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## Appeal Decision

Inquiry Held between 1-11 October 2019

Site visit made on 9 October 2019

**by Louise Phillips MA (Cantab) MSc MRTPI**

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

**Decision date: 13<sup>th</sup> December 2019**

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**Appeal Ref: APP/C1435/W/19/3230484**

**Mornings Mill Farm, Eastbourne Road, Willingdon BN20 9NY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by The Vine Family and the University of Brighton against Wealden District Council.
  - The application Ref WD/2017/1942/MEA, is dated 6 September 2017.
  - The development proposed is an outline application with all matters reserved except for the means of access from Eastbourne Road for the comprehensive development of a mixed-use urban extension comprising up to 700 dwellings including affordable housing, 8,600 square metres of employment floorspace, medical centre, primary school, community centre, retail, playing fields, children's play space, allotments, amenity open space, internal access roads, cycle and footpath routes and associated landscaping and infrastructure.
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### Decision

1. The appeal is dismissed and planning permission for an outline application with all matters reserved except for the means of access from Eastbourne Road for the comprehensive development of a mixed-use urban extension comprising up to 700 dwellings including affordable housing, 8,600 square metres of employment floorspace, medical centre, primary school, community centre, retail, playing fields, children's play space, allotments, amenity open space, internal access roads, cycle and footpath routes and associated landscaping and infrastructure, is refused.

### Application for Costs

2. An application for costs was made by Wealden District Council against The Vine Family and the University of Brighton. This application is the subject of a separate decision.

### Preliminary Matters

3. The description of development above relates to a revised planning application submitted to the Council on 30 November 2018. The appropriate notifications have taken place and so my decision is made on this basis. Mid-way through the Inquiry, the appellant introduced further revised plans of the site access arrangements following discussions and negotiations with East Sussex County Council (in its capacity as highway authority) which had been ongoing since early August.

4. The revised plans sought to address the objections of the highway authority but, nevertheless, the changes proposed were significant and my acceptance of them would have deprived both professional/technical consultees and interested parties of their rightful opportunity for comment. The former would not have had time to consider the revised material in any meaningful way; and the latter, some of whom have taken considerable interest in the transport-related aspects of the proposal, would not have been able to consider it at all. I have therefore based my decision on the access plans submitted with the appeal and listed in the Statement of Common Ground, August 2019: drawing nos IT432/TA/03A and 04A. These plans, along with the Site Location Plan ref. 1.109B, are intended for determination now. As the application is made in outline with all other matters reserved, I have treated the remaining submitted plans as illustrative.
5. The development plan for the district comprises of the Wealden Core Strategy Local Plan 2013 (CSLP), the Affordable Housing Delivery Local Plan 2016 (AHDLP), saved policies in the Wealden Local Plan 1998 (WLP) and saved policies in a joint Minerals Local Plan 2013 which are not relevant to this appeal. In its putative reasons for refusal, and in support of its case generally, the Council also refers to policies in the Submission Wealden Local Plan 2019 (SWLP), which is an emerging plan currently subject to independent examination.
6. The fact that the examination has commenced does indicate that the SWLP has reached a relatively advanced stage of preparation, but paragraph 48 of the National Planning Policy Framework (the Framework) also requires that the extent to which there are unresolved objections to relevant policies is taken into account in determining how much weight should be attributed to an emerging plan. In this case, there are significant unresolved objections concerning strategic matters specifically relevant to this appeal. At the time of writing, the examining Inspector's letter concerning the strategic matters considered at Stage 1 of the examination has not been published, and subsequent stages have not been programmed.
7. Consequently, while the relevant policies of the SWLP are a material consideration to which I have had regard, I give them limited weight. This position is consistent with that taken by other Inspectors in the majority of the appeal decisions to which I have been referred<sup>1</sup>. Some have given greater weight to specific evidence underpinning the emerging plan in relation to the protection of Ashdown Forest, but this is a matter of judgement which must be based on the totality of the evidence before each individual Inspector.
8. The appeal is made against the Council's failure to determine the application within the statutory period, but its Statement sets out the reasons for which it would have refused planning permission had it retained the power to do so. I have had regard to these reasons, but in finalising the main issues for the appeal below I have taken account of how the various concerns were clarified through the presentation of evidence at the Inquiry.
9. Furthermore, and significantly in respect of the main issues, the effect of the proposed development upon the Ashdown Forest SAC was a key contested issue at the inquiry, taking two full days of inquiry time. The parties agree that the potential for the development to have a significant effect upon the Forest in

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<sup>1</sup> Core Documents 6.1 – 6.6 and Inquiry Document 13.

respect of air quality, in combination with other plans and projects, could not be ruled out at the screening stage<sup>2</sup>. Therefore, as the competent authority in this case, I would need to carry out an Appropriate Assessment (AA) as required by the Habitats Directive before I could consider any grant of planning permission<sup>3</sup>.

10. However, for the reasons explained in my decision, I intend to dismiss the appeal on highway grounds and thereby refuse planning permission for the scheme. The outcome does not therefore turn upon the effect of the proposal on the Forest and I am not required to undertake AA or to conclude upon this matter. Indeed the parties share the view that the examining Inspector's forthcoming report is likely to be determinative for the district as a whole. It would not therefore be helpful for me to reach an unnecessary finding in respect of this particular case. Consequently, the matter does not constitute a main issue of the appeal, notwithstanding the intensity of the dispute.
11. A completed Unilateral Undertaking (UU) pursuant to S106 of the Act<sup>4</sup> was submitted after the close of the Inquiry (Inquiry Document 20). This followed discussion of a draft version at the event and a subsequent exchange of comments by the parties. I have taken both the completed UU and the comments into account in my decision.

## **Main Issues**

12. The main issues are:

- The effect of the proposed access arrangements upon the safety of all road users;
- The effect of the proposed development upon the operation of the strategic and local road networks, including upon planned bus priority measures, and whether it would provide appropriate opportunities for the use of sustainable transport modes;
- Whether the proposed development would be premature, having regard to the emerging Submission Wealden Local Plan and to national policy on this matter; and
- Whether, if required, the proposed development would make appropriate provision for affordable housing and infrastructure, including open space, play facilities and community infrastructure.

## **Reasons**

### Safety of Access Arrangements

13. Vehicular access to the appeal site is proposed in the form of two junctions onto the A2270 Eastbourne Road, which provides a key north/south route between the south Wealden area and Eastbourne. Both proposed junctions would be three-arm, signalised junctions which, taken together, would include slip/flair lanes, advanced cycle stop lines, new footways and staggered toucan crossings. A new dedicated cycle lane and bus lane are also shown along the western carriageway of the A2270 beginning near to the northernmost

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<sup>2</sup> Appellant's Shadow HRA, November 2018, page 5 second paragraph (CD1.18).

<sup>3</sup> Habitats Directive (92/43/EEC), Article 6(3).

<sup>4</sup> Town and Country Planning Act 1990.

proposed access, running through the southernmost one and onward towards Eastbourne.

14. The cycle and bus lanes form part of the highway authority's planned Hailsham, Polegate & Eastbourne Movement and Access Corridor – the HPEMAC – (considered further below) and they have been incorporated into the appeal scheme in the form shown in the latest consultation documents. More recently, the highway authority has decided that it would prefer the cycle lane to be provided on the eastern side of the A2270, and it is likely that this could be accommodated were planning permission to be granted. Consequently, the proposed access junctions would be used by vehicles including buses, and by cyclists and pedestrians. They would represent significant, relatively complex pieces of infrastructure on a busy and important road.
15. Two documents, dated July 2017 and February 2019, comprise the independent Stage 1 Road Safety Audit of the proposed junctions undertaken at the request of the appellant<sup>5</sup>. These reports identify several problems, common to both junctions and specific to each, which essentially amount to there being insufficient information to conclude at this stage that the designs would not compromise road safety.
16. The missing details include the location of various items of ancillary infrastructure, such as street furniture, poles and bus stops; vehicle swept path analysis (showing how different vehicles would move through the junctions); and scheme dimensions/geometry (concerning lane widths and the size of islands etc). No estimate of the likely volume of cycle and pedestrian traffic expected to use the junctions has been provided. In the absence of such details, the Audit identifies the potential for collisions between different types of road user if there is ultimately insufficient room to accommodate them as proposed.
17. The Audit recommends that the missing information should be provided with detailed junction designs which would be subject to a Stage 2 Safety Audit, and Section 5 of guidance document GG119 forming part of the Design Manual for Roads and Bridges clearly outlines a staged audit process. However, the highway authority is not satisfied that the changes to the submitted designs required to respond to the Stage 2 audit would be sufficiently minor to fall within the scope of its own Section 278 approval process. Indeed it is not certain that the form of the junctions proposed could be retained.
18. Therefore, while the level of detail provided in this case might be adequate in some circumstances, it is insufficient to demonstrate that the significant, multi-user junctions proposed to serve a substantial development from a busy road would be safe. Whilst Highways England accepted the appellant's scheme of improvement to nearby Cophall Roundabout on the basis of a Stage 1 Safety Audit, this included detailed junction dimensions and traffic flow estimates for all road users. Thus the evidence is not comparable.
19. For the reasons above, I conclude that it has not been demonstrated that the proposed access arrangements would not compromise the safety of all road users. The proposed development would therefore conflict with Policy TR3 of the WLP 1998 which requires provision of a satisfactory means of access and with Policy TR13 insofar as pedestrian safety would be affected. It would also

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<sup>5</sup> Reproduced in Appendix JB7 to the Proof of Evidence of Mr Justin Bass, September 2019.

conflict with the provisions of paragraph 108 of the Framework concerning safety.

#### Operation of the Road Network

20. During the course of the appeal, Highways England withdrew its objection to the appeal scheme because it is now satisfied that its impact upon the Strategic Road Network (SRN) - specifically the A27 - could be mitigated<sup>6</sup>. A package of measures is required<sup>7</sup>, and both Highways England and the local highway authority are confident that the elements for which they are responsible could be delivered as necessary. The appellant would be responsible for work to Cophall Roundabout to the north of the site and this could be secured by means of a legal agreement with Highways England along with a S278 agreement.
21. To ensure the efficient and safe operation of the SRN, it would be necessary to impose a condition requiring no more than 150 dwellings to be occupied until the various works are completed. However, to alleviate congestion on the Local Road Network (LRN) to which the proposed development would add, the highway authority's Polegate High Street Signals scheme should be completed prior to any occupation. This is due in 2020/21 and the appellant broadly accepts the necessity of the more stringent condition. Overall, therefore, the effect of the proposed development upon the operation of the SRN is capable of being addressed.
22. In respect of the LRN, it is agreed that further mitigation works would be required in addition to those necessary to safeguard the operation of the SRN. The UU would provide a financial contribution sufficient to enable a signal box to be upgraded at the junction of the A2270 and Huggetts Lane to the south of the site; and it was agreed at the Inquiry that the development should not be occupied until Phase 1 of the HPEMAC is implemented. The proposed development would have a direct impact upon these elements of the road infrastructure. A condition could be imposed to secure the necessary mitigation, although the specific effect of the proposal upon the HPEMAC is considered below.
23. It was further agreed that the development should, to some extent, be contingent upon works to upgrade two roundabouts on the A22 Golden Jubilee Way<sup>8</sup>. This road provides an alternative route specifically intended to divert traffic to and from Eastbourne away from the congested A2270, and the appeal scheme would clearly add traffic on the latter. However, Highways England confirmed that the scheme would have no direct impact on either roundabout, and the improvements to them are required whether or not it is built. Therefore, given that the traffic impact of the proposed development would be gradual as it would be constructed in phases, it would be reasonable to permit the occupation of up to 150 units before the roundabout works are completed as Highways England suggests. This could be secured by condition.
24. The HPEMAC is essentially a proposal for a sustainable transport corridor from Hailsham to Eastbourne which seeks to minimise predicted traffic congestion in the Eastbourne and South Wealden areas as a result of increased development.

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<sup>6</sup> Statement of Common Ground (SOCG) between Highways England and the appellant, 10 September 2019.

<sup>7</sup> *Ibid*, para. 3.1.

<sup>8</sup> A27 and A22 Golden Jubilee Way Roundabout; and A22 Golden Jubilee way and Dittons Road roundabout.

- Phase 1, which includes the stretch of the A2270 past the appeal site, was consulted upon in October 2017. It is fully funded and due to be implemented in 2020/21. The HPEMAC includes a northbound bus lane past part of the site and, while no southbound bus lane is proposed, bus priority is a key aspect of the HPEMAC overall.
25. The plans of the proposed accesses to the appeal site do not include measures to facilitate southbound bus movements through either the northern or southern signalised junctions. The northern junction is expected to delay southbound vehicles (including buses) by approximately 16.60 seconds in the morning peak period and by approximately 16.88 seconds in the evening peak. The projected southbound time savings resulting from the HPEMAC along this particular stretch of the A2270 are 48 seconds and 74 seconds in the morning and evening peaks respectively and the delays caused by the proposed northern access to the appeal site would be set against these<sup>9</sup>. Northbound buses are also expected to experience delays, but the extent is less clear in the figures and this was of less concern at the Inquiry. The effect of the southern proposed access was similarly of less concern.
  26. The delays expected to affect southbound buses are perhaps relatively small in themselves and they are certainly small in the context of an overall journey time from Hailsham to Eastbourne exceeding half an hour. However, not everyone will make the entire journey from Hailsham to Eastbourne and the success of bus priority measures will surely be linked to the experience of passengers in any given locality. In this context, the delays cited above are significant versus the relatively small time savings to be achieved by the HPEMAC. Moreover, they fundamentally conflict with the very purpose of an approved and funded sustainable transport scheme.
  27. The emerging SWLP does include a smaller development site allocation in the vicinity of the northern proposed access to the appeal site<sup>10</sup>, but I have no detailed information about the nature or position of the access which might be needed to serve it. I cannot therefore conclude with confidence that the appellant's proposed access would be no worse than the one required by the emerging plan. The effect of the latter upon the HPEMAC and LRN generally would itself require assessment in any case. Therefore, the present site access proposals do not demonstrate sufficient consideration for the purpose of the HPEMAC and they do not promote this opportunity available for public transport use as required by paragraphs 102 and 108 of the Framework.
  28. Turning to the use of other sustainable transport modes, the Polegate/Willingdon and Jevington Footpath no. 5 runs north/south through the site linking to the A2270 Eastbourne Road and the B2247 Pevensey Road. The nearby settlement of Polegate, with its train station and selection of day to day services lies to the north-west of the site. Footpath no. 5 could be upgraded within the site itself to provide an appropriate facility for both pedestrians and cyclists. The main internal road serving the development would also provide foot and cycleways connecting with Eastbourne Road at both proposed access points.
  29. Thus pedestrians and cyclists would be able to travel from the site to Polegate along Eastbourne Road with cyclists making use of the HPEMAC cycleway and

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<sup>9</sup> Supplementary Proof of Justin Bass, September 2019, Appendix JBS6, page 385.

<sup>10</sup> SLWP, Policy SWGA38, Allocation PW1.



- existing marked lanes. Pedestrians would need to cross Eastbourne Road and back again to make the journey, but the availability of formal crossing points would make this relatively easy. Moreover, pedestrians would also be able to use existing routes towards Polegate from the north of the site, via Black Path or "Polyarch" without the need for upgrading.
30. Whether the routes via Black Path or "Polyarch" could be upgraded to meet the formal standards for cycle paths or those required by the Disability Discrimination Act is less certain. The former route runs over Polegate Town Council's land, with the appellants benefitting from an easement which permits various vehicles, including motor vehicles, to pass over a particular strip of land to the site. It is not absolutely clear that this confers a right to upgrade the path, but the existence of the easement suggests there is a reasonable prospect of suitable access being achieved.
31. Moreover, a surfaced path runs parallel to the strip of land covered by the easement. It is not wide enough to constitute a formal cycle path and public use in perpetuity cannot be guaranteed. However there is no particular concern that access will be denied and its quality is such that cyclists from the development could use it. Consequently, the Black Path route would provide a suitable, if not perfect, route to Polegate for cyclists from the north of the site.
32. The "Polyarch" route includes unregistered land, making the process for obtaining the necessary consent to upgrade the path potentially difficult for any party. The highway authority presented this as an insurmountable obstacle to it undertaking the work, and no other solution was forthcoming. Thus the existing path, which is narrow and potholed in places, might not be suitable for general cycling, but Black Path would provide alternative access to Polegate. Cyclists would also be able to use Footpath 5 within the site to connect to Eastbourne Road and onward to Polegate in any case.
33. Drawing together my findings above in relation to the operation of the transport network, I conclude that the proposed development would not affect the operation of the SRN because its impact could be suitably mitigated. The development would provide appropriate opportunities for walking and cycling, and both pedestrians and cyclists would have a choice of routes to Polegate. However, the proposed access junctions on the Eastbourne Road would compromise planned bus priority measures forming part of the HPEMAC and this has not been given sufficient consideration. Having regard to the overall purpose of the HPEMAC to minimise congestion, this failure to promote bus use would be detrimental to the operation of the LRN. Thus the proposal would be contrary to Policy TR3 of the WLP 1998, which requires that new development does not perpetuate unacceptable traffic conditions and that it provides appropriate public transport facilities. As stated above, it would also conflict with paragraphs 102 and 108 of the Framework.

#### Prematurity

34. Paragraph 49 of the Framework requires that two tests are met before a refusal of planning permission could be justified on grounds of prematurity. Considering test a), the proposed development is certainly substantial, and the site's policy status would change if the SWLP were to be adopted. Currently under the Core Strategy, most of the site lies within a strategic development area (SD4) identified in Policy WCS4 at south Polegate/east Willingdon. The area is expected to provide around 700 dwellings, 8,600sqm of employment

floorspace, leisure, recreation and community facilities. Therefore, the appeal scheme complies with this policy in principle. Under the emerging SWLP, the strategic development area designation would be removed, and the appeal site would not be allocated in any form.

35. However, the strategy of the SWLP is to focus the majority of development within the South Wealden Growth Area (SWGA), which includes the area within the development boundary of Polegate and Willingdon (Policy SWGA1). Whilst the appeal site would not be allocated, it would fall entirely within this development boundary (Map 11, page 209) where the principle of development would be acceptable under the terms of Policy WLP3. Paragraph 6.11 of the SWLP further explains that development of any scale would be acceptable in principle, subject to compliance with other policies within the plan. Consequently, the proposed development would be consistent with the growth strategy of the SWLP - in principle.
36. The foremost reason for removing the SD4 development area from the SWLP and for not allocating the appeal site (the allocation of which was proposed in an earlier iteration of the plan) concerns the effect that the quantum of development proposed, in combination with other planned growth, could have upon the integrity of the Ashdown Forest Special Area of Conservation (SAC) via an air quality pathway of impact. Indeed the Council's case on prematurity centres on the scale of the task involved in having to de-allocate 700 dwellings proposed elsewhere in the SWLP in order to accommodate the appeal scheme within the overall "cap" on housing growth it sets at 14,228 dwellings. The reason for the cap is that the plan is predicated upon an air quality mitigation strategy which seeks to deal with the potential effects of 14,228 dwellings precisely.
37. However, the dwelling cap was an input to the Council's air quality evidence supporting this appeal rather than an output of it. Essentially, having been asked to test a figure of 14,228 dwellings, the Council's air quality specialist has concluded that the impacts of the SWLP are mitigable, but that this will be challenging. He further concludes, quite reasonably, that mitigating a higher level of development will be more challenging<sup>11</sup>, but no evidence was presented to demonstrate that a higher level of growth has been tested from an air quality perspective. Thus it has not been demonstrated that the precise cap of 14,228 dwellings is needed because it would be impossible to mitigate the air quality impacts of more; although there might of course be other reasons for selecting this figure.
38. Consequently, it should not automatically be concluded that the appeal scheme would conflict with Policy AF1 of the SWLP, which would require development in addition to planned growth, in combination with planned and other relevant development, to demonstrate that it would not adversely affect the SAC. I am not required to undertake an AA given my overall conclusion about this appeal, but the development would be likely to generate just 38 vehicles using roads through the forest per day. The additional effects of the scheme itself would therefore be extremely small. Moreover, the measures comprising the Council's intended Air Quality Mitigation Strategy (CD5.2, paragraph 12.27) are not site-specific and would be as applicable to the appeal scheme as to allocated sites.

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<sup>11</sup> Proof of Evidence of Dr Marner, 10 September 2019, paragraphs 6.3-6.5.



39. Overall, the proposed development would comply with the growth strategy of the SWLP in principle. The 14,228 dwelling cap does not represent an absolute limit on growth from an air quality perspective and, if the SWLP were to be adopted, the appeal scheme would need to comply with Policy AF1 (and there is no fundamental reason to consider that compliance would not be possible). Therefore, having regard to test a) in paragraph 49 of the Framework, a grant of planning permission would not undermine the process for preparing the SWLP by predetermining decisions about the scale, location or phasing of development that are central to it. Having reached this finding, it is not necessary to consider test b) in paragraph 49 and so I conclude that the proposed development would not be premature.

#### Affordable Housing and Infrastructure Provision

40. The UU includes planning obligations relating to all the requests made by the Council. Nothing is fundamentally missing, and the appellant does not dispute the need to make some sort of provision in each case. However, there remains dispute about the nature, scale and/or effectiveness of certain provisions.
41. The UU would secure 35% affordable housing as required by Policy AFH1 of the Affordable Housing Delivery Local Plan 2016 (CD4.2) with an appropriate tenure mix. This obligation is not disputed, it is necessary to comply with the development plan and it meets the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and in paragraph 56 of the Framework. An obligation is also included to secure on-site provision of various types of public open space as well as a financial contribution towards its maintenance. Open space is required by policies LR1, LR3 and LR5 of the WLP 1998, and the amount of land and money secured by the UU would satisfy the recommendations in the Council's draft Supplementary Planning Guidance. Consequently, the relevant tests are also met in this respect.
42. Community hall facilities would need to be completed upon the occupation of the 280th dwelling. The outstanding requirement for such facilities in the local area justifies the need for obligation in principle. Part of the overall space would be provided in a converted barn, but the UU would nevertheless secure specific facilities to meet Sport England's standards where relevant. In the absence of any alternative information about the size or type of hall required by the Council<sup>12</sup>, the facility offered by the appellant seems reasonable. Further obligations concern the provision of land to accommodate a medical centre and a school. Again, these requirements are justified by the unmet need (or, in the case of the school, the probable future need) for such facilities in the local area which would be made worse by the development. Following discussion at the inquiry, it is not disputed that the space proposed would be sufficient.
43. However, the Council has various concerns about the mechanisms proposed for securing the community hall, the medical centre site and the school site at the right time and for transferring them to the appropriate organisations. Certain obligations would be tied to the "phasing assumptions" and the "Design Framework Parameter Plan" embedded within the UU, but both are clearly intended to be indicative and flexibility is provided for other assumptions/locations to be approved by the Council in due course. The

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<sup>12</sup> Council's CIL Infrastructure Justification Statement (para. 2.19).

arrangements for the transfer of the facilities/land might ultimately enable the developer to discharge its obligations without the infrastructure having been secured, but only if various public and other responsible bodies fail to accept them within good time. As the facilities are requested by the Council as being in demand and would meet the relevant standards, this would seem to be a small risk. Of course, the risk would be smaller still had it been possible to conclude a legal agreement between the parties, but it has not.

44. Turning lastly to the obligations concerning highways, it is not disputed that the UU secures sufficient financial contributions towards necessary works at the Huggetts Lane Signals (see above) and for auditing the travel plan. It also provides for a "Bus Service Contribution" of £420,000 towards increasing the frequency of buses past the site; a "High Street Contribution" of £1,383,000 towards traffic calming and public transport improvements on Polegate High Street; and a "Links Contribution" of £100,000 towards upgrading Footpath 5 beyond the site boundary.
45. The highway authority has requested a sum of £1.2m to increase bus services past the site from two to four journeys per hour. However, this would appear to represent the total cost of providing the service for five years with no contributions being sought from other developments which would benefit from the HPEMAC scheme, and no allowance being made for funding from passenger fares. The proposed development would certainly contribute to the need for improved bus services but the appellant's evidence<sup>13</sup> indicates that the Bus Service Contribution in the UU would be more reasonably related to the development.
46. Similarly, given that the traffic impact of the development would be gradual, it would be reasonable for the High Street Contribution to be paid in two instalments. Indeed the contribution would be paid in the relatively early stages of implementation given that planning permission is sought for up to 700 dwellings. The Links Contribution is not necessary because both pedestrian and cycle access to Polegate could be obtained by other routes (see above) and, in any case, the highway authority has confirmed its position that it could not use the money for its intended purpose.
47. Overall therefore, with the exception of the unnecessary Links Contribution, the planning obligations provided for within the UU meet the tests in the CIL Regulations and the Framework and I have had regard to them in reaching my decision. On this basis, I conclude that the proposed development would make appropriate provision for affordable housing and infrastructure, including open space, play facilities and community infrastructure. In this particular respect, there would be no conflict with Policies CS1 or TR3 of the WLP 1998; or with Policies WCS7 or WCS14 of the CSLP 2013.

#### Other Matters

48. The preliminary matters above explain that the proposed development has the potential to have a significant effect upon the integrity of Ashdown Forest SAC via an air quality pathway of impact. It also has the potential to affect the integrity of the Pevensey Levels SAC via a water quality pathway. Whether there would ultimately be an effect upon the Ashdown Forest is disputed, but

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<sup>13</sup> Justification for S106 Obligations, 9 October 2019.

there is agreement that any effect on the Pevensey Levels could be mitigated by the imposition of conditions.

49. In addition to the matters addressed under the main issues of the appeal, interested parties have raised concerns about the proposed development including the loss of open agricultural space; the effect upon the character and appearance of the area; the effect upon the nearby South Downs National Park and the Dark Night Skies Reserve; wildlife; flood risk and drainage; air pollution; and pressure upon various local infrastructure. However, given my overall conclusions, these matters are not determinative of the appeal.

### **Planning Balance and Conclusion**

50. The proposed development would provide up to 700 dwellings, 35% of which would be affordable. In view of the Government's objective of significantly boosting the supply of homes, this would clearly be a benefit of the scheme. Moreover, the Council can presently demonstrate only 3.67 years supply of specific deliverable sites for housing, falling short of the five-year requirement expected by the Framework (paragraph 73). In this context, the proposed housing, which would be provided in accordance with the growth strategy for the District, constitutes a significant benefit which weighs heavily in favour of the development in the planning balance.
51. The economic benefits of the scheme in the form of the employment and retail floorspace proposed also weigh strongly in its favour and, while the community facility and the land for the medical centre and school are all to some extent required to serve the development itself, they would also help to address existing (or likely future) deficits. Consequently, they are also positive factors in the balance. The development would provide various types of public open space and there is no reason to doubt that it would be constructed to high standards of design and sustainability. However, such commitments are to be expected of a scheme of the scale proposed and they thus represent neutral factors.
52. Turning to the balance directly, the benefits of the proposed development are material considerations to be weighed against the conflict I have found with the development plan in respect of highway safety and the operation of the LRN. In addition, the absence of a five-year housing land supply triggers the operation of paragraph 11d) of the Framework – colloquially known as the "tilted balance". Paragraphs 11d) i) and 177 of the Framework provide for the tilted balance to be disengaged where a proposal is likely to have a significant effect on a habitats site unless an AA has concluded that it will not affect the integrity of that site. The criteria for disengaging the tilted balance therefore apply here, but possibly only because I have not needed to undertake an AA. Consequently, to avoid prejudice to the appellant, I will apply the tilted balance provided by paragraph 11d) ii) of the Framework.
53. Taken together, the benefits which would result from the proposed development, and particularly the housing, would be substantial and I give them very significant weight in my decision. Against this, the scheme would compromise planned bus priority measures forming part of the HPEMAC scheme, causing detriment to the operation of the LRN; and would potentially compromise the safety of all road users. The disruption of the HPEMAC would conflict with the Framework for the reasons given above and would seem wasteful of imminent and fully funded mitigation. It is therefore something to

which I attach a good deal of weight, but whether the specific delays involved would amount to a “severe” impact on the road network (as required by paragraph 109 of the Framework) is perhaps doubtful in the context of the tilted balance. However, the potential impact on highway safety would be “unacceptable” in the terms of paragraph 109, and I give this harm great weight in my decision.

54. Overall, the basic risk to highway safety constitutes an adverse impact of the proposed development which would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. The proposal does not therefore benefit from the presumption in favour of sustainable development set out in paragraph 11d) and it follows that such a presumption does not weigh in favour of the scheme in the balance required by section 38(6) of the Planning and Compulsory Purchase Act. Applying that balance, I conclude that the conflict with the development plan in respect of highway safety is not outweighed by other material considerations in favour of the scheme. The proposal should therefore be determined in accordance with the development plan and so the appeal should be dismissed, and planning permission refused.

*Louise Phillips*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Victoria Hutton

Instructed by Wealden District Council

Witnesses:

Dr Ben Marner

Kelly Sharp

Roger New

Kal Kamboh

Alex Jack

James Webster

Claire Turner

Stacey Robins

Air Quality Consultants Ltd.

Wealden District Council

GTA Civils & Transport

East Sussex County Council

East Sussex County Council

Wealden District Council

Wealden District Council

Wealden District Council

### FOR THE APPELLANT:

Sasha White QC, with Anjoli Foster

Instructed by JMT Planning and JLL

Witnesses:

Ian Turkington

Dr Katy Read

Justin Bass

Steven Williamson

Jeff Thomas

Philip Robin

John Baird

Ben Naish

Turkington Martin Landscape Architects

Middlemarch Environmental Ltd.

Intermodal Transportation Ltd.

Intermodal Transportation Ltd.

JMT Planning

Jones Lang LaSalle

Osborne Clarke

Osborne Clarke

### FOR HIGHWAYS ENGLAND (Rule 6 Party):

Kevin Bown

Mr Bowie

Highways England

Highways England

### INTERESTED PERSONS:

Cllr John Pritchett

Cllr Stephen Shing

Cllr M Cunningham

Willingdon & Jevington Parish Council; and  
Willingdon Residents Association

Representing himself and the residents he  
serves as a County Councillor and a  
Polegate Town Councillor

Representing himself



## **DOCUMENTS**

1. Opening Statement on behalf of the Council.
2. Opening Statement on behalf of the Appellants.
3. Statement made by Cllr Pritchett.
4. Draft Planning Obligation by Agreement (received 1 October 2019).
5. Comments from local residents attending on Day 1.
6. Council's Preliminary Observations on Appellant's Additional Transport Evidence (Mr New, received 7 October 2019).
7. Proposed amended access plans (Revisions 03E and 04F); and plans identifying the amendments.
8. Council's comments on draft Planning Obligation by Agreement (received 8 October 2019).
9. Draft Planning Obligation by Unilateral Undertaking (received 10 October 2019) and Appellant's justification for the scale of the obligations.
10. Relevant title deeds x3.
11. Letter from "Assura" concerning the medical centre proposals dated 9 October 2019.
12. Sport England Guidance on Village and Community Halls.
13. Appeal decisions submitted by the Council x6.
14. Closing Submissions on behalf of the Council.
15. Closing Submissions of the Appellant.
16. Costs Application on Behalf of the Council.
17. Costs Response on behalf of the Appellant.
18. Council's Comments on Unilateral Undertaking, dated 17, 18 and 22 October 2019.
19. Appellant's Response to Council's Comments on Unilateral Undertaking, dated 21 October 2019.
20. Completed Unilateral Undertaking, dated 21 October 2019.