s106 Agreement, there would be limited harm to the character and appearance of the area. On the evidence at the Inquiry on these three matters alone, the proposals would amount to sustainable development. Applying the tilted balance to these 3, as the most important of the material considerations, any landscape harm would fall well short of significantly or demonstrably outweighing the advantages of new housing and other benefits such that under NPPF §14 the proposals should be allowed. Little weight should be given to outdated development plan policies, which are largely inconsistent with NPPF §47 so that, on balance, achieving sustainable development and complying with the NPPF would outweigh the conflict and clearly indicate that

the appeal should not be required to fully accord with the development plan but should be allowed.

103. However, consideration (iv) and the obligations of the SoS as competent authority under the Habitat Regulations means that, unless and until the SoS receives sufficient and necessary information to address the obligations of the Habitat Regulations, it is not possible to determine if LSE would occur and whether an AA would be required. In accordance with the precautionary principle, and in absence of the information referred to above, the appellant has not demonstrated that the scheme could amount to sustainable development under NPPF §119. Having taken these matters into account, to grant planning permission at this stage would be unlawful and so the appeal should fail.

### **Recommendation**

104. I recommend that SoS satisfy himself as to whether or not LSE exist and an AA is needed and, following this process, whether there would be adverse effects on the AF SAC. Given my findings outlined above, on the evidence available at the Inquiry, it cannot be demonstrated that there would not be LSE. In the event that further information shows that there would be no adverse effects, the appeal should be allowed and outline planning permission granted subject to: a revised description to include land for a One Form Entry Primary School, the attached Schedule of conditions, and appropriate findings with regard to whether all the provisions in the s106 Agreement satisfy the statutory tests.
105. As matters stand, with adverse effects on the AF SAC being uncertain, the precautionary principle applies and the appeal should be dismissed.

*David Nicholson*

INSPECTOR

## Schedule of conditions

1. Approval of the details of the appearance, layout, scale and landscaping of the site (hereinafter called the "reserved matters") shall be obtained from the Local Planning Authority (LPA) for any phase of development, prior to the commencement of development on site.  
Application for approval of the reserved matters shall be made to the LPA before the expiration of 3 years from the date of this permission.  
The development hereby permitted must be begun before the expiration of 2 years from the date of approval of the last of the reserved matters.

*Reason: To enable the LPA to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990.*

2. No development shall take place, including any works of demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the LPA. Thereafter the approved CMP shall be implemented and adhered to throughout the entire construction period. The CMP shall provide details as appropriate, but not necessarily be restricted to, the following matters:
  - the anticipated number, frequency and types of vehicles used during construction,
  - the method of access and routing of vehicles during construction,
  - the parking of vehicles by site operatives and visitors,
  - the loading and unloading of plant, materials and waste,
  - the storage of plant and materials used in construction of the development,
  - the erection and maintenance of security hoarding,
  - the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
  - details of public engagement both prior to and during construction works,
  - scheme to minimise dust, dirt and noise emissions from the site during the period of construction,
  - hours of construction/working.

*Reason: To ensure safe and neighbourly construction in the interests of amenity and road safety and to accord with Policies B3 and T4 of the Mid Sussex Local Plan (LP) and policy DP19 of the Submission Version District Plan 2014-2031 (DP)*

3. The development hereby permitted shall not proceed until details of the proposed foul water drainage and means of disposal, including a Drainage Management and Maintenance Plan have been submitted to and approved in writing by the LPA and no building shall be occupied until all approved drainage works have been carried out in accordance with such details. The drainage scheme shall be maintained thereafter in accordance with the approved Drainage Management and Maintenance Plan for the lifetime of the development.

*Reason: To ensure that the proposed development is satisfactorily drained and to accord with Policies CS13 and CS14 of the LP and Policy DP41 of the DP*

4. The development hereby permitted shall not proceed until details of the proposed surface water drainage and means of disposal, including proposed swales and wetland, have been submitted to and approved in writing by the LPA and no building shall be occupied until all drainage works have been carried out in accordance with the approved details. The details shall include a timetable for its implementation and

a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. Maintenance and management during the lifetime of the development shall be in accordance with the approved details.

*Reason: To ensure that the proposed development is satisfactorily drained and to accord with Policies CS13 and CS14 of the LP and Policy DP41 of the DP*

5. Prior to the commencement of the development hereby permitted, an air quality assessment shall be submitted to and approved in writing by the LPA in accordance with the Sussex Air Quality and Emissions Mitigation Guidance 2013 guidance document<sup>141</sup>.

The assessment shall include details of any scheme necessary for the mitigation of potential impacts on air quality.

The assessment shall include the following:

- An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the reduction of emissions. The assessment should quantify what measures or offsetting schemes are to be included in the development which will reduce the emissions from the development during construction and when in operation.
- All works, which form part of the approved scheme, shall be completed before any part of the development is occupied and shall thereafter be maintained in accordance with the approved details.

*Reason: To accord with policy DP27 of the DP*

6. (i) No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the LPA before development commences or within such extended period as may be agreed with the LPA:
- a) A desk study report documenting all the previous and existing land uses of the site and adjacent land in accordance with best practice including BS10175:2011+A1:2013 - Investigation of potentially contaminated sites - Code of practice. The report shall contain a conceptual model showing the potential pathways where exposure to contaminants may occur both during and after development; and, unless otherwise agreed in writing by the LPA,
  - b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk study created in accordance with BS10175:2011+A1:2013 and BS8576:2013 - Guidance on investigations for ground gas - Permanent Gases and Volatile Organic Compounds (VOCs). The laboratory analysis should be accredited by the Environment Agency's Monitoring Certification Scheme where possible; the report shall refine the conceptual model of the site and state either that the site is currently suitable for the proposed end-use or that will be made so by remediation; and, unless otherwise agreed in writing by the LPA,
  - c) A remediation method statement detailing the remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. For risks related to bulk gases, this will require the production of a design report and an installation report for the gas as detailed in BS8485:2015 - Code of practice for

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<sup>141</sup> Available at <http://www.sussex-air.net/>

the design of protective measures for methane and carbon dioxide ground gases for new buildings. The scheme shall consider the sustainability of the proposed remedial approach. It shall include nomination of a competent person to oversee the implementation and completion of the works.

(ii) The development hereby permitted shall not be occupied/brought into use until there has been submitted to and approved in writing by the LPA verification by the competent person approved under the provisions of condition (i)c that any remediation scheme required and approved under the provisions of conditions (i)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of the LPA in advance of implementation). Unless otherwise agreed in writing by the LPA such verification shall comprise a stand-alone report including (but not be limited to):

- a) description of remedial scheme,
- b) as built drawings of the implemented scheme,
- c) photographs of the remediation works in progress,
- d) certificates demonstrating that imported and/or material left in-situ is free of contamination, and records of amounts involved.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under conditions (i)c.

*Reason (common to all): To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.*

7. No development shall take place until details of existing and proposed site levels have been submitted to and approved by the LPA. Development shall not be implemented otherwise than in accordance with such details.

*Reason: For the avoidance of doubt and to ensure that the development does not prejudice the amenities of adjacent residents or the appearance of the locality and to accord with Policy B1 of the LP and Policy DP24 of the DP.*

8. No development shall commence until details of the play area(s) to be provided on site have been submitted to and approved by the LPA. The details shall include the layout, drainage, equipment, landscaping, fencing, timetable for construction and future management of the areas to be provided. The development shall only be implemented in accordance with the approved details and shall thereafter be retained at all times for their designated use.

*Reason: To ensure satisfactory provisional equipment and to ensure that play area is provided and retained within the development for use by the general public and to accord with Policy R3 of the LP and Policy DP22 of the DP.*

9. No development shall take place until the applicant, or their agents or successor in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation and timetable which has been submitted to and approved by the LPA.

*Reason: To identify and to secure the appropriate level of work that is necessary before commencement of the development, and also what may be required after commencement and in some cases after the development has been completed, and to accord with Policy B18 of the LP and Policy DP35 of the DP.*



10. Prior to the commencement of development, plans and details of how the proposed road(s), footways and casual parking areas serving the development are to be constructed, surfaced and drained shall be submitted to and approved in writing by the LPA. The scheme shall only be implemented in accordance with the approved plans and details.

*Reason: To secure satisfactory standards of access for the proposed development and to comply with Policy T4 of the LP and Policy DP19 of the DP.*

11. Prior to the commencement of development a comprehensive plan of biodiversity compensation measures and enhancements, including new hedgerows, woodland, thicket and scrub to compensate for the loss of hedgerow and other dormouse habitat, as well as other habitat features and enhancements as set out in the Ecological Appraisal report by Aspect Ecology, dated October 2015 (ref ECO2512.EcoApp.vf1) and shown on the illustrative Landscape Management Areas Plan by Catherine Shelton Associates Limited (Ref 826/L22) shall be submitted to and approved in writing by the LPA. The development shall only be implemented in accordance with the approved details.

*Reason: To protect the ecological value of the site and to accord with Policy C5 of the LP and Policy DP37 of the DP.*

12. No development shall commence until details of a lighting plan showing measures to be used to minimise light pollution of the surrounding habitats and open green space have been submitted to and approved in writing with the LPA. The development shall only be implemented in accordance with the approved lighting plan, unless first agreed in writing with the LPA, and shall be retained thereafter in accordance with the approved details.

*Reason: To protect the ecological value of the site and to accord with policies C5 and C6 of the LP and Policy DP37 of the DP.*

13. No development shall take place until a detailed Landscape Management Plan, based on the Outline Landscape Management Plan submitted in support of this application including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to and approved in writing by the LPA. The landscape management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the LPA.

*Reason: In the interests of visual amenity and of the environment of the development and to accord with Policies B1 and B2 of the LP and Policy DP24 of the DP.*

14. No dwelling shall be occupied until the access to the site from the public highway has been constructed in accordance with details to be submitted to and agreed in writing by the LPA. The development shall only be implemented in accordance with the approved details.

*Reason: In the interests of highway safety and to accord with Policy T4 of the LP and Policy DP19 of the DP.*

15. No dwelling shall be occupied until the car parking spaces serving the respective dwellings have been constructed in accordance with plans and details to be submitted

to and approved in writing by the LPA. These spaces shall thereafter be retained at all times for their designated use.

*Reason: To ensure adequate parking provision is provided for properties and to accord with Policy T5 of the LP and Policy DP19 of the DP.*

16. No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved by the LPA. These spaces shall thereafter be retained at all times for their designated use.

*Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies and to accord with Policy T6 of the LP and Policy DP19 of the DP.*

17. No development shall commence until the vehicular access onto Scaynes Hill Road serving the development and East Mascalls Lane has been realigned in accordance with details indicatively shown on drawing number ITL3139-GA-023 Revision E and a detailed construction specification submitted to and approved in writing by the LPA.

*Reason: To secure satisfactory standards of access for the proposed development and to accord with Policy T4 of the LP and Policy DP24 of the DP.*

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Toby Fisher of Counsel	instructed by Mid Sussex District Council (MSDC)
He called	
Josh Peacock CMLI	Lizard Landscape Design and Ecology, West Worthing, West Sussex
Ian Ellis BA MRTPI	MSDC

### FOR THE APPELLANT:

Christopher Boyle QC	instructed by Cripps LLP
He called	
James Bevis	
Catherine Shelton BSc MPHIL FLI	Catherine Shelton Associates, Woodbridge, Suffolk
Malcolm Cooper PhD MPhil BA DMS MCIfA IHBC MCIM FSA FSA Scot FRSA Hon FRIAS	
Asher Ross MRTPI	GL Hearn, High Holborn, London

### INTERESTED PERSONS:

Cllr. John Dumbleton	Lindfield Rural Parish Council
Gil Kennedy	Lindfield Preservation Society

### INQUIRY DOCUMENTS

- 1 Addendum to proof of Ross to take account of *Hopkins*
- 2 Opening statement by the LPA
- 3 Judgment in *Gladman v Daventry & SoSCLG* [2016] EWCA Civ 1146
- 4 Initial list of suggested conditions
- 5 Appellant's Note on MSDC15 re HLS
- 6 Statement by Cllr. John Dumbleton
- 7 Statement by Gil Kennedy for the LPS
- 8 Appellant's Summary note on the s106 provisions – updated 30 May 2017
- 9 Letter from the Land Trust dated 15 May 2017 with calculations for the country park
- 10 CIL justification from WSCC
- 11 Site visit itinerary
- 12 Letter with signatures from residents of Walstead opposed to the proposals but unable to attend the Inquiry
- 13 Agreed Note with regard to the Ashdown Forest (AF)
- 14 Judgment in *Palmer v Herefordshire Council & ANR* [2016] EWCA Civ 1061
- 15 List of suggested conditions with track changes
- 16 Email from WSCC with regard to library contribution
- 17 Amendments to proof of Ellis to take account of *Hopkins*
- 18 Closing Statement for the Council
- 19 Closing Statement for the Appellant
- 20 Signed Statement of Common Ground dated 16 May 2017
- 21 Agreement under s106 of the T&CP Act 1990 signed and dated 9 June 2017
- 22 Amended table to proof of Ross – attached to email dated 22 May 2017

## CORE DOCUMENTS

CD/1/1	National Planning Policy Framework
CD/1/2	Relevant extracts from National Planning Practice Guidance
CD/1/3	Housing White Paper
CD/1/4	Written Ministerial Statement on Neighbourhood Planning 12 December 2016
CD/1/5	Guidelines for Landscape and Visual Impact Assessment, 3rd edition, (GLVIA3) The Landscape Institute and the Institute of Environmental Assessment and Management dated April 2013
CD/1/6	The Landscape Institute Advice Note 01/11 (re photography and photomontage)
CD/1/7	GLVIA3 Statement of Clarification 2/14 (28 January 2014) regarding residential amenity
CD/1/8	An Approach to Landscape Character Assessment, Natural England, October 2014
CD/2/1	APP/D3830/W/15/3137838 <i>Birchen Lane</i> appeal decision dated 8 August 2016
CD/2/2	APP/D3830/A/14/2218078 <i>Land at Penland Farm</i> appeal decision dated 12 January 2015
CD/2/3	APP/A0665/W/15/3140241 <i>Land at Park Farm, Rudheath, Northwich, Cheshire</i> appeal decision dated 12 May 2016
CD/2/4	APP/D3830/W/14/2226987 <i>Land Parcel at London Road, Hassocks</i> appeal decision dated 16 March 2017
CD/2/5	<i>Stroud DC v SSCLG &amp; Gladman</i> [2015] EWHC 488 Admin
CD/2/6	<i>Irving, R (on the application of) v Mid Sussex District Council &amp; Anor</i> [2016] EWHC 1529 (Admin)
CD/3/1	MSDC Local Plan 2004
CD/3/2	MSDC District Plan August 2016 version
CD/3/3	District Plan Inspector's Initial Findings on housing land supply February 2017
CD/3/4	MSDC: Housing and Economic Development Needs Assessment (HEDNA) dated November 2015
CD/3/5	HEDNA Addendum dated 2016
CD/3/6	MSDC's Strategic Housing Land Availability Assessment (SHLAA) – Lindfield and Rural Lindfield Assessed Sites – June 2015
CD/3/7	MSDC's SHLAAs dated April 2016
CD/3/8	Mid Sussex District Council's SHLAAs: Review of Landscape and Visual Aspects of Site Suitability, Land Use Consultants for MSDC, January 2015
CD/3/9	The Mid Sussex Landscape Capacity Study, Hankinson Duckett Associates for MSDC dated July 2007
CD/3/10	The Capacity of Mid Sussex District to Accommodate Development, Land Use Consultants (LUC) for MSDC dated June 2014
CD/3/11	Landscape Character Assessment for MSDC dated 2005
CD/3/12	Mid Sussex District Settlement Sustainability Review (SSR) dated May 2015
CD/3/13	The Development and Infrastructure Supplementary Planning Document (SPD)
CD/4/1	Design and Access Statement
CD/4/2	Transport Assessment
CD/4/3	Catherine Shelton Note dated January 2016
CD/4/4	Statement of Common Ground between the Appellant and the Council
CD/4/5	Landscape and Visual Impact Assessment
CD/4/6	Outline Landscape Management Plan
CD/4/7	Indicative Landscape Strategy Plans
CD/4/8	Ecological Appraisal dated October 2015
CD/4/9	Arboricultural Implications Report
CD/4/10	Archaeological Desk Based Assessment
CD/4/11	Heritage Statement
CD/4/12	NLP Assessment of 2015 HEDNA
CD/4/13	LUC Consultation response to application
CD/4/14	Urban Design Officer observations dated 23 December 2015
CD/4/15	Officer Report for Appeal scheme dated 7 April 2016
CD/4/16	Decision Notice for Appeal scheme
CD/5/1	Made Lindfield and Lindfield Rural Neighbourhood Plan
CD/5/2	Examiner Report into Neighbourhood Plan
CD/5/3	Submission version of Lindfield and Lindfield Rural Neighbourhood Plan
CD/5/4	The Lindfield and Lindfield Rural Housing Needs Survey Report dated May 2013
CD/5/5	Lindfield Village Design Statement
CD/6/1	Draft section 106 Agreement



# Ministry of Housing, Communities & Local Government

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

## SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

## SECTION 2: ENFORCEMENT APPEALS

### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

## SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

## SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.