



## Appeal Decisions

Hearing Held on 19 – 22 January 2021

Site Visit made on 29 January 2021

**by Lesley Coffey BA (Hons) BTP MRTPI**

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

**Decision date: 1<sup>st</sup> April 2021**

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### **Appeal A: APP/U1430/W/19/3244364**

#### **Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Westcott Leach Limited against the decision of Rother District Council.
  - The application No RR/2018/2790/P, dated 13 October 2018, sought approval of details pursuant to condition No 1 of a planning permission, No RR/2017/2181/P, granted on 4 May 2018.
  - The application was refused by a notice dated 14 October 2019.
  - The development proposed is a 'Business park for up to 33,500 square metres (net internal area) of employment floorspace (within use classes B1 and B2) with roads and ancillary infrastructure and services.'
  - The details for which approval is sought relate to appearance, landscaping, layout and scale for part of development approved under RR/2017/2181/P.<sup>1</sup>
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### **Appeal B: APP/U1430/W/19/3245114**

#### **Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU**

- 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 consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Sea Change Sussex against the decision of Rother District Council.
  - The application No RR/2019/2250/DC, dated 12 July 2019, sought approval of details pursuant to condition No 8 of a planning permission, No RR/2017/2181/P, granted on 4 May 2018.
  - The development proposed is a 'Business park for up to 33,500 square metres (net internal area) of employment floorspace (within use classes B1 and B2) with roads and ancillary infrastructure and services.'
  - The details for which approval is sought comprise a phasing plan which delineates the physical extent of each phase and provides in total for no more than 33,500 square metres (net internal floorspace) and including appropriate parking, loading and turning facilities compliant with the adopted East Sussex County Council parking standards.
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<sup>1</sup> These matters are taken from the application form. The reserved matters listed in condition 1 on the original outline approval are specified as siting, design and external appearance of the buildings and landscaping.

### **Appeal C: APP/U1430/W/19/3246335**

#### **Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU**

- 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 consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Sea Change Sussex against the decision of Rother District Council.
  - The application No RR/2019/2250/DC, dated 23 September 2019, sought approval of details pursuant to conditions Nos 15 and 29 of a planning permission Ref RR/2017/2181/P, granted on 4 May 2018.
  - The development proposed is 'Business park for up to 33,500 square metres (net internal area) of employment floorspace (within use classes B1 and B2) with roads and ancillary infrastructure and services.'
  - The details for which approval is sought are a surface water drainage scheme (condition 15) and flood risk mitigation measures (condition 29) for this phase.
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### **Appeal D: APP/U1430/W/19/3246923**

#### **Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU**

- 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 consent, agreement or approval to details required by a condition of a planning permission.
  - The appeal is made by Sea Change Sussex against the decision of Rother District Council.
  - The application No RR/2019/2250/DC, dated 12 July 2019, sought approval of details pursuant to condition No 10 of a planning permission, Ref RR/2017/2181/P, granted on 4 May 2018.
  - The development proposed is 'Business park for up to 33,500 square metres (net internal area) of employment floorspace (within use classes B1 and B2) with roads and ancillary infrastructure and services.'
  - The details for which approval is sought are soft landscaping and tree planting details for this phase.
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### **Appeal E: APP/U1430/W/19/3246925**

#### **Land at Buckholt Lane, Bexhill-on-Sea, East Sussex TN39 5AU**

- 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 consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Westcott Leach Limited against the decision of Rother District Council.
- The application No RR/2019/2250/DC, dated 23 September 2019, sought approval of details pursuant to condition No 9 of a planning permission, No RR/2017/2181/P, granted on 4 May 2018.
- The development proposed is 'Business park for up to 33,500 square metres (net internal area) of employment floorspace (within use classes B1 and B2) with roads and ancillary infrastructure and services.'
- The details for which approval is sought are hard landscaping details for this phase.

## **Decisions**

### **Appeal A: APP/U1430/W/19/3244364**

The appeal is allowed and the reserved matters are approved, namely appearance, landscaping, layout and scale for part of development approved under RR/2017/2181/P, pursuant to condition No 1 of a planning permission Ref RR/2017/2181/P, granted on 4 May 2018, subject to the conditions set out in the Schedule to this decision.

### **Appeal B: APP/U1430/W/19/3245114**

The appeal is allowed, and I approve the details submitted pursuant to Condition 8 of Planning Permission Ref RR/2017/2181/P, granted on 4 May 2018, in accordance with the terms of the application, Ref RR/2019/2250/DC, dated 12 July 2019, and the plan submitted with it.

### **Appeal C: APP/U1430/W/19/3246335**

The appeal is allowed, and I approve the details submitted pursuant to Conditions 15 and 29 of Planning Permission Ref RR/2017/2181/P, granted on 4 May 2018, in accordance with the terms of the application, Ref RR/2019/2250/DC, dated 23 September 2019, and the plans submitted with it.

### **Appeal D: APP/U1430/W/19/3246923**

The appeal is allowed, and I approve the details submitted pursuant to Condition 10 of Planning Permission Ref RR/2017/2181/P, granted on 4 May 2018, in accordance with the terms of the application, Ref RR/2019/2250/DC, dated 12 July 2019, and the plans submitted with it.

### **Appeal E: APP/U1430/W/19/3246925**

The appeal is allowed, and I approve the details submitted pursuant to Condition 9 of Planning Permission Ref RR/2017/2181/P, granted on 4 May 2018, in accordance with the terms of the application, Ref RR/2019/2250/DC, dated 23 September 2019, and the plans submitted with it.

## **Applications for costs**

### **Appeal A: APP/U1430/W/19/3244364**

1. An application for costs was made by Westcott Leach Limited against Rother District Council. This costs application is the subject of a separate decision.

### **Appeal B: APP/U1430/W/19/3245114, Appeal C: APP/U1430/W/19/3246335, Appeal D: APP/U1430/W/19/3246923 & Appeal E: APP/U1430/W/19/3246925**

2. Applications for costs in relation to the above appeals were made by Sea Change Sussex against Rother District Council. These Costs applications are the subject of separate decisions.

## Procedural Matters

4. Outline planning permission was granted in May 2018 for up to 33,500 square metres of employment floorspace. The reserved matters comprised siting, design, the external appearance of the buildings and landscaping. A reserved matters application for part of the site was submitted by Westcott Leach in October 2018<sup>2</sup>. In response to comments from the Council in respect of the submitted reserved matters application Sea Change Sussex (the applicant for the outline planning permission) subsequently submitted a phasing plan pursuant to condition 8 of the outline planning permission.<sup>3</sup> Applications to discharge conditions 9, 10, 15, & 29, in so far as they relate to the reserved matters appeal were also submitted.<sup>4</sup>
5. The reserved matters (RM) application was refused by the Council at a committee in September 2019. The applications to discharge planning conditions 8,9,10,15 & 29 were not determined (appeals B,C,D,& E). At the hearing the Council confirmed that there were no putative reasons for refusal in relation to these appeals. It stated that the information submitted in relation to these conditions had been taken into account by the Council in reaching its decision on the reserved matters application (Appeal A). It stated that the reasons why the submitted details were unacceptable to the Council are evident from the Committee report.
6. The reserved matters application was refused for six reasons including the impact of the proposal on surface water run-off and surface water quality. The Council stated that in the light of comments from the Local Lead Flood Authority it did not contest the fifth reason for refusal.<sup>5</sup>
7. The decision notice, committee report and the Council's statement of case all refer to the absence of a masterplan for the outline planning permission site. Both parties made legal submissions in relation to this matter at the hearing. On the basis of these submissions it was confirmed that the Council was not seeking a masterplan, but nevertheless considered that it would be a useful tool to inform the design and layout of the reserved matters (RM) site and the implications it may have for the outline permission site. It was also agreed by the parties that the development plan policies are a material consideration in the determination of these appeals. I have considered the appeals on this basis.
8. The Council's decision notice in respect of the RM appeal refers to policy BX3 of the Rother District Local Plan 2006. Following the adoption of the Development and Site Allocations Local Plan (DaSA) in December 2019 the policies within the Local Plan 2006, including BX3, were superseded and are no longer extant. I have considered the appeal accordingly. The Core Strategy also includes policy BX3, and unless otherwise stated all references to policy BX3 in this decision refer to Policy BX3 within the Core Strategy.
9. An Environmental Statement (ES) prepared under the 2011 EIA Regulations was submitted with the outline planning application and was deemed satisfactory for the purposes of the original outline planning decision. Further

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<sup>2</sup> Phase 1 and phase 2 as shown on the submitted phasing plan

<sup>3</sup> Appeal B

<sup>4</sup> Appeals C,D, & E.

<sup>5</sup> Letter dated 8 January 2020

environmental information was submitted during the course of the appeal application, that supplements the original ES. There has been no specific addendum to the ES, and therefore there is no statement as to how each of these documents affects the conclusions of the 2017 ES.

10. The additional information identifies and assesses seven new viewpoints within the landscape and visual impact assessment. These are all within the study area defined in the 2017 ES. The ecology report provides additional baseline information following further site surveys. No new or changed significant effects are concluded compared to the 2017 ES. It is considered that the residual effects in the 2017 ES therefore continue to represent the likely significant effects of the development.
11. As set out above there are five appeals. I shall address the main issues in relation to the reserved matter appeal first, and then any outstanding matters in relation to the other appeals.

### **Planning Policy**

12. The development plan includes the Rother Local Plan Core Strategy (adopted 2014) and the Development and Site Allocation Local Plan (DaSA) adopted December 2019.
13. Core Strategy Policy OSS1 sets out the overall spatial development strategy for Rother. This includes focusing new development at Bexhill, giving particular attention to promoting economic regeneration and the growth of the Hastings and Bexhill area, including through mixed use development.
14. Policy BX1 sets out the overall strategy for Bexhill. Amongst other matters it seeks to promote the economic growth of the town, and wider area, including prioritising development for employment purposes, increasing the supply of land and premises and promoting efficient infrastructure. It also aims to provide for employment and housing growth, in accordance with Policy BX3.
15. Policy BX3 promotes residential and employment development within the Bexhill area, with at least 60,000 square metres of new business floorspace focused on the new strategic employment areas associated with the construction of the Bexhill to Hastings link road. The housing and business development are to be focussed on a strategic site to the north-east of the town with the scale, timing and location determined through the Site Allocations process.
16. Policy EN3 requires new development to be of high design quality, and amongst other matters to contribute positively to the character of the site and surroundings. It also sets out a number of key design principles.
17. The DaSA includes development policies to complement those within in the adopted Core Strategy (and those in the NPPF) and addresses topics where further elaboration is considered necessary to provide a proper basis for local development management. It also sets out site specific allocations to meet the requirements of the Core Strategy and also acknowledges that outline planning permission has been granted for the appeal site.
18. Policy BEX1 of the DaSA identifies the appeal site as Land at Levetts Wood and Oaktree Farm, Sidley and allocates it for a comprehensive business

development, to provide up to 33,500 square metres of business floorspace. The policy sets out a number of requirements for development to be permitted, including that proposals conform to a masterplan covering the entire area; the provision of pedestrian and cycle access to the adjacent residential allocation; the retention and reinforcement of landscaped boundaries around and within the site, including along the NBAR frontages. It requires proposals for structural open spaces, landscape and woodland belts and buffers to form an integral part of proposals, as indicated on the Detail Map. The Detail Map within the DaSA provides an indicative layout. It shows landscape planting adjacent to the NBAR with the existing tree belts between the fields retained and an access road running north west to south east across the site.

19. The North East Bexhill Supplementary Planning Document (SPD) was adopted in 2009. Its purpose was to refine and elaborate on the allocations within the 2006 Local Plan. It covers the nature and layout of respective land uses, their relationship with each other and their surroundings, the provision of supporting infrastructure and the programme for achieving development.
20. It identifies the appeal site as part of the BX3 allocation within the Local Plan 2006. It is separated from allocation BX2 (the other growth site) by the Hastings to Bexhill link road. Both allocations were proposed as mixed-use developments.
21. The SPD sets out a vision for a wide tree lined Country Avenue that would extend from the Hastings to Bexhill link road around the employment land within the Local Plan 2006 BX3 area, as well as providing access to the new residential area off of Water Mill Lane (situated to the north west of the appeal site, but part of the Local Plan BX3) site. It proposes that each of the three fields that comprise the outline permission site would have its own access off of the Country Avenue and there would be a connecting road between the central and western fields to assist with circulation. It also seeks a masterplan for the whole policy area, which in the case of BX3 included the housing site now allocated as BX2 in the Core Strategy.
22. There have been a number of significant changes in both policy and practical terms since the adoption of the SPD.
23. One of the stated purposes of the SPD was to provide further detail and guidance in relation to the allocations within the 2006 Local Plan. However, the Local Plan is no longer extant and the allocations and policies within it have been superseded by those within the Core Strategy and DaSA. Whereas Local Plan BX3 was proposed as a mixed-use development within the Local Plan 2006 and the SPD, the DaSA provides for separate allocations in relation to the housing and employment floorspace. In addition, DaSA policy BEX1 seeks the provision of up to 33,500 square metres of employment floorspace, in contrast to the 26,000 square metres sought by the SPD. Under the SPD access was to be a loop road to connect with the Country Avenue and then to join the Hastings to Bexhill link road and this is illustrated by figure 8 of the SPD which shows the indicative layout. The DaSA reflects the fact that the NBAR has been completed and proposes a single point of access from the Buckholt Lane roundabout.
24. There have also been changes on the ground since the SPD was adopted. The most significant of these is the alignment of the NBAR which differs markedly

from that shown within the SPD. At the hearing, Mr Shaw, on behalf of Sea Change Sussex, explained that this was due to the desire to avoid encroachment upon an area of ancient woodland. Due to this the access to the site and the shape and size of the central and eastern fields differ significantly from that within the SPD and this is reflected in the DaSA Detail Map. Consequently, the access arrangements promoted by the SPD are not achievable, and the Detail Map within the DaSA shows a spine road running through the site rather than direct access from the NBAR into the fields.

25. The overarching vision and objectives within the SPD relate to a much larger mixed-use area. Accordingly, taking account of the changes in policy that have occurred since its adoption, together with the reduction in the size of the site, the increased floorspace to be accommodated, the alignment on the NBAR and revised access arrangements, I conclude that the SPD should be afforded little if any weight. For this reason the requirements and guidance within it cannot be considered prescriptive in respect of these appeals.

### **Appeal A: APP/U1430/W/1/32443649**

#### **Main Issues**

26. Based on the submitted evidence, including the evidence submitted at the hearing, I consider the main issues in relation to the reserved matter appeal to be:
- The effect of the submitted reserved matters and the phasing plan on the future development of the remainder of the outline planning permission site, with particular regard to the layout of the site and the delivery of employment floorspace; and
  - Whether the reserved matters in relation to siting, design, the external appearance of the buildings and landscaping are acceptable having regard to development plan policies that seek a high standard of design; and
  - The effect of the proposal on biodiversity.

#### **Reasons**

27. The appeal site comprises three fields. Access would be from the recently completed Buckholt Lane roundabout, which is located adjacent to the central field and close to the boundary with the eastern field. Buckholt Lane is a public right of way that crosses the site, separating the eastern and central fields. The north eastern boundary of the site is defined by the North Bexhill Access Road (NBAR), also known as Haven Brook Avenue.
28. The reserved matters application seeks approval for 7,895 square metres of B1 and B2 floor space. The proposal would deliver three clusters of light industrial units in terraces of three to four units each with associated parking, turning facilities and landscaping. The units would vary in size and are designed to be occupied either individually or combined to create larger premises. The proposal also includes attenuation ponds and a foul drainage treatment plant north of the NBAR.
29. The proposal includes an access road from the roundabout extending southwards towards the eastern field and north westwards through the central

field. It stops short of the boundary with the western field and runs broadly parallel to the NBAR and would facilitate access to the remaining areas of land within the outline planning permission site.

**The effect of the submitted reserved matters and the phasing plan on the future development of the remainder of the outline planning permission site**

30. The appeal site is predominantly located to the south west of the NBAR. It lies within an area of undulating landscape and falls from the south eastern corner of the site to the northern part.
31. It comprises three distinct fields, the boundaries of which are defined by tree belts. Buckholt Lane a public right of way broadly aligns with the tree belt separating the eastern and central fields. The access to the entire outline permission site is from a spur leading from the Buckholt Lane roundabout. At this location the site is about 2-3 metres higher by comparison with the carriageway of the spur. The surrounding landscape comprises open fields many of which are separated by tree belts and with a wooded backdrop. The wooded backdrop includes areas of ancient woodland such as Cole Wood. The south of the appeal site is bound by a large woodland block known as Levetts Wood which is predominately designated as Ancient woodland. The woodland provides a buffer to the existing housing development at Sidley.
32. Condition 8 of the outline planning permission required the submission of a phasing plan. The reason given for the condition was to ensure that each phase included an appropriate parcel of land for buildings, parking and other facilities and landscaping, with associated access links, SuDS and biodiversity space, which together would deliver the creation of a high quality environment.
33. A phasing plan was submitted by Sea Change Sussex (Appeal B) to assist with the consideration of the RM application. It was accompanied by a note setting out the proposed floor area, development density and parking provision for each phase. In total there would be 33,500 sq m of floorspace, with a floorspace to site area density of 23.0% and 1098 parking spaces.
34. The submitted phasing plan indicates how the permitted floorspace would be accommodated on the site, together with the required level of parking. Whilst the design and layout of these areas will be subject to future RM applications, this information when taken together with the development density demonstrates that each phase has the potential to accommodate the level of development proposed with the necessary parking and mitigation sought by the Council.
35. The RM relates to most of the eastern field and includes the north eastern part of the central field. The phasing plan showed 5 phases of development including the access road (Phase 1) and the employment units that would occupy all but the southernmost part of the eastern field, and the northern part of the central field as well as the land on the opposite side of the NBAR that would be used for drainage purposes (Phase 2). The proposed access road would extend north and southwards from the access point. It would stop short of the western field (Phase 5) and would provide access to Phase 3 at the southernmost part of the appeal site.

36. The Council consider the RM site to be an illogical first phase land parcel and submits that the three fields should be developed in separate phases. This approach reflects that within the SPD, but it is not carried forward into either the Core Strategy or the DaSA. DaSA Policy BEX1 does however seek the retention of the existing landscape boundaries around and within the site, including the tree belts that separate the fields.
37. The appellant considers the approach of starting with the parts of the site closest to the access to be logical and states that this is a common and sensible approach in the development of commercial property, especially for the initial phases of a large-scale, speculative, employment use development. This approach would also have the benefit of bringing forward the timeframe for the delivery of the structural landscaping at the front of the site which will follow the completion of Phase 2.
38. Based on the phasing plan, the western field would represent a separate phase as sought by the Council. With the exception of the southernmost part of the site, the eastern field would form a distinct phase (as represented by the RM appeal). At the hearing the appellant explained that the part of the eastern field that would remain undeveloped (Phase 3) is intended to provide a bespoke building to meet the needs of a future occupier. The access to Phase 3 would be located towards the centre of the boundary with Phase 2 in the position of the lowest lying land. Therefore, neither the eastern or the western fields would be constrained as a result of the land parcels shown on the phasing plan.
39. The central field would be divided by the proposed access road, due to the need to provide access to the western and eastern fields. The submitted alignment provides for some small scale B1 units between the access road and the NBAR, with the major part of the central field (Phase 4) lying to the south of the access road. The need for an east-west access road is acknowledged by the DaSA and the proposed access road is similar in alignment and position to that shown on the Detail Map within the DaSA. Locating the access road further to the south would decrease the size of Phase 4 and thus would be likely to be a greater, rather than lesser constraint on the development of that part of the outline permission site. If it were to be located closer to the boundary with the NBAR it would be likely to result in a very constrained parcel of land. Therefore on the basis of the submitted evidence I am satisfied that the submitted phasing plan is satisfactory.
40. I have also considered whether developing the central field as a single phase would provide a more logical land parcel. However, such an approach would still require the access road to extend to the eastern and western fields and would therefore still divide it into two distinct areas. Due to the location of the access close to the boundary with the eastern field I do not consider the development of the two areas either side of the access to be illogical, or that it would constrain the future development of the remainder of the outline permission site. Indeed, it would have the benefit of providing a completed access to the entire outline permission site and could make the site more attractive to employment uses in the future.
41. The DaSA and the Core Strategy expect the outline permission site to provide up to 33,500 square metres of business floorspace. This represents over half of all new business floorspace within Bexhill. Core Strategy Policy EC2 seeks a

suitably broad and readily available supply of business land and premises. Therefore, the delivery of employment floorspace is an intrinsic part of the development plan strategy for this site. Consequently, the land parcels created by the phasing plan, and indeed the order in which the site is developed, must take account of not only the environmental considerations, but also the commercial considerations in relation to the development of this site.

42. The Council consider the failure to provide a masterplan to be contrary to the requirements of the SPD and policy BEX1 within the DaSA. For the reasons given above I do not afford any weight to the requirement for a masterplan within the SPD. Policy BEX1 states that proposals will be permitted where they conform to a masterplan covering the entire area. However, the RM relate to a planning permission that has already been granted and the extant permission is acknowledged within the DaSA. I therefore agree with the appellant that Policy BEX1 is not applicable to this RM appeal or the other appeals since it is primarily a site allocation policy and the RM appeal and the other appeals relate to an extant planning permission on an allocated site.
43. Although these appeals do not fall to be assessed against the criteria within Policy BEX1, I nevertheless accept the Council's position that the RM should be determined in accordance with the relevant development plan and national planning policies.
44. Although the Council acknowledge that there is no legal requirement for a masterplan, it nonetheless considers that the absence of a masterplan is a symptom of the failures of the RM application insofar as it fails to provide an appropriate scheme in terms of landscape, design and layout.
45. The appellant states that a masterplan would unreasonably constrain the future development of the site which is dependent upon flexibility to meet future occupier needs. Sea Change Sussex (SCS) explained that a masterplan would restrict its ability to respond to varied occupier requirements and would be an unnecessary development constraint in an already challenging market.
46. SCS explain that based on extensive experience in the promotion of the regeneration programme for the area that forecasting the needs of occupiers is very difficult. As such in a marginally viable location such as Bexhill, flexibility in the layout and design of development is necessary to appeal to a wide enough range of potential occupiers to secure investment. This flexibility, together with a phased approach is required to allow development to be brought forward in financeable packages without prejudicing future phases of development.
47. SCS state that particularly at the present time when the impact of the pandemic on working patterns and practices are uncertain, it is difficult to forecast the requirements of future occupiers and the impact that such requirements may have on construction, massing, and site layout. In addition, the recent changes in the Use Classes Order may also impact on the demand for particular types of accommodation. In these circumstances a masterplan may limit the flexibility of the appellant to respond to changes in the market. For these reasons it considers that committing to such elements of design beyond a phase by phase basis would be severely detrimental to the commercial appeal of the latter phases of development.

48. At the hearing the appellant explained that the phasing plan had taken account of the site constraints, which in turn had been informed by detailed information and surveys in relation to the levels across the site, the trees, biodiversity and the drainage requirements. The phasing plan provides sufficient information to ensure that the remainder of the outline planning permission site would be capable of delivering the necessary floorspace, parking and servicing, landscaping and SuDS drainage. Therefore having regard to viability considerations and the need for flexibility, I am not persuaded that a masterplan is necessary, or that the absence of a masterplan would adversely impact on the development of the remainder of the outline application site.
49. I therefore conclude that the submitted RM and phasing plan would not adversely affect the remainder of the outline planning permission site, and would comply with Core Strategy policies BX1, and BX3, which together with EC2 promote the provision of business floorspace within Bexhill.

**Whether the reserved matters in relation to siting, design, the external appearance of the buildings and landscaping are acceptable having regard to development plan policies that seek a high standard of design**

50. The Council is critical of the RM in terms of the landscape structure it proposes, the effect on biodiversity, the effect on individual trees and the form and design of the proposal.
51. The parties agree that the appeal site does not form part of a valued landscape. It lies within the East Sussex Coombe Valley Character area, as identified in the East Sussex Landscape Character Assessment 2016. The key characteristics for this landscape area include rolling well-wooded countryside with typical High Wealden character of rolling landscape and historic field patterns as well as extensive areas of ancient woodland.
52. The landscape management guidelines for this character area include the integration of proposed and existing development into the landscape through planting of trees and woodland to define the village boundaries with the countryside. The design and layout of new developments is expected to respect the character and form of the landscape and existing settlements, and conserve hedges, trees and small woods on the higher ground.
53. The dominant feature of the surrounding area in terms of landscape is the NBAR which cuts through former field boundaries and gives rise to an open character with views in both directions along the NBAR and the adjacent fields, albeit contained by the rolling landscape, tree belts and the many areas of woodland. To the south the appeal site is well contained by areas of woodland, including Levetts Wood. In addition, the central field benefits from wooded boundaries that separate it from the adjacent fields. There are further tree belts to the south of the site. The area on the opposite side of the NBAR is occupied by the remainder of the original fields and is lower by comparison with the land on the appeal site.
54. Aside from views from the NBAR and the newly created Greenway link, views of the site are largely contained by the existing wooded backdrop to the site. The RM application was accompanied by a number of verified views to illustrate the scale and mass of the proposed development. It is evident from these

- viewpoints that in longer distance views the proposed buildings would not be visible.
55. Overall, I consider the appeal site to be representative of the character area in which it is located. The landscape strategy proposed by the RM application is to retain the existing tree belts between the fields other than where it is necessary for the access road to cross the field. As such it would retain the historic field pattern. It also proposes a woodland belt, about 18 metres in depth adjacent to the NBAR. The indicative strategic landscape strategy shows that this will continue along the frontage of the western field and would therefore assist with providing a degree of enclosure to the existing fields that has been lost as a consequence of the NBAR.
56. The Council consider the proposed woodland belt should be a minimum of 18 metres in depth to provide an adequate buffer and make a positive contribution to the character of the site. It would seem that this requirement was derived from measuring the buffer shown on the Detail Map within the DaSA. The purpose of the Detail Map was to provide an indicative layout for the outline permission site. It does not set a precise and/or minimum depth. Moreover, given the scale and size of the Detail Map within the DaSA such a measurement cannot be reliable.
57. The appellant submitted a plan showing the depth of the planting along the boundary within the NBAR<sup>6</sup>. This plan was prepared using CAD and is based on a survey of the site and I therefore have no reason to doubt its accuracy. It is evident from this plan that for the most part an 18 metre buffer would be achieved within the site boundaries, although in some locations, the full 18 metres would be reliant on the landscaping delivered as part of the NBAR. The significance of the buffer is not its precise depth, but the extent to which it would contribute to the character and setting of the development overall.
58. Although the DaSA suggests that the outline permission site is similar to a woodland clearing in character, I disagree. The landscape either side of the NBAR is characterised by a high degree of openness. I acknowledge that distant views either side of the NBAR are contained by the numerous areas of woodland and tree belts. As a consequence of this openness, long views of the NBAR are available in both directions. The proposed woodland belt adjacent to the NBAR would limit the extent of these views and would also help to establish a more intimate setting for the proposed buildings. The additional submitted verified views show that even in winter months when the trees have reached 8 metres in height they would filter views of the proposed development. I therefore consider that the proposed woodland buffer, that would include 172 specimen trees of predominantly native species, Low Oak Woodland Transplants (3327 no. plants), native hedgerow (2167 no. plants), as well as understorey planting, would make a positive contribution to the setting and character of the site and provide a sense of place.
59. The Council consider the layout of the site would be dominated by the parking and servicing areas and as such the proposal would fail to deliver the high-quality design sought by the SPD and the DaSA. Policies EN1 and EN3 of the Core Strategy also seek a high quality built and natural environment, including

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<sup>6</sup> 18 metre buffer to the NBAR Overlay

where possible the enhancement of locally distinctive landscapes and landscape features.

60. The Council does not dispute that based on floorspace the proposed development would have a density of about 23%. The parties differ as to the amount of greenspace within the scheme, which the Council estimates to be about 26%, or 40% if the flood attenuation areas are included. The appellant considers the greenspace to be closer to 41.78%, or 38.29% if the area north of Buckholt roundabout is excluded. The parties were unable to narrow this difference at the hearing. The Ecology Note submitted by the appellant sets out the soft landscaping proposals for the RM site. Excluding the drainage ponds, these areas would occupy about 40.9% of the site. Based on the detailed breakdown within the appellant's evidence, I conclude that the figure is likely to be closer to that suggested by the appellant.
61. Regardless of the precise figure the proposal provides a substantial landscaped buffer to the northern and southern boundaries as well as the retention of much of the Buckholt Lane tree belt and other smaller areas of landscaping. Whilst the potential for these smaller areas to make a significant contribution to the character of the site is limited, the detailed planting plans indicate that even within these areas there would be specimen trees, numerous shrubs and other plants. When taken together with the more substantial planting areas, the level of planting proposed greatly exceeds that which would generally be found on an employment site.
62. The proposed floorspace density is significantly lower than that within the SPD. The site has been allocated for employment purposes within the development plan and it is essential that the layout of the site is able to accommodate the servicing and parking requirements of future occupants. These could change overtime and no evidence was submitted to indicate that the extent of the parking and servicing proposed were excessive in terms of business need.
63. The landscape proposals would provide a structured landscape setting for the proposed buildings is broadly consistent with the indicative arrangement shown on the Detail Map. The retention of the field boundaries other than where the road crosses the tree belt, together with the woodland buffer to the NBAR would be consistent with Core Strategy policies EN1 and EN3.
64. Even with the woodland buffer the proposed buildings would be visible from the NBAR, although such views would diminish over time as the landscaping matures. The entrance to the site includes a substantial area of landscaping and a drainage pond. These features would assist with integrating the site with the surrounding landscape. The parking courtyards and servicing areas would be screened from public views by the proposed buildings.
65. The layout proposes two terraces (Group 3a) running broadly parallel to the NBAR with a central parking/servicing area. These buildings would have an eaves height of about 7m and would be set into the slope to minimise their overall height thereby responding to the complex topography of the site.
66. The buildings within Group 3b would occupy slightly higher land and would be set at right angles to the road with a generous space between the buildings to allow for servicing. Although these would have the potential to be more prominent in views from the north east, due to their orientation and the

- separation between the buildings the visual prominence from outside of the site would be minimised.
67. Group 2a would occupy the lower ground of the central field. One block would be at right angles to the NBAR providing a visual break between the buildings and views through to the treeline beyond. Taken together the proposed buildings would not break the existing treed skyline that forms the backdrop to the RM site.
68. The design of each group of buildings varies according to their location on the RM site. They benefit from hipped roofs and the servicing areas face away from the site boundaries. The short terraces are staggered and the individual buildings include panels of full height fenestration to provide visual interest. The panels of fenestration and the manner in which the buildings follow the topography would add visual interest.
69. The Council is critical of the proposal to use Kingspan wall and roof panels. This is a typical material used for many employment buildings, including offices. The colours selected have had regard to the High Weald Colour Guide. Whilst timber cladding may be less obtrusive within some views, there is no evidence to indicate that it would be as thermally efficient as the proposed cladding. Since the views of the buildings are fairly well contained in landscape terms, and the Council does not raise concerns about distant views of the proposal, the use of timber cladding in this location would not significantly diminish the visual impact of the proposed buildings. I therefore consider the design of the buildings and materials proposed to be acceptable.
70. The Council was not critical of the alignment of the public rights of way through the site but was concerned that they would not provide an attractive pedestrian environment. It is inevitable given the scale of the proposed development that pedestrians will be aware of it as they pass through the site. The pedestrian route adjacent to site 3b would pass the retained trees on the site, an area planted with woodland grass mix and understory shrub planting. This route would provide an attractive pedestrian link to the NBAR. The right of way that would pass through the access road would run close to the landscaping and drainage pond at the entrance to the site. Whilst pedestrians will be conscious that they have left the countryside and are passing through an employment site the journey would be through an attractively landscaped setting.
71. The appeal scheme proposes the removal of T69, T70, T71 and T72 which all form part of the Buckholt Lane tree belt and are protected by a Tree Preservation Order (TPO). The appellant's tree survey categorised these trees as Category B for the purposes of *BS 5837:2012 Trees in relation to design, demolition and construction*. They are trees of moderate quality with a life expectancy of at least 20 years.
72. The loss of some trees within the Buckholt Lane tree belt is an inevitable consequence of the development of the site for employment purposes, however such losses should be minimised where possible. The Council suggest that if the access road were to break through the tree belt in a squarer direction, slightly further south, it may be possible to limit the extent of tree loss to T71 and T72.

73. This would involve the realignment of the access road and was rejected by the appellant due to consequential impacts on other trees on the site, an increased ecological impact due to the loss of additional grassland due to the less direct route, the impacts on the layout of the site, the development density and therefore the viability of the scheme.
74. At the hearing Mr Leach, the appellant, explained that the buildings had been designed in order to be able to offer different sized units to different occupiers. The proposed units relate to the market demand in terms of their mix and size and would accommodate 90% of the requests for floor space. Mr Leach explained that the rental yield is anticipated to be about £7.67 per sq ft against a construction cost of £85-90 per sq ft, in addition to the cost of the land. Given the narrow profit margins, any reduction in floorspace, or increased costs in relation to the road would have implications for the viability of the proposal. Whilst this information has not been independently verified, in the absence of any evidence to the contrary, given Mr Leach's experience within the employment market in the area I have no reason to doubt the figures provided to the hearing. Whilst the viability of the scheme is a material consideration, it would not in itself justify the loss of trees that could be retained if the road were to be realigned.
75. The Council is critical of the appellant's failure to provide different layouts for the eastern parcel of land when considering the suggested alternative road alignment. However, the eastern field is constrained by the topography and the topographical features within it, as well as the requirement to provide a substantial woodland buffer adjacent to the NBAR. Therefore, having regard to the evidence that underpinned and informed the submitted layout, I consider the options for alternative configurations to be limited.
76. The alternative alignment proposed by the Council is not informed by the technical evidence available to the appellant, and would be likely to have consequences for the viability of the proposal, including a reduction in deliverable floorspace, as well as potential implications for biodiversity and tree loss elsewhere on the site.
77. The proposal also involves the loss of T30 and T35, and hedgerow 37 located towards the southern boundary of the RM site. These trees are both oaks and are categorised as category A and B respectively. Category A trees are high quality trees with a life expectancy of at least 40 years and should be retained where possible. The loss of these trees is necessitated by the loop road that connects the service road for the Group 3a units with the main access road.
78. The appellant states that the loss of these trees is unavoidable due to engineering constraints in respect of drainage and carriageway widths. The Council maintain that the loss could be avoided if the road were to be moved northwards and westwards and the internal layout including the location of buildings and car parking re-arranged. It is unclear the extent to which the Council's approach has had regard to the engineering constraints that informed the appellant's layout.
79. The loss of hedgerow 37 was identified within the ES. It appears to be a truncated hedgerow that does not link to other hedgerows and stops close to the group of trees in which T30 and T35 are located. I consider the loss of part

- of this hedgerow would have a minimal impact in landscape terms and note that the ES found it to have low ecological value.
80. The loss of T30 and T35 is regrettable, but I observed that the topography at this part of the site is particularly complex. Whilst I accept that the loss may be unavoidable given the quality of T30 there would be some harm contrary to Policy EN1.
81. In addition to the trees identified for removal there will be works within the root protection area (RPA) of a number of other trees on the site and the Council is concerned that some of these works could lead to the removal of these trees.
82. Unit 3.b1 would encroach upon about 4% of the RPA of T22. The Arboricultural Method Statement sets out that excavation in this area will be by hand and no roots over 25mm will be severed without consultation with the Project Arboriculturalist.
83. Ideally the RPAs of trees should be left un-disturbed, however BS5837 acknowledges that foundations can be designed to minimise the impact on the trees. Given the limited extent of the encroachment, I am satisfied that the proposal would be unlikely to adversely impact on this tree. Moreover, I note the tree survey categorised it as a category C tree with some basal decay. This assessment has not been disputed by the Council, and therefore I do not consider that the limited extent of the works proposed within the RPA should be a constraint on development.
84. The Council and the Arboricultural Impact Assessment identified a number of trees where it is proposed to construct new surfaces within the RPA. The Council's greatest concern is with trees T67 and T68 which form part of the Buckholt Lane tree belt which are located close to the proposed access road. The Council is concerned that the change in levels associated with the access road would impact on the health of these mature oaks.
85. Given the need to remove 4 trees in this location every effort should be made to avoid any additional tree loss beyond that identified. The submitted information indicates that there will be a change in levels close to these trees and some construction work will occur within the RPA. The Arboricultural Method Statement (AMS) sets out that the finished level of the no-dig surface will be higher than the surrounding unsurfaced ground and that clean screened topsoil will be banked around the edge of the surface. The approach within the AMS generally accords with the advice regarding hard surfaces within BS 5837. There is often an element of uncertainty regarding the impact of works on the health of nearby trees since the precise rooting area and pattern can only be established once works commence. However, subject to the measures in the AMS the impact on these trees is likely to be minimal.
86. The RPA of T73 and T74 extend into the service strip adjacent to the road. The AMS proposes the use of impact mowing with the entry and exit pits located outside of the RPA. Where this is not feasible a sensitively excavated trench is proposed.
87. The AMS sets out a number of measures to ensure the protection of the trees during construction. These include, but are not limited to, Arboricultural

supervision at various specified stages of development, protection barriers and a pre-commencement meeting with the Project Arboriculturalist. Subject to the RM being implemented in accordance with these measures the proposal would be unlikely to have a significant adverse effect on the trees to be retained.

88. I consider that the RM are an appropriate response to the landscape character area in which the appeal site is located. Whilst it will take some time to mature, the structural landscaping around and within the site would create a distinctive setting for the proposed development. The layout of the site and design of the proposed buildings would, when taken together with the proposed landscaping and site constraints, would provide an appropriate balance between the need to deliver employment floorspace and respond to the character of the landscape in which the site is located. Whilst there would be a loss of trees and loss of hedgerow 37, these losses are necessary in the light of the site constraints. Having carefully considered the submitted evidence I am not convinced that once practical considerations are taken in to account that alternative site layouts would permit a reduction in the number of trees to be lost without a significant reduction in the floorspace proposed.
89. Having regard to the location of the appeal site and the proposed use, I find the proposed layout of the site, together with the design and materials of the proposed buildings to be acceptable. Whilst there would be some tree loss as a consequence of the proposed development, I am satisfied that the proposal includes all reasonable steps to minimise such loss. The proposed landscaping would help to mitigate the loss of these trees and the overall landscape strategy would provide a sense of place both within the site and in views from the NBAR and provide the NBAR itself with a less stark appearance. Overall, I conclude that the reserved matters are acceptable and would safeguard the local landscape character in accordance with Core Strategy Policy EN1 and contribute positively to the character of the site and its surroundings in accordance with Policy EN3 and DaSA Policy DEN1.

## **Biodiversity**

90. The RM site does not include any designated wildlife sites or areas of ancient woodland. The closest statutory wildlife site is Combe Haven Site of Special Scientific Interest which is located about 1.1 kilometres to the east, and the closest non-statutory wildlife site is Coles Wood located about 140 metres to the north of the RM site and is also an ancient woodland. The closest area of ancient woodland is located 60 metres to the east of the site on the opposite side of the NBAR. Accordingly, the proposal would not have any significant direct impacts on designated wildlife sites or ancient woodlands.
91. The Council's concerns with the impact of the proposed development on biodiversity include the fragmentation of habitat due to the loss of trees, hedgerows and grassland, as well as the impacts on badgers, bats, and dormice.
92. No badger setts would be directly affected by the construction. The closest sett is located about 15 metres away from unit 3B. On behalf of the appellant Dr Painter explained that the tunnels associated with this sett had been investigated and that they extended southwards into the woodland rather than in towards the site.

93. The ES sets out measures for the protection of this sett during construction and there would be no direct impact on the sett as a result of the proposed development. It acknowledges that within the outline permission site a significant area of open pasture grassland currently used by badgers for foraging and commuting would be permanently lost as a result of the Proposed Development, and could result in a gradual reduction in current badger density locally in the long-term. The parties agreed that the appeal site is located in an area with a high density of badgers and the reduction in the density of badgers would be localised.
94. There are two further setts in the woodland area between the central and western fields. These comprise a 2 hole and a four-hole sett. Dr Painter suggested that they were probably outlier sets and confirmed that they were not used for breeding. The Council consider that the alignment of the access road may impact on these setts and their associated tunnels. Dr Painter explained that the alignment of the access road sought to avoid these setts, however since the location of badger setts can change overtime there would need to be additional surveys at the time the RM for Phase 5 are submitted. The access road as shown on the existing plans stops short of this tree belt in order to provide flexibility in terms of its precise alignment. It should therefore be possible to avoid any harm to these setts.
95. The ES states that the access road would require the clearance of a 20m wide tree gap through the Buckholt Lane woodland belt and this could reduce / disrupt the use of the woodland corridor by roosting bats but would be unlikely to affect the overall integrity of the local bat population. Further bat surveys were carried out as recommended by the ES, with the most recent survey being published in September 2020.
96. The survey used a range of techniques, including dusk and dawn emergence and re-entrance surveys and the use of thermal imaging cameras. Based on the submitted evidence I am satisfied that the surveys were conducted in a professional and competent manner. The surveys identified a low level of activity along the Buckholt Lane tree belt and assessed those trees on the RM site that were proposed for removal for roosting potential. During the surveys a low number of foraging bats were identified, but no roosting bats were found. The surveyors understood that T30 and T35 would be retained. Whilst this is an incorrect assumption, these trees were assessed in accordance with best practice guidelines and were found to have low potential for bats. They were surveyed in July 2020 using a camcorder with infrared night shoot facility and a tripod mounted Anabat Express bat detector. A further survey in August 2020 found a single foraging bat, but no roosting bats.
97. No bats were seen or recorded emerging from any of the trees during the surveys. However, as noted by the Report surveying trees for bat roosts is challenging and the absence of roosting bats during a specific survey should not be used as evidence of no roosting use. Based on the current findings, no bat mitigation or licencing would be required in relation to proposed tree loss and tree roosting bats.
98. The proposal would have the potential to cause indirect harm to bats during construction and the operational period due to lighting and disturbance from construction activities. Condition 18 of the outline planning permission requires the submission of an Ecological Design Strategy, which amongst other matters

requires the submission of measures for the retention and protection of habitats during construction. Condition 21 requires the submission of a Construction Environmental Management Plan, including details of mitigation for protected species. I am satisfied that together these conditions would ensure that the effects of construction on bats and other protected species would be satisfactorily mitigated.

99. The ES identified the western and central fields as the area with the greatest potential for dormice. A number of surveys were carried out at the time of the NBAR. The RM application would remove hedgerow 37 and a total of six trees with the potential to provide dormouse friendly habitat. As explained by Dr Cole on behalf of the Council, habitat suitable for dormice has already been removed in connection with the NBAR. The mitigation in relation to the NBAR which includes replacement planting and a crossing below the road has not yet been completed.
100. It is inevitable that the proposal will have some impact on habitat suitable for dormice due to the need for the access road to cross the tree belt. However, the ES found no evidence to suggest that dormice are present within the site, although previous surveys have confirmed this species is relatively common and widespread in suitable habitats locally. These areas will need to be inspected prior to clearance to determine the need for EPS licenced removal. The areas of proposed loss do not form a part of a continuous habitat corridor (given the presence of the NBAR) and will not result in significant severance or fragmentation effects on dormice.
101. Whilst there will be some loss of habitat for dormice the proposal would also provide benefits in terms of the exclusion of horses and other grazing animals from the woodland belt, the management of woodland and the re-instatement of suitable habitat within the site.
102. The access road is an internal estate access road, and therefore unlike the NBAR would be unlikely to have a significant effect on connectivity. The proposal would result in the loss of about 4.1 hectares of improved and semi-improved grassland. The loss of higher value habitats would be restricted to 5 oak trees, 1 beech tree, 65 m of hedgerow and 15 m of ditch. The loss of these habitats would be unlikely to result in significant habitat severance or fragmentation effects in relation to habitat corridors within the wider landscape as these features are already crossed by the NBAR.
103. The proposal would provide a range of ecologically-focused habitat types including areas of native shrubs, wildflower meadow, woodland understorey and native emergent and marginal planting and would cover about 40.9% of the RM Site in total. This will represent a significant increase in the extent and diversity of higher value habitats within the site. There would also be improvements to the condition of the retained north-south linear woodland belt that connects Levetts Wood to the Combe Haven stream (immediately west of the appeal site) by excluding livestock and providing select understorey planting.
104. I conclude that any potential harm arising from the RM would be adequately mitigated and I find the RM are acceptable in terms of the effect of the proposal on biodiversity and would comply with Core Strategy Policy EN5.

## **Other Considerations**

105. Bexhill has a long standing and identified need for employment floorspace, and the development of the outline permission site would contribute to meeting this need. The delivery of business floorspace within Bexhill is supported by SCS, a not for profit economic development company for Sussex. It aims to expand the area's economy and generate jobs by attracting successful employers and enabling local firms to grow.
106. Since 2012 SCS has acquired and installed a number of services to 31 hectares of land with a capacity for 84,000 sq m of employment development of which 53,500 sq m is located on Bexhill Enterprise Park South and the appeal site. This investment has come forward as a result of efforts by SCS, with the support of public sector investment to deliver infrastructure, the construction of the NBAR and the proposed delivery of on-site infrastructure including the site access road and drainage, which will be funded with the benefit of £1.94m of Local Growth Fund Grant. SCS state that intervention remains necessary due to low rental values and rising construction costs.
107. Mr Shaw, from SCS stated that no private sector led development has been forthcoming other than the appeal proposals. Moreover, the Appellant is the only significant developer who has delivered light industrial units in East Sussex.
108. Mr Leach, the appellant, explained that he has extensive experience of the employment market within Bexhill and the wider area. He advised that there was a demand for low rental premises from small businesses and that estate agents within Hastings currently have just one such property on their books. He outlined a number of matters that informed the layout and design of the proposal. These include the overall height, light within the buildings, insulation, and flexibility in the layout of the units.
109. I conclude that the proposal would deliver much needed employment floorspace in accordance with Core Strategy Policies BX1 and BX3. It would help to create the conditions in which businesses can invest, expand and adapt in accordance with paragraph 80 of the Framework, thereby supporting economic growth in the local area.

## **Planning Balance**

110. The RM and the phasing plan would not adversely impact on the future development of the remainder of the outline planning permission site, or the delivery of the remainder of the employment floorspace. The submitted RM strike an appropriate balance between the need to create a high-quality environment and the delivery of employment floorspace. The RM would also allow flexibility to meet any changing needs that may arise, particularly in the circumstances of the current pandemic. I have also found that the proposal would be acceptable in terms of its effect on biodiversity. I accord significant weight to the employment benefits of the RM and I conclude that the proposal would comply with the development plan as a whole.

## **Conditions (Appeal A)**

111. A number of conditions were suggested by the parties and discussed at the hearing. I have considered the suggested conditions in light of the tests set

out at paragraph 55 of the National Planning Policy Framework and the advice in the Planning Practice Guidance.

112. I agree that in the interests of certainty the proposal should be carried out in accordance with the approved plans. Conditions requiring the provision of parking and turning areas, and the provision of cycle storage facilities before the buildings are occupied are necessary to ensure that sufficient parking and servicing space is available and in the interests of sustainable travel.
113. The proposal is for an employment site and is not located close to any other development. I therefore do not consider 1:10 sectional drawings through the elevations to be necessary.
114. The Council suggested two conditions that would restrict permitted development rights, one in relation to extensions and one in respect of changes of use. The appellant considered the wording of these conditions to be unduly restrictive and suggested alternative wording.
115. Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity.<sup>7</sup> The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 so that it is clear exactly which rights have been limited or withdrawn.
116. The Council's suggested condition in relation to extensions is very widely drawn and includes structures, alterations, installations, hardstanding, boundary enclosures, lighting and other operations and would not be confined to just those activities that come within permitted development. Given the location of the site close to ancient woodland, the mitigation provided by the detailed landscape proposals and the potential to adversely impact on the retained trees, I agree that works external to the building that come within the scope of permitted development should be restricted. I therefore consider that the appellant's suggested amendment that would limit the works to those covered by the GPDO and would not prevent the installation of mezzanine floors to be preferable. The Council confirmed that it is content with the suggested revision to the wording. The revised condition would also afford future occupants flexibility without impacting on the trees or other features on the site.
117. The Council's suggested conditions would limit the future use of the building to Class B1 and Class B2. The original permission was for employment floorspace (within use classes B1 and B2) but did not include any restriction on changes of use that come within permitted development. PPG states that conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted.<sup>8</sup> The use of the buildings does not directly relate to the reserved matters and therefore to impose a condition restricting the use of the proposed building would not meet the test of reasonableness. For this reason I do not propose to impose the suggested condition.

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<sup>7</sup> PPG Reference ID: 21a-017-20190723

<sup>8</sup> PPG Reference ID: 21a-025-20140306

118. Detailed measures to safeguard the trees during construction are set out in the submitted Arboricultural Method Statement. I consider these measures to be necessary to safeguard the health of the trees, I have therefore imposed a condition requiring compliance with the submitted statement.

### **Conclusion on appeal A**

119. For the reasons given above, I conclude that Appeal A should succeed.

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### **Appeal B: APP/U1430/W/19/3245114**

120. The submitted phasing plan provides the information sought by condition 8 of the outline permission in terms of the physical extent of each phase, the floorspace to be provided and the appropriate parking, loading and turning facilities.
121. For the reasons given above, the phasing plan would not adversely affect the delivery of employment floorspace on the remainder of the outline permission site.

### **Conclusion on Appeal B**

122. For the reasons given above I conclude that the appeal should succeed.

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### **Appeal C: APP/U1430/W/19/3246335**

123. The main issue in relation to Appeal C is the effect of the submitted Drainage Strategy and Maintenance Statement on flood risk and water quality.
124. At the Hearing, Mr Frost, on behalf of the appellant, confirmed that Appeal C related only to the internal road.
125. These conditions required the applicant to show that drainage proposals are in line with the design parameters set out in the conditions that had been agreed at the outline planning stage, with the Local Lead Flood Authority (Then the County Council, now Pevensey and Cuckmere Water Level Management Board ('P and C WLMB')). The P and C WLMB have granted consent subject to compliance with a number of conditions and specifications.
126. The Council confirmed that it did not contest the drainage reason for refusal. At the hearing Mr Frost stated that the submission related to the internal road only. On the basis of the available information, including the discharge by the P and C WLMB, I am satisfied that the proposal would not increase the flood risk on site or elsewhere and would safeguard water quality.

### **Conclusion on Appeal C**

127. For the reasons given above I conclude that the appeal should succeed.

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### **Appeal D: APP/U1430/W/19/3246923**

128. The main issue in respect of Appeal D is whether the proposed soft landscaping and tree planting details for this phase are acceptable.
129. As set out above the proposal includes a woodland belt adjacent to the NBAR, together with areas of planting and habitat creation within the RM site. The number and species of trees, together with the hedgerow planting, and the other planting within the site are considered to be satisfactory. For the reasons given above the proposed soft landscaping would comply with Core Strategy policies EN1, EN3 and DaSA policy DEN1.

### **Conclusion on Appeal D**

121. For the reasons given above I conclude that the appeal should succeed.

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### **Appeal E: APP/U1430/W/19/3246925**

130. The main issues in relation to Appeal E is whether the proposed hard landscaping details for this phase are acceptable.
131. Condition 9 of outline planning permission states that: *"Pursuant to Condition 1, no development shall commence on each phase until the following hard landscaping for that phase have been submitted to, and approved in writing by, the local planning authority and these works shall be carried out as approved:*
- a) Proposed finished levels or contours;*
  - b) Means of enclosure (fence, hedging etc);*
  - c) Hard surfacing materials (road surface, cycleway, footpath, crossings);*
  - d) Minor artefacts and structures (e.g. curbs, street furniture, signs, signals, lighting etc); and*
  - e) Proposed and existing functional services above and below ground (e.g. drainage, power, communication cables, pipeline etc indicating lines, manholes, supports etc)."*
132. The details for which approval is sought are the hard landscaping details for this phase. These include the external surface finishes and kerbing as shown on Plan No 12702-R-01-CRH-Z1-00-DR-C-6000-T2, together with the plans showing the detailed layout of each group of buildings. It is proposed to use bitumen for the drives, turning areas, parking spaces and main footways with concrete for the rear access paths.
133. The Council's concern that the layout of the site would be dominated by hard-surfacing is addressed above. The Council also considers that the proposed details should provide a 'softer, more attractive' hard landscaping.
134. The materials proposed in relation to the roadway, parking and turning areas would meet the functional needs of future businesses. They would be framed by areas of soft landscaping and given the proposed use of the buildings are considered to be acceptable.

135. The submitted plans show details for the individual groups of buildings (2a,3a & 3b). These areas are delineated on both the landscape plans and the detailed layout plans. The submitted information indicates that within these areas some footways would be concrete, and others would be bitumen. However, there are a number of footpaths that fall outside of these areas and no details have been submitted to indicate the materials for these footpaths. They generally provide a link between the appeal site and the countryside beyond as well as routes between areas of landscaping, and therefore are different in character from those footpaths within the individual blocks.
136. Whilst I find the submitted details to be acceptable in so far as they relate to the main access road and the individual blocks, in the absence of further details I am unable to conclude on the footpaths outside of these areas.

### **Conclusion on Appeal E**

137. For the reasons given above I conclude that the appeal should succeed.

*Lesley Coffey*

INSPECTOR

## Appeal A: APP/U1430/W/19/32443649

### Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

|                                           |             |   |
|-------------------------------------------|-------------|---|
| Developable Areas Plan                    | 2217/P100.1 | A |
| Site Location Plan                        | 2217/P101   |   |
| Block Plan                                | 2217/P102   | F |
| Site 2a Proposed Layout                   | 2217/P103   | E |
| Site 2a Proposed Detailed Layout          | 2217/P104   | E |
| Site 3a Proposed Layout 1                 | 2217/P105   | F |
| Site 3a Proposed Layout 2                 | 2217/P106   | E |
| Site 3a Proposed Detailed Layout 1        | 2217/P107   | E |
| Site 3a Proposed Detailed Layout 2        | 2217/P108   | E |
| Site 3b Proposed Layout                   | 2217/P109   | E |
| Site 3b Proposed Detailed Layout          | 2217/P110   | E |
| Street Scene 1                            | 2217/P111   | C |
| Street Scene 2                            | 2217/P112   | C |
| Street Scene 3                            | 2217/P113   | B |
| Cycle Store Details                       | 2217/P114   |   |
| Infrastructure Site Compound              | 2217/P115   | D |
| Pond 2 Proposed Detailed Layout           | 2217/P116   | D |
| Tree Removal Plan                         | 2217/P117   | D |
| Site 3c Proposed Layout                   | 2217/P118   | C |
| Units 2a 1-4 Ground Floor Plan            | 2217/P201   |   |
| Units 2a 1-4 Floor Plan at Higher Level   | 2217/P202   |   |
| Units 2a 1-4 Roof Plan                    | 2217/P203   |   |
| Units 2a 1-4 Elevations                   | 2217/P204   | A |
| Units 2a 5-8 Ground Floor Plan            | 2217/P211   |   |
| Units 2a 5-8 Floor Plan at Higher Level   | 2217/P212   |   |
| Units 2a 5-8 Roof Plan                    | 2217/P213   |   |
| Units 2a 5-8 Elevations                   | 2217/P214   | A |
| Units 3a 1-3 Ground Floor Plan            | 2217/P221   |   |
| Units 3a 1-3 Floor Plan at Higher Level   | 2217/P222   |   |
| Units 3a 1-3 Roof Plan                    | 2217/P223   |   |
| Units 3a 1-3 Elevations                   | 2217/P224   | A |
| Units 3a 4-6 Ground Floor Plan            | 2217/P231   |   |
| Units 3a 4-6 Floor Plan at Higher Level   | 2217/P232   |   |
| Units 3a 4-6 Roof Plan                    | 2217/P233   |   |
| Units 3a 4-6 Elevations                   | 2217/P234   | A |
| Units 3a 7-10 Ground Floor Plan           | 2217/P241   | A |
| Units 3a 7-10 Floor Plan at Higher Level  | 2217/P242   | A |
| Units 3a 7-10 Roof Plan                   | 2217/P243   | A |
| Units 3a 7-10 Elevations                  | 2217/P244   | A |
| Units 3a 11-12 Ground Floor Plan          | 2217/P251   | A |
| Units 3a 11-12 Floor Plan at Higher Level | 2217/P252   | A |
| Units 3a 11-12 roof plan                  | 2217/P253   |   |

|                                         |           |   |
|-----------------------------------------|-----------|---|
| Units 3a 11-12 Elevations               | 2217/P254 |   |
| Units 3b 1 – 2 Ground Floor Plan        | 2217/P261 |   |
| Units 3b 1-2 Floor plan at higher level | 2217/P262 |   |
| Units 3b 1-2 roof plan                  | 2217/P263 |   |
| Units 3b 1-2 elevations                 | 2217/P264 |   |
| Units 3b 3-4 Ground Floor plan          | 2217/P271 |   |
| Units 3b 3-4 floor plan at higher level | 2217/P272 |   |
| Units 3b 3-4 roof plan                  | 2217/P273 |   |
| Units 3b 3-4 elevations                 | 2217/P274 |   |
| Schedule of external materials          | 2217/P281 | A |

2. Each building hereby approved shall not be occupied until the approved parking spaces for that building have been laid out within the site in accordance with the approved proposed detailed layout plans 2217/P104/E, 2217/P107/E, 2217/P108/E and 2217/P110/E and shall thereafter be retained for that purposes only.
3. Each building hereby approved shall not be occupied until the cycle store for that building have been laid out within the site in accordance with the approved proposed detailed layout plans 2217/P104/E, 2217/P107/E, 2217/P108/E and 2217/P110E and the cycle store details drawing 2217/P114. They shall thereafter be retained for that purpose only.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting this Order with or without modification), planning permission shall be required for any extensions, buildings, structures, alterations, installations, hard-standing, boundary enclosures or lighting or other operations that would be permitted development under Schedule 2, Part 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
5. The approved reserved matters shall be implemented in accordance with the measures set out within the PJC Consultancy Arboricultural Method Statement (including the Appendices) dated 16 August 2019.

## **APPEARANCES**

### FOR THE APPELLANT:

|                       |                                 |
|-----------------------|---------------------------------|
| Rhodri Price Lewis QC | of Counsel                      |
| Andrew Frost          | Sea Change Sussex               |
| John Shaw             | Sea Change Sussex               |
| Bernard Leach         | Westcott Leach                  |
| Sara Boland           | Influence Landscape Consultants |
| Dr Duncan Painter     | Applied Ecology Limited         |
| Chris Stanyard        | Campbell Reith                  |
| Peter Davies          | PJC Consultancy                 |

### FOR THE LOCAL PLANNING AUTHORITY:

|                 |                                                |
|-----------------|------------------------------------------------|
| Rowan Clapp     | of Counsel                                     |
| Diane Russell   | Rother DC Design and Conservation Officer      |
| Dr Kate Cole    | East Sussex County Council, County Ecologist   |
| Virginia Pullen | East Sussex County Council Landscape Architect |
| Jeff Pyrah      | Rother DC Development Management Team Leader   |

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Legal submissions on behalf of the appellant
2. Legal submissions on behalf of Rother District Council
3. Joint Note on Density Calculation
4. Applied Ecology Bat Tree Survey Report September 2020
5. Amended Appendix 10 layout submitted by the Council
6. Appellant's submissions in respect of Planning Balance
7. Council's submissions in respect of Planning Balance

## **PLANS SUBMITTED AT THE HEARING** (Submitted For Information)

- A. 12702.Bp.Topo Survey-Model with NBAR
- B. 12702-R03-4051-P2 BEX3 Constraints Drawing Option B
- C. 12702-R03-4052-P2 BEX3 Constraints Drawing Option C
- D. 12702-R03-6000- P1 External Finishes Layout
- E. N0357 (96-1)005 Rev G Landscape Planting Plan Phases 1 (Culvert Scheme)
- F. N0357 (96-1)006 Rev G Landscape Planting Plan Phases 1 (Culvert Scheme)
- G. N0648 (03)001 Soft Landscape Area as a percentage of Reserved Matters Area
- H. N0648 (03)002 Soft Landscape Area as a percentage of Reserved Matters Area excluding area to north of Buckholt Roundabout
- I. N0648 18 m Buffer to NBAR - Overlay
- J. X3 Constraints Drawing Option B