



Appeal Decision

Inquiry held between 6 and 8 September 2022

Site visits made on 7 and 8 September 2022

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st September 2022

Appeal Ref: APP/P1425/W/22/3299370

Land at South Road, Wivelsfield Green RH17 7QR

- 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 Lewes District Council.
 - The application Ref LW/21/0754, dated 22 September 2021, was refused by notice dated 29 April 2022.
 - The development proposed is an outline planning application (all matters reserved except for means of access) for the erection of up to 45 homes (including 40% affordable) and formal and informal open space including new woodland planting and play areas.
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application (all matters reserved except for means of access) for the erection of up to 45 homes (including 40% affordable) and formal and informal open space including new woodland planting and play areas on land at South Road, Wivelsfield Green RH17 7QR in accordance with the terms of the application Ref LW/21/0754, dated 22 September 2021, and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Wates Developments Ltd against Lewes District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The proposal is made in outline with all matters reserved for later consideration other than for access. Although considerable discussion took place based on the layout and landscape plans, these are just illustrative of one way that the site could be developed within the parameters set by the description and the drawings of the access and do not themselves form part of the proposal. I have considered the appeal with this in mind.
4. A legal undertaking has been submitted with the appeal securing a number of planning obligations. I comment on these obligations later in my decision.
5. At the request of interested parties I visited the area during the morning school drop-off period, and my visit to the site the following day coincided with the afternoon school pick-up period. I was therefore able to observe the traffic associated with these periods in the vicinity of the site.

Main Issues

6. The main issues are considered to be the effect of the development on:
 - The spatial strategy as set out in the development plan
 - The landscape character and appearance of the area
 - Housing land supply.
7. It is also necessary to consider the benefits that would arise from the development. I do this as part of the planning balance.

Reasons

Spatial strategy

8. The Lewes District Local Plan Part 1 - Joint Core Strategy 2010-2030 (the 'Core Strategy') identifies Wivelsfield Green as a service village. Service villages are defined as having a basic level of services and facilities, public transport provision (possibly not frequent) and limited employment opportunities. Wivelsfield Green fits this description being mainly residential and having a range of facilities such as a primary school, village hall, shop, pub and recreation ground which meet day-to-day needs but where higher order facilities need to be accessed elsewhere. Bus services are available but are not frequent. For planned housing growth in Wivelsfield Green, the settlement hierarchy¹ suggests a range of 30-100 dwellings, while Policy SP2 of the Core Strategy supports a minimum of 30 net additional dwellings, with no upper limit.
9. Land outside settlement boundaries is regarded as countryside for planning policy purposes². Policy DM1 of the Lewes District Local Plan Part 2 – Site Allocations and Development Management Policies 2020 (the 'Allocations Plan') protects the distinctive character and quality of the countryside and new development is only permitted where it is consistent with a site allocation or where a need for a countryside location can be demonstrated. I interpret the latter criterion as applying to uses that need a countryside location because of their function or where they are appropriate in a countryside setting.
10. Policy 1 of the Wivelsfield Parish Neighbourhood Plan 2015-2030 (the 'Neighbourhood Plan') is consistent with Policies SP2 and DM1 of the Core Strategy and Allocations Plan respectively in that it directs development to sites within the settlement boundaries, and only supports proposals for housing development outside the boundaries if they are consistent with the countryside policies of the development plan. Policy 2 of the Neighbourhood Plan allocates 3 sites with a combined capacity of approximately 34 dwellings, which is consistent with the planned housing growth in Policy SP2 of the Core Strategy, but does not expressly prevent the provision of further housing.
11. The appeal site is contiguous with but outside the settlement boundary for Wivelsfield Green as defined on the Lewes District Policies Map 2020. It is not allocated for development, and the proposed use is not one that needs a countryside location within the meaning of that phrase in Policy DM1. Although the spatial strategy recognises that the village can accommodate a modest

¹ Core Strategy, Table 2 – Settlement Hierarchy

² Allocations Plan, supporting text to Policy DM1

amount of housing growth, the location of the site outside the settlement boundary means that residential development on it, as proposed in the appeal scheme, conflicts with the spatial strategy of the development plan and its approach to the location of new development.

12. The weight to be given to the policies that underpin the spatial strategy, in particular those relating to residential development, depends on other factors such as whether they have become out-of-date. I address this weighting in the planning balance, having considered the issue of housing land supply and the ramifications that flow from that. However, in so far as the policies are relevant, I conclude that the location of the development outside the settlement boundary runs counter to the spatial strategy in the development plan and conflicts with Policy DM1 of the Allocations Plan and Policy 1 of the Neighbourhood Plan.

Landscape character and appearance

13. The site falls within the Natural England National Character Area 121 – Low Weald, and the East Sussex Landscape Character Area 14 – Western Low Weald. The landscape is characterised as being of gently undulating, relatively low lying countryside. Agriculture is largely pastoral because of the heavy clay soils. The area has a patchwork of small, irregular shaped fields bounded by hedges, with scattered tree features including woodland, shaws and hedgerow trees giving the impression that the area is well wooded. Wivelsfield Green is noted as one of the larger 20th century villages which have grown on the main road and rail routes through the area.
14. Although the Low Weald is not a 'valued landscape' in the sense that it is designated for its landscape qualities at a national or regional level, it is largely unspoilt with few intrusive features and no large urban areas. The character area studies referred to above recognise it for its own intrinsic character and beauty.
15. The appeal site exhibits many of the landscape features described in the character area profiles. It is well maintained grassland surrounded by field hedges and occasional hedgerow trees, with a block of woodland along its south western edge. The topography is undulating with the land sloping up from South Road to a ridge along its southern edge as well as sloping up more gently towards its eastern end. About half of the southern ridge is occupied by the block of woodland with the remaining ridge open, although views beyond it are not publicly visible because of the difference in height with South Road.
16. The site occupies a position on the southern edge of the settlement of Wivelsfield Green. Buildings bound the northern side of South Road and the eastern side of Hundred Acre Lane, including a development of houses at Shepherds Close. Other than some of the buildings at Coldharbour Farm, which appear to have been originally built for agricultural purposes before conversion, these buildings are domestic in form and appearance.
17. Developing the site would inevitably harm its contribution to the landscape by replacing open grassland with built development, including houses and their gardens, roads and parking areas at different levels on the sloping site. New vehicular and pedestrian accesses onto South Road would also necessitate removal of some of the hedgerow, there would be domestic activity and vehicular movements where there are none at present, and increased lighting.

The informal open space and play area would not be built upon but would still have a more managed and domesticated appearance than the current pasture land.

18. Some landscape mitigation could be provided, including by additional hedgerow planting and reinforcement of existing boundaries. Differing views were expressed at the value of additional woodland planting along the open southern ridge, which would on the one hand provide additional woodland but on the other limit future public views southwards of the Downs from the top of the ridge. Landscaping is a reserved matter and so not for detailed consideration at this stage. In general terms, while further planting on the site could provide some mitigation, it would not overcome the impact of the development on the landscape value of the site. It is due to these local landscape effects that the site was classified as not deliverable or developable in the Council's latest Land Availability Assessment³.
19. However, these landscape effects would be largely confined to the site itself. The settlement edge to the north and west, and the sloping terrain topped by woodland to the south provide a degree of containment, particularly to the western part of the site. Development on this part of the site would have little impact on the wider landscape of the Low Weald. I reach this view notwithstanding the Council's landscape capacity study⁴ which ranks the area as having a low capacity to accommodate development. That is in part because the study area is considerably larger than the appeal site, including land to the south of the ridge, which is more sensitive to change in landscape terms.
20. The degree of containment would also limit the visual effects of the development. The buildings would be seen in views from South Road looking west, but these would be seen against the backdrop of existing buildings along the eastern side of Hundred Acre Lane. The effect of the development would be to bring the settlement boundary further eastwards. The buildings would also be seen in views from South Road looking east. This would have a greater visual impact than westerly views because the buildings would interrupt views of undeveloped countryside. However, if developed in the manner shown on the illustrative landscape masterplan⁵ no built development would take place on the eastern part of the site, thereby retaining views up to the open part of the ridge and its larger sky view.
21. Development on the site would also be visible from within Wivelsfield Green from roads such as Downsview Drive, Allwood Crescent and Fair Place in glimpsed views between buildings, because of the sloping nature of the land. While development on the site would remove views of the green backdrop presently enjoyed from these roads, such views are already moderated by the presence of other buildings.
22. The development would affect views from the properties in South Road, Shepherds Close and along Hundred Acre Lane. Their current view of open countryside would be replaced by a residential estate. However, these are private rather than public views, and as the planning system operates in the public interest rather than to protect private interests, the impact on those views is not something that can be given weight.

³ Lewes District Council, Interim Land Availability Assessment (LAA), February 2022

⁴ Lewes District Council and South Downs National Park Authority Landscape Capacity Study, 2012

⁵ SLR, Wivelsfield Green LVA Landscape Masterplan, WG-1, March 2022

23. Mid to long distance views of the site are limited by the degree of containment provided by the existing settlement edge and topography of the site. Subject to the location of new development being on the western part of the site, and consideration being given to the height of buildings, none of the development would be visible from the south because of the intervening ridge and woodland. Although the layout and landscape plans are for illustrative purposes only and do not form part of the outline proposal, I am satisfied that the quantum of built development sought in the description could be accommodated at a reasonable density and with sufficient space to provide screen planting on the western part of the site without having to intrude into the eastern part of the site, which is more sensitive in landscape and visual terms.
24. Drawing these matters together, I conclude that the development would cause harm to the landscape character and appearance of the area, but that harm would be moderated by the degree of containment that is present and the ability to avoid developing the more sensitive eastern part of the site. It would therefore conflict with Policy CP10 of the Core Strategy and Policy DM1 of the Allocations Plan, which seek to protect, maintain and where possible enhance the natural, locally distinctive landscape qualities and characteristics of the district, but only to the extent set out above.

Housing land supply

25. There was agreement between the main parties that the Council cannot demonstrate a 5 year housing land supply, and that the current shortfall stands at 2.73 years' supply⁶. This is even worse than the position when the application was determined, when housing land supply stood at 2.9 years' supply.
26. The consequence of the lack of a 5 year housing land supply for applications involving the provision of housing is that the policies most important for determining the development plan are deemed to be out-of-date⁷. In such circumstances, paragraph 11 of the National Planning Policy Framework (the 'Framework') states that permission should be granted, subject to 2 criteria being taken into account.
27. It was agreed by the main parties that the first criterion is not applicable as none of the policies in the Framework that protect areas or assets of particular importance are engaged in this case⁸. The second criterion is relevant to the appeal as a material consideration, in that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I consider the weight to be assigned to this material consideration in the planning balance.
28. The reason for the Framework 'tilting' the balance in favour of residential development in this manner is to support the Government's objective of significantly boosting the supply of housing, particularly in situations where local planning authorities are not bringing forward an adequate supply of land for housing development, or where housing is not being built at a rate to meet demand.

⁶ Lewes District (outside of the South Downs National Park) Five Year Housing Land Supply (2022-2027) Annual Position Statement at 1 April 2022 (published August 2022)

⁷ National Planning Policy Framework, footnote 8

⁸ National Planning Policy Framework, footnote 7

29. The housing land supply in the Council's Annual Position Statement is based on the Government's standard method of calculation⁹ and is unconstrained. This differs markedly from the housing land supply figure contained in the Core Strategy, which is based on a former method of calculating housing demand involving objectively assessed housing need and is constrained, in part to recognise factors such as flood risk, internationally important ecological sites, and the South Downs National Park, which impact on the ability of the area to accommodate new development.
30. It has been suggested on behalf of the Council that the constrained nature of the district should mitigate the weight to be given to the shortfall in housing land supply. However, no such mitigation is included in the standard method or in the Framework. Whether or not a constrained housing land supply figure should be included in any future local plan would be a matter for the local plan review, and tested through a local plan examination, and is beyond the scope of this Inquiry. For the purposes of the appeal, I have based my decision on the agreed housing land supply position as set out in the latest Annual Position Statement, based on the standard method of calculation.
31. Criticisms of the way housing demand is calculated were also put forward on behalf of the Parish Council¹⁰. While demand may be driven by people moving into the district rather than through internal population growth, that nevertheless forms part of the demand for housing that the Government's objective is seeking to address, and by doing so the issue of affordability. The amount of residential development appropriate in Wivelsfield Green needs to be viewed in light of the much higher housing requirement arising from the standard method, irrespective of whether there is disagreement over the way that requirement is calculated or what is currently planned for in the Neighbourhood Plan.
32. The Council has accepted the need to review its development plan but is at an early stage in the process of revision and the work carried out so far is not sufficiently advanced to carry weight in the current appeal. While it is unable to demonstrate an adequate housing land supply, the Council has adopted an Interim Policy Statement for Housing Delivery¹¹, which contains a number of criteria it intends to use to determine planning applications for housing development outside of the settlement planning boundaries. These criteria were assessed in some detail in the case officer's report on the application and found to be met, albeit that the proposal was subsequently refused by the Council for the reason set out on the refusal notice.
33. The first of those criteria is that the site boundary should be contiguous with an adopted settlement planning boundary. This applies to the appeal scheme. The second is that the scale of development is appropriate to the size, character and role of the adjacent settlement having regard to the settlement hierarchy and taking account of the cumulative impact of extant unimplemented permissions in the relevant settlement. In this regard, while the appeal scheme of 45 dwellings would be in addition to the 34 allocated in the Neighbourhood Plan and others granted or allowed on appeal, I consider it would be of a scale that is commensurate with the settlement and would not either individually or cumulatively result in an overdevelopment of it. I consider that the appeal

⁹ The Planning Practice Guidance, housing supply and delivery

¹⁰ Ian Dawson, Chair, Wivelsfield Parish Council

¹¹ Lewes District Council, Interim Policy Statement for Housing Delivery, March 2021

proposal would also accord with the other criteria of the Interim Policy Statement for the reasons set out in the case officer's report.

34. I was directed to appeal decisions¹² in which a similar interim policy statement adopted by another local planning authority¹³ was accorded contrasting weight. Having regard to the latter of these appeal decisions, the planning witnesses at the Inquiry accepted that the Lewes Interim Policy Statement should only carry limited¹⁴ or very limited weight¹⁵ because it was not appropriate to introduce new policy in such a way.
35. While recognising the limitations of such a document, it seems to me that the Interim Policy Statement is a pragmatic response by the Council to the current situation, acknowledging that in order to meet a higher housing figure than that contained in the adopted development plan it is likely that additional sites outside settlement boundaries will have to be permitted, and provides criteria by which such decisions can be made in a clear and consistent manner, pending adoption of a revised local plan. The Interim Statement explicitly recognises that it does not form part of the development plan and does not alter the statutory planning framework. In my view, it is a material planning consideration that should be accorded at least some weight.
36. I conclude that the Council is unable to demonstrate an adequate supply of housing land, and as a result the presumption in favour of sustainable development set out in paragraph 11 of the Framework applies and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The development proposal is also given support by the Interim Policy Statement.

Other Matters

37. Concern has been raised at the accessibility of the development to facilities and services. As noted in the settlement hierarchy there are day-to-day facilities available in the village. I acknowledge that occupiers of the development would have to access higher order facilities and services outside the village and are more likely to use their cars than those living in larger urban areas. Nevertheless, there are other forms of transport available such as bus and bicycle, and even when trips to use higher order facilities or services in Haywards Heath and Burgess Hill are by car those journeys would be relatively short. Obligations in the legal undertaking would also secure contributions towards school and bus transport and encourage modes of transport other than the motor car. Wivelsfield Green is recognised as a service village capable of accommodating modest new development and I do not consider that accessibility is so limited that it should prevent a development of the scale of the appeal scheme from being built.
38. There was a suggestion from an interested party¹⁶ that there was no need for more affordable housing in Wivelsfield, and that occupiers of affordable housing in Wivelsfield would be disadvantaged because of the limits on accessibility. I disagree. Given the high cost of housing, there remains a pressing need for

¹² CD 4.1 – APP/L3815/W/21/3286315: Lnad to the west of Church Road, West Wittering and CD 4.17 - APP/L3815/W/20/3255383: Earnley Concourse, Clappers Lane, Earnley, Chichester

¹³ Chichester District Council, Interim Policy Statement for Housing Development, November 2020

¹⁴ Mr Ross in cross examination

¹⁵ Mr Carpenter in cross examination

¹⁶ John Kay, CPRE Sussex

affordable housing in the district that this scheme could help address. There is no reason why that affordable housing should not be located in Wivelsfield; indeed the development plan encourages the provision of affordable housing on-site as part of market housing led schemes, and previous developments have successfully introduced affordable housing to the village, for example Shepherds Close.

39. The lack of capacity in local services is also raised. Although Wivelsfield Primary School may be at capacity that is because it is a popular school with pupils attending from a wide catchment. Assuming the admissions policy favours proximity then children living in the appeal scheme would be admissible to the school, with those more distant having to choose from other primary provision in the district¹⁷. The same would apply to secondary education.
40. I was told that the nearest doctors' and dentists' surgeries are not accepting new patients. That would apply to the occupiers of new development whether it was in the village or the nearby towns. I fully understand concerns about the capacity of the national health service to accommodate existing and new patients, but that is a wider issue and not one that is specific to Wivelsfield Green. It is not a sufficient reason to prevent development taking place.
41. Southern Water has not raised objection to the scheme and while I note the problems some residents have experienced in foul drainage, that appears to be a localised issue. I have no reason to contradict the view of Southern Water that the scheme could be adequately drained.
42. The development would generate additional traffic. I observed the area around the primary school during the drop-off and pick-up periods. While there was some on-street parking on side roads during those times, more so in the afternoon than the morning, traffic flowed safely and reasonably freely. While recognising that is only a snapshot in time, my observations tally with the Highway Authority's decision not to raise objection to the scheme on highway safety or congestion grounds.
43. It is clear that residents value the local wildlife and are concerned that the development would harm local wildlife habitat. While the pasture land is well maintained, in biodiversity terms it does not have a high ecological value. The more valuable habitat features, such as the woodland and the majority of the hedgerows would be retained and enhanced by further planting and features such as a pond. An ecological assessment of the scheme¹⁸ concludes that after landscape planting matures there would be an overall biodiversity net gain. Having regard to that conclusion I consider that the concerns about habitat loss are not well founded.
44. The development would have an impact on the houses in South Road, Shepherds Close and Hundred Acre Lane because of its proximity. I have commented on views in my assessment of landscape character and appearance, but there are also concerns around overlooking, loss of daylight, surface water drainage and noise. The illustrative landscape masterplan indicates screen planting could be used in part to address these concerns. These are matters that would need to be addressed in detail at the reserved

¹⁷ Llyod Wilson Partnership, Education Note, 27 July 2022 (appended to Mr Ross' proof of evidence).

¹⁸ ECOSA, Ecological Impact Assessment, January 2022

matters stage. I have also given consideration to them where relevant through conditional controls attached to the decision.

45. I have been referred to previous planning decisions on the site and in the village, appeal decisions elsewhere and some legal judgements. I have had regard to these decisions where I consider them to be applicable. Otherwise, they have not altered my overall conclusion.

Planning Balance

46. I have concluded that the proposed development would cause harm to the spatial strategy of the development plan because it would run counter to it and would as a result conflict with Policy DM1 of the Allocations Plan and Policy 1 of the Neighbourhood Plan. However, because of the lack of housing land supply these policies must be considered out-of-date, in that the spatial strategy would not achieve the level of housing growth expected by national policy and as calculated using the standard method. I therefore place only moderate weight on the conflict with these policies.
47. I have also concluded that the development would harm the landscape character and appearance of the site. Differing opinions were offered on the magnitude of that harm at the Inquiry. In my view it would be significant at a local level because of the loss of landscape features and the interruption of views of the pasture land that forms a backdrop to the southern edge of Wivelsfield Green. It would therefore conflict with Policy CP10 of the Core Strategy and Policy DM1 of the Allocations Plan. However, that harm is moderated by the degree of containment provided by the existing settlement edge, the ridge to the south and the block of woodland, and the ability of the built part of the development to be confined to the western part of the site. The impact of the development on the wider landscape would therefore be limited. Having regard to these factors, I give moderate weight to the harm to landscape character and appearance.
48. There was a large measure of agreement on what constitutes the planning benefits of the scheme, some of which are supported by policies in the development plan as listed in the Statement of Common Ground¹⁹. Most importantly, these include the provision of 45 dwellings, of which 18 would be affordable. I accord these benefits significant weight in meeting housing demand. The lack of housing land supply, which at 2.73 years is by any measure substantially below that required by national policy, adds to the weight to be given to the provision of new housing.
49. The provision of open space, including an equipped play area, would be of benefit both to future residents of the scheme and also more generally to the public. The provision of play space is a policy requirement, but the extent of open space shown on the illustrative landscape masterplan is substantial and exceeds what would normally be expected in a development of this size and I therefore give it limited weight.
50. Landscape enhancement with additional hedge and woodland planting would be of some benefit but would be necessitated in part to compensate for the removal of part of the hedgerow along South Road and soften the countryside edges of the scheme. There are also conflicting views about the advantages of

¹⁹ Statement of Common Ground, 9 August 2021, paragraph 4.5

woodland planting along the open section of the ridge. I therefore give this benefit limited rather than moderate weight.

51. It was not disputed that the development would provide approximately 11% biodiversity net gain in habitats and 33% net gain in hedgerows. The provision for at least 10% biodiversity net gain contained in the Environment Act 2021 has not yet been enacted and therefore these benefits exceed the more modest requirement contained in the development plan and paragraph 174 of the Framework. I therefore give this benefit moderate rather than limited weight.
52. There would be some economic benefits arising from the development, including temporary employment during the construction phase and the spending power of future residents helping to support local businesses. I was directed to appeal decisions²⁰ which took differing interpretations of paragraph 81 of the Framework, which states that significant weight should be placed on the need to support economic growth and productivity. In my view, this needs to be read in the context of Chapter 6 of the Framework. While residential development may provide some economic benefits, that is less central to creating a strong, competitive economy than growth in the commercial and industrial sectors. I therefore accord this benefit moderate rather than significant weight.
53. Notwithstanding the benefits of varying weight detailed above, having regard to the policies which are most important for determining the appeal, by which I mean those policies relating to spatial strategy and landscape character and appearance, I conclude that the proposal would conflict with the development plan when taken as a whole.
54. However, and importantly, the 'tilted' balance introduced by the presumption in favour of sustainable development requires that planning permission be granted unless the adverse impacts significantly and demonstrably outweigh the benefits. In my judgement, the moderate adverse impacts do not significantly and demonstrably outweigh the benefits, particularly those relating to increased housing supply, when weighed one against the other. It follows that planning permission should therefore be granted.
55. Further support is provided by the proposal agreeing with the criteria in the Interim Policy Statement. I give this limited beneficial weight. Even if I were to assign very limited or no weight to the Interim Policy Statement, I consider that the tilted balance introduced by the presumption in favour of sustainable development would still be in favour of granting planning permission.

Legal undertaking

56. The appeal is accompanied by a legal undertaking that would secure 18 of the units as affordable dwellings, make financial contributions towards recycling facilities, a travel plan, a traffic regulation order, school transport and bus services, secure future maintenance of the open space and woodland, secure off-site highway works including a vehicular access to South Road, bus stop improvements, 2 uncontrolled pedestrian crossing points and a new footway along part of South Road, and provide a route through the development for public access to a car club space.

²⁰ CD 4.7 – APP/D0121/W/21/3286677: Rectory Farm, Chescombe Road, Yatton, Bristol and CD 4.15 – APP/C1570/W/21/3272403: Mill Road, Henham

57. Having had regard to the compliance statement submitted by the Council and the discussion that took place at the Inquiry, I am satisfied that the obligations meet the requirements of Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) in that they are necessary, directly related to the development and fairly and reasonably related in scale and kind. I have placed weight on them in this appeal in meeting policy requirements in the development plan and the additional demands the development would place on infrastructure and public services, and helping to improve accessibility.

Conditions

58. I have considered the conditions included in the Statement of Common Ground against the tests in paragraph 56 of the Framework. I have included those which meet the tests set out in the Framework, subject in some cases to rewording and simplification in the interests of clarity, consistency and enforceability. They have also been reordered in accordance with the advice in the Planning Practice Guidance. I have taken the signed Statement of Common Ground as the appellant's written agreement to the inclusion of pre-commencement conditions as required under section 100ZA of the Town and Country Planning Act 1990.

59. Condition 1 is necessary to require submission of the reserved matters, and conditions 2 and 3 set time limits for their submission and the start of development. I have separated these for clarity. The shorter submission timescale for the reserved matters that has been agreed reflects the need to bring development forward as quickly as possible. Condition 4 listing the approved drawings is needed for certainty.

60. Condition 5 is necessary to ensure protection of trees to be retained on the site. Conditions 6, 11 and 16 are necessary to ensure adequate surface water drainage and maintenance, the former specifically to prevent water draining onto the public highway.

61. Condition 7 is required to ensure control over the aspects of access within the site that are not covered by the approved drawings. Condition 8 is needed to ensure that any damage to the public highway will be made good in due course.

62. Conditions 9, 17 and 19 are necessary to ensure the protection of wildlife habitats and enhancement of biodiversity on the site. In accordance with the discussion that took place at the Inquiry I have combined 2 suggested conditions into one and simplified their requirements in the interests of clarity.

63. Conditions 10, 14, 15 and 22 are necessary to protect existing residents from noise, dust and odours during the construction period, and remediate any contamination that may be found on site, for the safety and comfort of existing and future residents.

64. Conditions 12 and 13 are necessary to ensure any finds of archaeological interest are assessed and recorded.

65. Conditions 18 and 21 are necessary in the interests of highway safety.

66. Condition 20 is necessary to meet policy requirements and promote energy efficiency.

67. I have not imposed a condition relating to sustainability assessment as it is not clear what its purpose is or what it requires a developer to do. I have not imposed conditions relating to parking and turning areas, flood alleviation, refuse recycling, cycle parking and the size of parking bays as these are more appropriately considered as part of the reserved matters. A condition requiring the installation of electric vehicle charging points is no longer necessary as this is now included in the building regulations²¹.

Conclusion

68. Although the proposed development would conflict with the development plan when taken as a whole, that conflict would cause only moderate harm. In this case, there are material considerations which outweigh that harm for the reasons given above, and indicate that the decision should be taken otherwise than in accordance with it.

69. Consequently, I conclude that the appeal should be allowed.

Guy Davies

INSPECTOR

Richborough Estates

²¹ The Building Regulations - Approved Document S: infrastructure for charging electric vehicles

APPEARANCES

FOR THE APPELLANT:

Sasha White, of Kings Counsel and Anjoli Foster, of Counsel, who called:

Jeremy Smith BSc (Hons) DipLA CMLI	Director, Landscape Architecture SLR
Asher Ross BSc (Hons) MPhil MRTPI	Director, Wates Development Ltd

Beth Gascoyne, Partner, Cripps LLP, attended the round table discussion on the legal undertaking and conditions.

FOR THE COUNCIL:

Dr Ashley Bowes, of Counsel, who called:

Nick Harper BA (Hons) DipLA (Hons) CMLI	Director, Harper Landscape Architecture LLP
Martin Carpenter BA (Hons) MRTPI	Director, Enplan

INTERESTED PARTIES:

Ian Dawson	Chair, Wivelsfield Parish Council
Mark Orchin	Resident
John Kay	CPRE Sussex
Nancy Bikson	District Councillor, Wivelsfield Ward
Celia Lindsay	Resident
Simon Taylor	Resident
Emma Smith	Resident

DOCUMENTS

Received during or after the Inquiry:

1. CD 4.15 - appeal decision, Mill Road, Henham
2. CD 4.16 - appeal decision, Field south of Raughmere Drive, Lavant
3. CD 4.17 - appeal decision, Earnley Concourse, Clappers Lane, Earnley
4. Opening submissions on behalf of the appellant
5. Opening submissions on behalf of the Council
6. Statement by Ian Dawson
7. Statement by Mark Orchin
8. Statement by John Kay
9. Statement by Celia Lindsay
10. Statement by Simon Taylor
11. Statement by Emma Smith
12. Costs application submitted by the appellant
13. Response to costs application by the Council
14. Final comments on the costs application by the appellant
15. Closing submissions on behalf of the Council
16. Closing submissions on behalf of the appellant
17. Completed copy of the legal undertaking

Schedule of conditions:

1. No development shall commence until details of layout (including site levels), scale, design and landscaping (hereinafter called the "reserved matters") have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
3. The development hereby permitted shall begin not later than 3 years from the date of this permission or not later than 2 years from the date of approval of the last of the reserved matters to be approved, whichever is later.
4. The development shall be carried out in accordance with the following approved plans: 7050 LOC001 Rev B – site location plan; ITB10356-GA-001 Rev G – site access plan.
5. No development shall commence until an arboricultural survey and impact assessment has been submitted to and approved in writing by the local planning authority. The survey and impact assessment shall be in accordance with BS5837:2012 and shall include details of the measures to protect trees to be retained on and adjacent to the site. The approved tree protection measures shall be implemented prior to commencement of development and thereafter retained until completion of the development. No vehicles, plant or materials shall be driven or placed within root protection areas.
6. No development shall commence until details of surface water drainage to prevent the discharge of surface water from the site onto the public highway and vice versa have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
7. No development shall commence until detailed drawings, including levels, sections and constructional details of the proposed roads, surface water drainage, outfall disposal and street lighting have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
8. No development shall commence until a condition survey of the surrounding highway network has been submitted to and approved in writing by the local planning authority. Any damage caused to the public highway as a consequence of construction traffic shall be made good prior to occupation of the last of the dwellings hereby approved.
9. No development shall commence, including ground works, until a method statement for the protection of retained habitats and measures to protect badgers, reptiles and amphibians has been submitted to and approved in writing by the local planning authority. The method statement shall include the purpose and objectives of the proposed works, design and/or working

methods, extent and location of proposed works shown on appropriate scale maps and plans, timetable for implementation, persons responsible for implementation, maintenance and waste disposal, where relevant. The development shall be carried out in accordance with the approved method statement, with any long term measures retained thereafter.

10. No development shall commence until a construction and environmental management plan has been submitted to and approved in writing by the local planning authority. The plan shall be written in accordance with the Institute of Air Quality Management guidance in BS5228 parts 1 and 2 and shall include mitigation measures as detailed in the Mayer Brown Air Quality Assessment WivelsfieldGreen(A).9, January 2022, Appendix A. The plan shall also include the following:
- The anticipated number, frequency and types of vehicles used during construction
 - The timing of deliveries and waste collection from the site
 - Means of reusing any existing materials present on site for construction works
 - The method of access and egress routing of vehicles during construction
 - The parking of vehicles by site operatives and visitors, including a workers' travel plan
 - The loading and unloading of plant, materials and waste
 - The storage of plant and materials used in the construction of the development
 - The erection and maintenance of security hoarding
 - Flood management during construction both on and off site
 - The provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway
 - Details of public engagement prior to and during construction works
 - How noise, vibration and odour impacts arising out of the construction will be addressed
 - Dust mitigation measures
 - Demonstration that best practical means have been adopted to mitigate the impact of noise and vibration from construction activities
 - Details of the use of protective fences, exclusion barriers and warning signs
 - Details of the location and appearance of the site offices and storage areas for materials including a bunded area for the storage of liquids, oils and fuel
 - Details of any external lighting.
- The approved plan shall be implemented throughout the construction period.
11. No development shall commence until a surface water drainage strategy has been submitted to and approved in writing by the local planning authority. The strategy shall incorporate detailed drawings and hydraulic calculations, be designed to limit surface water flows to no more than 10.17l/s for all rainfall events, incorporate details of the outfall of the surface water drainage system, how surface water flows exceeding the capacity of the system will be managed, and details of groundwater monitoring. The development shall be carried out in accordance with the approved surface water drainage system and thereafter retained.
12. No development shall commence until a programme of archaeological works has been implemented in accordance with a scheme of investigation which

has been submitted to and approved in writing by the local planning authority.

13. The development shall not be occupied until an archaeological site investigation and post-investigation assessment carried out in accordance with the programme of archaeological works has been submitted to and approved in writing by the local planning authority.
14. No development shall commence until a contamination remediation strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include a site investigation scheme to assess contamination risk to all receptors including those off site, the results of the investigation scheme, and an options appraisal and remediation strategy. The approved remediation strategy shall be carried out and a verification report demonstrating that the works set out in the remediation strategy have been implemented submitted to and approved in writing by the local planning authority prior to occupation of the development.
15. If during development contamination not previously identified is found to be present on the site then no further development shall be carried out until a revised contamination remediation strategy has been submitted to and approved in writing by the local planning authority. The revised remediation strategy shall be carried out and a verification report demonstrating that the works set out in the remediation strategy have been implemented submitted to and approved in writing by the local planning authority prior to occupation of the development.
16. The development shall not be occupied until a surface water drainage maintenance and management plan has been submitted to and approved in writing by the local planning authority. The plan shall include who will be responsible for managing the surface water drainage system and how those arrangements will be maintained in perpetuity. The approved plan shall be implemented prior to occupation of the development and thereafter retained.
17. The development shall not be occupied until a lighting design strategy for biodiversity has been submitted to and approved in writing by the local planning authority. The strategy shall identify those areas that are particularly sensitive for badgers, bats and hazel dormice, demonstrate how external lighting has been designed to avoid disturbance to the above species, and minimise light spill from the site to the countryside. All external lighting shall be installed and thereafter maintained in accordance with the strategy.
18. The development shall not be occupied until visibility splays of 2.4m x 51m to the west and 2.4m x 54m to the east have been provided at the junction with South Road in accordance with the approved site access plan. The visibility splays shall thereafter be maintained and kept free of any obstruction above a height of 600mm.
19. The development shall not be occupied until a landscape and ecological management plan has been submitted to and approved in writing by the local planning authority. The plan shall be designed to support a minimum 10% biodiversity net gain on the site and shall include a description and

evaluation of features to be managed, any ecological constraints on the site, options, aims and objectives of management, management actions including a work schedule and timetable, details of responsibility for implementation and funding of the plan, and any ongoing monitoring and remedial measures. The approved plan shall be implemented in accordance with the approved details.

20. The development shall not be occupied until details of ultra-low NO_x boilers with maximum NO_x emissions less than 40 mg/KWh (or a zero emission energy source) have been submitted to and approved in writing by the local planning authority. The approved boilers shall be installed prior to occupation of the development and thereafter retained.
21. The completed access shall have a maximum gradient of 2.5% (1 in 40) for a minimum distance of 10m from the channel line into the site and 11% (1 in 9) thereafter.
22. Construction work shall take place only between the hours of 0800 to 1800 Mondays to Fridays and 0900 to 1300 Saturdays. Construction work shall not take place at any time on Sundays or on Bank or Public holidays.

***** End of conditions *****