

Appeal Decision

Inquiry held on 23 November – 3 December 2021

Accompanied site visit made on 2 December 2021

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 5th January 2022

Appeal Ref: APP/C3810/W/21/3273087

Land South of Barnham Station, Barnham, West Sussex.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gleeson Strategic Land against the decision of Arun District Council.
 - The application Ref BN/142/20/OUT, dated 20 November 2020, was refused by notice dated 23 February 2021.
 - The development proposed is outline planning application with all matters reserved other than principal means of access for up to 200 dwellings, with access taken from Marshall Close, associated infrastructure and landscaping and demolition of existing buildings.
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Decision

1. The appeal is allowed, and planning permission is granted for an outline planning application with all matters reserved other than principal means of access for up to 200 dwellings, with access taken from Marshall Close, associated infrastructure and landscaping and demolition of existing buildings at Land South of Barnham Station, Barnham, West Sussex in accordance with the terms of the application ref BN/142/20/OUT and the conditions set out in the schedule attached to this decision.

Application for Costs

2. An application for costs was made by Gleeson Strategic Land against Arun District Council. This application will be the subject of a separate Decision.

Preliminary Matters and Main Issues

3. The proposal was submitted in outline with all matters reserved except for the principal means of access. The application was accompanied by a Design and Access Statement (DAS), a parameters plan, an illustrative masterplan and various technical documents. The Local Planning Authority (LPA) considered the proposal on this basis, and so shall I.
4. At the time the LPA made its decision there were 10 reasons for refusal. Following subsequent work undertaken by the appellant various technical matters have been resolved with statutory consultees. West Sussex County Council (WSSCC) as the local highway authority no longer objects to the appeal proposal subject to conditions attached to any grant of planning permission and has entered into a statement of common ground (SOCG) with the appellant to this effect. Similarly, following further dialogue and work, the Environment Agency and National Highways no longer object on the issues of flood risk and

impact on the A27 road network respectively. Again, this is subject to conditions being imposed and a planning obligation securing a financial contribution for A27 improvements. Taking this into account, the LPA no longer pursues its reasons for refusal No.2 (impact on the road network), No.4 (impact of highway enhancements outside of the site boundary), No.6 (impact on the A27 road network), No.7 (flood risk) and No.8 (air quality). That said, issues of flood risk and the potential impact of the appeal proposal on the local highway network are clearly of matters of significant concern to local residents and community representatives.

5. An executed agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and dated 3 December 2021, has been submitted [ID21]. The agreement includes obligations concerning affordable housing, public open space provision and maintenance, off-site highway works to the A27 and the potential for off-site upgrades to Footpath 323 (FP323). On this basis the LPA no longer pursues its reason for refusal No.9. I return to the matter of the planning obligations in more detail later in this decision.
6. The appeal site is directly adjacent to the Barnham to Bognor Regis railway line ("the branch line") and a short distance from the Barnham to Chichester railway line ("the main line"). FP323 crosses the appeal site and connects northward across both lines, via two unmanned and unsignalized at-grade crossings¹. FP323, via these crossings, would provide connections to existing facilities in Barnham and the planned strategic development at BEW². As part of the appeal process Network Rail submitted objections in relation to the safety of both the Birch and West Barnham crossings and has sought the matter to be resolved prior to the occupation of any dwellings. Whilst the appellant submitted extensive evidence in relation to rail safety, following dialogue with Network Rail on the form of an appropriate planning condition, this evidence was not called upon at the Inquiry. I return to the detail of conditions and the requisite tests in more detail later in this decision. I set out here that the issue of safety at these crossings is, in my view, enveloped within the LPAs broader concerns about the appeal site's connectivity. Consequently, I consider a main issue for this appeal relates to whether appropriate and safe access can be achieved.
7. Taking all of the above into account, the main issues in this appeal are as follows:
 - (1) Whether the site represents a suitable location for residential development, having regard to development plan policies and the existing and planned settlement pattern;
 - (2) The effect on the character and appearance of the area;
 - (3) The effect on the setting of listed buildings and the Barnham Church Lane Conservation Area;
 - (4) Whether the proposal makes appropriate and safe provision for linkages to local facilities or whether it would result in an over-reliance on the private car;

¹ 'Birch' crossing at the branch line and 'West Barnham' crossing at the main line.

² Barnham, Eastergate and Westergate – Strategic allocation SD5 in the 2018 Arun Local Plan for 3,000 homes

- (5) Whether the site can be successfully drained, in respect of both foul and surface water drainage;
- (6) Whether the proposal would make appropriate provision for affordable housing and other infrastructure; and
- (7) Whether there are any material considerations, including the housing land supply position, that would indicate a decision otherwise in accordance with the development plan.

Reasons

Whether the site represents a suitable location for residential development

Development Plan

- 8. The development plan comprises of the Arun Local Plan adopted in 2018 (the ALP) and the Barnham and Eastergate Neighbourhood Plan 2014 (NP1). The ALP, prepared, examined and adopted in the context of the National Planning Policy Framework (NPPF), sets out the spatial strategy, strategic policies and development management policies for the period 2011-2031. The ALP is predicated on meeting the full objectively assessed housing need within the relevant housing market area. The ALP anticipated a Non-Strategic Site Allocations Development Plan Document (the NSSA DPD) to allocate up to medium scale development sites in addition to any neighbourhood plan sites. The District Council is no longer preparing the NSSA DPD and has opted for a review of the ALP.
- 9. The ALP allocates various strategic development sites including the BEW. This development will result in a combination of extensions to the settlements of Barnham, Eastergate and Westergate together with a core new settlement containing new local centres and facilities, together with strategic infrastructure including a new alignment to the A29. The ALP envisaged a capacity of 3,000 dwellings but emerging masterplan work, which has been endorsed by Arun District Council, indicates this is likely to increase to some 4,300 dwellings. Consequently, the Barnham area will experience substantial, strategic housing growth over forthcoming years. The appeal site directly adjoins the south-east edge of BEW, separated only by the branch line.
- 10. The ALP identifies in the context to Policy H SP1 at Table 12.1 that at least 1,250 homes will be assigned to settlements, including Barnham, to plan for as part of neighbourhood planning. Whilst not specified in the ALP, the subsequent figure formulated for Barnham is 75 dwellings. Accordingly, the emerging Barnham and Eastergate Neighbourhood Plan (eNP2) allocates housing sites with a capacity for 110 dwellings. The Examiners report into eNP2 was received by the LPA in November 2021. No referendum is proposed on the Plan and the District Council seeks to 'make' eNP2 in January 2022. At the time of this decision, eNP2 is not part of the development plan, but it is clearly at a very advanced stage. Accordingly, significant weight will need to be applied to the relevant policies of eNP2 in the terms set out at NPPF paragraph 48. In terms of any conflict with eNP2 and matters of prematurity (NPPF paragraph 49), I return to this as part of the overall balancing towards the end of this decision.

11. The appeal site comprises a generally open area of countryside to the south of the main, modern settlement in Barnham. It occupies a shallow valley slope rising gently from the south-west along the watercourse of the Barnham Rife to higher land in the north-east corner of the site at just over 8 metres AOD³. The site comprises almost entirely of close-cropped pasture grazed by horses in a series of paddocks, generally demarcated by post and wire fencing. There is a small group of modest-scale farm/equine buildings towards the north of the site. Accordingly, the appeal site is treated as countryside in the development plan. It is beyond but adjacent to the Built-Up Area Boundary (BUAB) for both Barnham and the BEW as identified in the ALP. The neighbourhood planning process has not amended these boundaries.
12. The appeal site is identified in the latest HELAA⁴ as 'deliverable' (site ref BA12A) meaning it is, in principle, suitable and available for development. However, I share, to some extent, the assessment in recent Flansham appeal⁵ that a positive assessment in a HELAA does not automatically translate into acceptability. Nor does it override the statutory status of the development plan. However, PPG paragraph 03-001-20190722 refers to HELAAs as being "... an important source of evidence to inform plan-making and decision-taking". This second aspect is particularly applicable in Arun given the decision not to pursue the NSSA DPD and the approach in the recent Interim Housing Statement 2021 to pragmatically consider deliverable HELAA sites as part of the strategy to recover housing delivery. Consequently, the HELAA evidence for the appeal site and the IHS are material considerations and one I return to as part of the final main issue.
13. As a starting point for decision-making, the appeal proposal would directly conflict with those development plan policies that seek to direct most housing proposals within the BUAB and to recognise the intrinsic character and beauty of the countryside. Accordingly, the appeal proposal would harmfully erode the certainty that the development plan and the advanced eNP2 should provide. The conflict with those development plan policies that manage the specific location of new housing is a harm to be weighed in the planning balance.

Settlement Pattern

14. In terms of whether spatially the appeal proposal would represent a natural progression of the built form in this locality, it is noted that there would be a modest gap to parts of the BUAB that relates to existing settlement at Barnham. I do not consider the scale of the gap to be a significantly harmful matter. It would allow for appropriate buffering to correspond with public amenity space at Marshall Close and to avoid areas of flood risk associated with the Barnham Rife. The resultant pattern of development and relationship to existing settlement would be comparable to that being contemplated elsewhere in the locality as shown on the BEW Framework Masterplan. Spatially, the site would be close to existing services and facilities in Barnham, one of the larger and more sustainable inland villages in Arun District.
15. The BUAB encloses the BEW and follows the branch line in this location. I note that the endorsed Framework Masterplan for BEW shows green infrastructure adjacent to the branch line in this location but for similar reasons as set out

³ Above Ordnance Datum

⁴ Housing and Economic Land Availability Assessment – December 2020

⁵ APP/C3810/W/19/3236911, paragraph 20

above intervening wedges of green infrastructure are proposed to be a key feature of planned settlement in the area. The BEW development will markedly change the character of the area directly to the north-west of the appeal site. Development in the BEW would be highly perceptible at the appeal location. Over time the appeal proposal would consolidate with BEW to form a coherent pattern of development in this part of Barnham. Subject to securing improved connectivity, the appeal proposal would not form an isolated limb of development, divorced from existing or planned communities.

Barnham's spatial role

16. As set out above, Barnham is anticipated to accommodate significant levels of growth through the ALP and to a lesser extent through eNP2. Accordingly, there is an understandable view that the village has taken an appropriate proportion of the District's housing growth. As such there would be a degree of harm arising from the conflict with the principle that a plan-led system should provide valuable certainty. Barnham is a community that has been through two rounds of plan-making in the last 4 years (the ALP and NP2) and as such the community has a reasonable expectation as to where major housing growth will occur in Barnham.
17. The ALP provides relatively little spatial guidance on distributing the housing requirement or how the at least 1,250 homes for neighbourhood plans are to be disseminated. What is clear from the ALP is that the spatial strategy at Policy SD SP1a includes providing for growth of the sustainable villages whilst maintaining their setting within the open countryside. Barnham is identified in the ALP as one of six villages in 'Inland Arun' which will develop their roles as large, well-connected villages. This is understandable given the development constraints in Arun of the South Downs to the north and the coast to the south.
18. Whilst the BEW will be a significant development, there is little before me that Barnham should not be considered a sustainable location for further housing growth, subject to site specific factors and appropriate infrastructure mitigation. The village has a good range of services, including a very well-connected railway station. Whilst employment opportunities in the immediate area are variable, there are frequent train services to likely commuting destinations. The sustainability of Barnham will be augmented by the BEW.

Conclusion on location

19. I conclude that the appeal site would be reasonably related to existing and planned settlement in Barnham. The proposed dwellings would not be isolated or unduly detached from the existing settlement and would integrate over time with the planned growth at BEW. The appeal site would be located at the edge of one of the more sustainable communities in Arun in accordance with ALP Policy SD SP1a. These are factors that weigh in favour of the appeal proposal.
20. However, and as the critical starting point, the appeal site is in a location contrary to development plan policies relevant to the supply of housing, including those relating to the BUAB. Accordingly, the appeal proposal would be contrary to ALP Policies C SP1, SD SP2, and LAN DM1 of the ALP by virtue of being outside of the BUAB, where development is to be carefully managed, including recognising the intrinsic character and beauty of the countryside. Locationally, the proposal would also be contrary to Policies H2 and H4 of NP1. In locational terms it would also conflict with Policies H1 and H8 in eNP2.

Allied to the harm arising from the conflict with the development plan and eNP2 is the harm that arises from the erosion of the certainty that a plan-led system should provide, including to local communities.

The effect on the character and appearance of the area

21. The appeal site is within a coastal plain landscape, mainly characterised by an open landscape, meandering rifes and strong suburban elements, including settlements such as Barnham. Long views to the South Downs and the quality of settlement edges are identified as being of particular landscape and visual sensitivity. More specifically, the appeal site is located within a Coastal Plain Enclosed Pasture Landscape Character Type. The appeal site is redolent of this landscape type which comprises of a small patchwork of paddocks, pasture and horticulture. It is, however, at the settlement edge of Barnham where there is some medium/high landscape capacity to integrate new development having regard to the sensitivities described above. Importantly, the appeal proposal would not erode the settlement gap between Barnham and Yapton.
22. The appeal proposal would provide a notable buffer of green infrastructure at the countryside edge of the appeal site, amounting to approximately half of the total appeal site area. The result would be to focus the developable area on the moderately higher parts of the site towards the branch line. Whilst the parameter plan shows 2 storey development (up to 10 metres) fringing those parts of the site closest to the Barnham Rife and existing settlement on Church Lane and Marshall Close Barnham, the highest parts of the site would accommodate elements of development up to 2½ storeys (11.5 metres).
23. There is relatively little existing development of this height in the vicinity of the appeal site. The nearest example is the residential development at Windmill Court on the north side of Barnham Station and similarly tall buildings further distant at the St Philip Howard High School. In various perspectives, including from within Church Lane, these existing buildings are not prominent. Windmill Court becomes more conspicuous on FP323 when walking across the appeal site, but it remains at distance and contained by intervening railway infrastructure. Retained boundary vegetation, strengthened with new planting within the site, would filter views of the appeal proposal in some perspectives, but it would remain visually prominent from viewpoints in Church Lane. For several years there would be little affinity to the BEW until those phases of the 'new settlement' development nearest the branch line come to fruition. Consequently, the appeal proposal, would result in a conspicuous cluster of development, including taller elements, extending out into the countryside to the south-east of Barnham on gently rising land up from the Barnham Rife.
24. The final density of the appeal scheme would be determined by the detailed layout. Based on the net developable area in the parameter plan, the DAS estimates an average density of 35 dwellings per hectare (dph). The HELAA has applied similar densities and similar average net densities would occur on the neighbouring BEW. The NPPF also encourages the efficient use of land. Nonetheless, the proposed density would be at odds with the gentle density of the nearest residential development at Marshall Close (c. 25 dph) and the very low density of sporadic housing at the periphery of Barnham on the opposite side of the Rife valley on Church Lane. I accept detailed design and landscaping would be able to soften the edges of development and, over time, mitigate the visual impact to an extent. However, there would be no escaping, in views

from Church Lane, that the appeal proposal would result in a perceptible loss of characteristic countryside and introduce a new urban edge with a limited relationship to the character of existing adjoining development. Over time the BEW will create a more urbanised backdrop to the north and west, but this will not be in the short/medium term.

25. The adverse landscape character and visual effects arising from the loss of countryside would be localised and limited. They would not involve any valued landscapes in the terms of NPPF paragraph 174a) or an important gap between settlements. It would, however, impact on a local opportunity from within Church Lane to appreciate Barnham's wider landscape and settlement context in terms of the long-range views to the South Downs escarpment to the north. Development on BEW may well affect this vista but the proximity and potential layout and massing of the appeal proposal on rising ground, in the middle distance of this view, presents a very real risk that views of the South Downs from Church Lane would be diminished with only the higher parts of the Downs visible above the ridges of the proposed dwellings. The vista from Church Lane is an open view⁶ identified in Appendix B to eNP2, which Policy ES4 seeks to protect and to be maintained if possible. I accept further detail on layout as part of reserved matters may limit the degree of interruption of this view but there would still be a moderate residual harm to what is presently a recognised landscape and visual sensitivity. Notwithstanding the harm to this view from within Church Lane, the otherwise rural and historic character of this rural byway, would remain largely unaffected due to the degree of verdant separation, including planned green infrastructure within the appeal site.
26. Elsewhere, eNP2 identifies an open view⁷ at the edge of the public open space at Marshall Close. The foreground in this view is not within the appeal site but the rising land of the appeal site forms the horizon. Accordingly, housing development, even allowing for peripheral landscaping, would enclose this limited view and remove a wider sense of rural, openness at this edge of Barnham. It is not, however, a prominent vista and requires purposefully positioning close to the edge of the open space where there is no dedicated path. As such I ascribe only very limited weight to the visual harm arising from the interruption to this localised view.
27. The appeal proposal would require highway works within Marshall Close in order to achieve access into the site. Marshall Close is a former local authority estate, dating from the late 1950s comprising of detached and semi-detached dwellings, set back from the highway with wide verges and the large central open green space (including children's play area). There is an arrangement of single storey garages within the open green space, but elsewhere off-street parking is generally limited. On-street parking is a feature within the street scene, which I understand to be exacerbated by rail commuters. Nonetheless, there is a distinctly spacious, tranquil, village character in Marshall Close. This is reinforced by the mature hedging and trees to the south and west edge of the Close, along the public open space and Rife and by tree specimens within the highway and around the 'green' area.
28. The access road into the site would result in the removal of a short length of hedging to the southern boundary of Marshall Close. Together with the necessary works to widen the highway within Marshall Close, the quiet,

⁶ Viewpoint 10

⁷ Viewpoint 15

verdant, cul-de-sac character of this part of the village would be diminished. Development would be visible at distance through the gap created, with a resultant loss in the semi-rural, peripheral character and designed layout of Marshall Close. The urbanising effect of the appeal proposal would also be experienced in both the increased volume of traffic from up to 200 dwellings and the proposed works to widen the highway and create additional off-street parking bays within the cul-de-sac. This would erode the verdant spaciousness and require some limited tree removal. I accept there would be scope to plant additional 'street trees' on highway land in accordance with NPPF paragraph 131 but the overall effect would be to subsume the tranquil character of Marshall Close within a more overt suburban context. Consequently, the character and appearance of Marshall Close would be harmfully affected.

29. Matters of scale, layout, design and landscaping would be reserved for later detailed determination. It is asserted, however, that the location of the appeal site and how it is proposed to be developed (by reference to the parameter plan), as a matter of principle would fail to constitute a beautiful place in the terms now sought by the NPPF (paragraph 8). The appeal proposal is informed by a detailed 155 page DAS which covers matters including, but not limited to, contextual appraisal, design, layout, density, green infrastructure and design coding. I accept the appellant may not be responsible for developing the site but as these matters would be for subsequent determination, the DAS would provide a comprehensive reference point for developing a detailed scheme. The DAS has been prepared with reference to both the National Design Guide and the Arun Design Guide. The site is generally unconstrained and with a significant balance of land for open space and landscaping established at this outline stage. Overall, I am satisfied that considerable scope remains at the detailed stage to allay some of the concerns regarding the visual impact of the development and to soften its the appearance, including the final layout and quality of proposed green infrastructure and open space. These details would be within the LPAs control through various conditions.
30. I therefore conclude that due to its location there would be some modest harm to the character and appearance of the surrounding area including the characteristic verdant coastal plain countryside to the south-east of Barnham and the tranquil cul-de-sac character within Marshall Close. There would also be a moderately harmful interruption of important local views, notably across to the South Downs from Church Lane. Consequently, the proposal would be contrary to Policies LAN DM1 and D DM1 of the ALP. It would be contrary to Policies ES4, ES6 and ES10 of NP1 which seek to protect open views towards the countryside and that new development should contribute positively to local character. Similarly, it would fail to accord with Policies ES4, ES5 and ES7 of eNP2. In terms of contributing to and enhancing the local environment the proposal would not be sympathetic to local character at odds with NPPF paragraphs 174b) and 130c) respectively. The proposal would also be contrary to relevant key objectives of the Arun Design Guide.

The effect on the setting of listed buildings and the Barnham Church Lane Conservation Area

Barnham Court

31. In respect of Barnham Court, a substantial grade I listed residence, the heritage significance is principally related to its architectural interest and

construction, reflecting its origins as a large mid-Seventeenth Century house, contemporaneous and of comparable style to Kew Palace. Whilst there are later Nineteenth Century additions it is the original scale and design of the brick-built house, including the Dutch shaped gables, other external detailing which generate the principal heritage interest. The physical fabric of Barnham Court would be unaffected by the appeal proposal.

32. Turning to setting and how Barnham Court is to be experienced, there is little evidence that the house was designed within a wider landscaped setting that purposefully included the appeal site. Any past functional relationship between Barnham Court and the appeal site has now largely been diminished. Due to surrounding vegetation and buildings, there is a very limited sense of Barnham Court from the north and the east, both within Church Lane and from FP323 across the appeal site. I am invited to draw a wider rural setting for Barnham Court along the length of Church Lane to its junction at Yapton Road. In terms of the NPPF definition of 'setting' I do not find the surroundings in which Barnham Court is experienced extends this far given the extent of intervening later development, including Marshall Close.
33. On the issue of setting, I generally share the submissions of Mr Crutchley that Barnham Court was primarily conceived to occupy a prominent position at the end of the promontory of gently higher land, adjacent to the parish church. This peripheral position of Barnham Court, emphasised by its clear relationship to the open, watery landscape to the south-west would not be disturbed the appeal proposal, including from public views on the footpath along the route of the former canal. Nor would the appeal proposal interfere with either the spatial or functional relationship between Barnham Court and St Mary's Church or the original historic core of Barnham village.
34. From FP323 there are various points where the chimneys and uppermost elements of the roof can be seen at distance between the various intervening trees. Whilst these limited views hint at a building of grandeur, there is a very limited experience of the building's heritage interest. Approximately, two-thirds of FP323 across the appeal site would retain an open perspective towards Barnham Court. Some very limited views of the chimneys from part of the footpath towards the branch line would be lost. However, this needs to be balanced against the increased public access to the proposed open space in the south-west quarter of the site, thus enabling a wider opportunity to glimpse the upper parts of Barnham Court from this perspective. Overall, there would be no harm to the setting of Barnham Court. I am mindful the owner is concerned about the risk of flooding from the Barnham Rife being exacerbated by the appeal proposal with potential water damage to the historic fabric of Barnham Court. I deal with this separately under drainage matters below.

Curacoa

35. *Curacoa* is a modestly proportioned Grade II listed, two storey, early Nineteenth Century cottage faced with flint with brick dressings and quoins and a hipped tiled roof. The heritage significance largely derives from the architectural and historical interest of its built form and fabric. It is a quaint rural cottage that is predominantly experienced as part of the loose cluster of historic settlement within the conservation area. In terms of its setting, *Curacoa* is positioned back from Church Lane by a relatively deep front garden. This front garden and its associative relationship to the generally linear pattern

of other vernacular buildings in this part of Church Lane, comprise the key aspects of its setting. This would not be impacted by the appeal proposal.

36. From the diminutive size of the window openings of Curacoa, it is difficult to reason that the property was conceived to have particular views of the appeal site. The adjacent dwelling to the east ('Ferndale') occupies a more forward position, including a tall 1½ storey side addition close to the boundary of Curacoa's plot. Accordingly, in perspectives from the north and north-east, Curacoa can be occasionally and partially glimpsed from FP323, such that a clear view or appreciation of its heritage significance is difficult to gain from the direction of the appeal site. Consequently, the degree of change at the appeal site would not cause harm to the heritage significance of Curacoa.

Luckham Cottage

37. The heritage significance of the Grade II listed Luckham Cottage⁸ is its architectural form, being a modest cottage of Eighteenth century origins, faced with knapped flints and red brick dressing and quoins and a thatched roof. It is positioned at the junction of Church Lane and Yapton Road (B2233). The appeal proposal would create additional vehicle movements at this junction. Given the existing character of Yapton Road there would be no material impact on its setting and no impact on the built form of the cottage. Consequently, there would be no harm to its heritage significance.

Barnham Church Lane Conservation Area (BCLCA)

38. The heritage significance of the conservation area is that it comprises the core mediaeval origins of rural settlement at Barnham on a low rising spur of land, bordered by the Barnham Rife to the north and west and by lower lying open levels to the south. The informal linear pattern of development includes St Mary's Church and Barnham Court. Various traditional cottages and buildings are loosely arranged either side of Church Lane, with later infill buildings on Church Lane and along High Ground Lane consolidating the pattern of settlement. Nonetheless, a rural character to the settlement within the BCLCA prevails, due to the general gaps between buildings, the small-scale parcels of undeveloped land at the periphery and the verdant setting at Barnham Court.
39. Whilst a significant proportion of the heritage significance stems from the physical form of historic settlement, a notable contribution is also made from the wider rural, agrarian setting. Notwithstanding the expansion of settlement in Barnham with the advent of the railway, the conservation area remains a tranquil and distinct rural hamlet focused on the parish church and Barnham Court. The appeal site forms part of the setting of the BCLCA as part of the farmed hinterland that would have supported the historic rural settlement, which also serves to separate the historic nucleus of settlement in Barnham from more recent development to the north-east. The nearest part of the BCLCA at the north-east corner is approximately 50 metres from the appeal site. Accordingly, the pastoral character of the appeal site is clearly visible in views out of the BCLCA at its north-eastern edge.
40. These views will change over time to a limited degree with the implementation of BEW. The impact of BEW will occur at some distance with existing trees between High Ground Lane and the railway screening large parts of the new

⁸ Grade II Listing description refers to 'Luccombe Cottage', known as Luckham Cottage

development. Whilst the endorsed Masterplan for BEW may be refined it nonetheless shows those parts of BEW closest to the BCLCA as green infrastructure. In large part from within the BCLCA at Church Lane views of existing buildings in 'modern' Barnham are largely filtered by existing vegetation and at some appreciable distance, such that even the larger scale buildings at the St Philip Howard High School and 'Windmill Court' are not especially noticeable. Accordingly, neither modern Barnham nor BEW particularly encroach on the setting of the conservation area.

41. In contrast, the proposed housing on the appeal site would be prominent on the higher ground of the gently rising slope. Whilst the residual gap would be generally comparable to those to the lower density fringe of 'modern' Barnham elsewhere on Church Lane, the likely scale and massing of the appeal proposal would bring a sizeable, dense cluster of modern residential development tangibly closer to the BCLCA. The sense of separation from the 'modern' Barnham would be perceptibly eroded and the rural setting to the north-east of the BCLCA would be reduced. The proposed extent of green infrastructure and landscaping, would, over time, soften the visual impact of the appeal proposal, but even with this mitigation the appeal proposal would bring the urban edge of modern Barnham prominently into the middle distance in views out of the BCLCA within Church Lane and on FP323.
42. In light of this adverse impact to its setting, the harm to the heritage significance of the BCLCA, as a whole, would be less than substantial. There would be an absence of direct impact on the principal heritage value of the BCLCA in terms of its physical settlement form and collective architectural interest of the buildings. Additionally, there would be a modest degree of separation due to the proposed green infrastructure in the south-west of the appeal site which would retain a degree of the pastoral Barnham Rife valley. Importantly, the wider, more open rural hinterland around more than three-quarters of the conservation area would remain unaffected. Accordingly, I cannot share the Council's assessment that the harm identified to the setting would sit at the "*upper end*" of any less than substantial spectrum (i.e. close to substantial). In coming to this assessment, I have had regard to the *Bedford* judgment⁹ and the analysis of what is likely to comprise substantial harm being comparable to "... *vitiating altogether or very much reduced*". A very large proportion of the heritage significance of the BCLCA, including the contribution from its rural setting, would remain intact.
43. On the other hand, nor can I share the appellant's assessment that any harm would be at the "*lowest end*" of this spectrum given the degree of loss of the sense of rural detachment from modern Barnham, particularly at the north-eastern edge of the BCLCA on Church Lane and within FP323, due to the relative proximity of new housing and its urbanising influence. Accordingly, I find my assessment to be somewhere between the mid-point and the lower end on any spectrum of less than substantial harm, and more towards the lower end. In terms of coming to this assessment, I have factored in that the appeal proposal would present some limited public benefit in terms of the proposed area of open space affording a wider appreciation of the BCLCA, where there is currently no public access.

⁹ Bedford Borough Council v. SSCLG [2013] EWHC 2847, paragraphs 24 and 25

Non-designated heritage assets

44. There are a number of non-designated heritage assets at the appeal location. This includes traditional farm buildings on the appeal site in addition to the Barnham railway station complex to the north, the Murrell Arms public house at the junction of Church Lane and Yapton Road and various traditional buildings and cottages to the south in the BCLCA. Given the combination of intervening distances, buildings and vegetation, there is generally very limited intervisibility or other relationships to these heritage assets. Consequently, there would be no harm to the heritage significance of proximate non-designated heritage assets beyond the appeal site boundary.
45. On the appeal site there is one modest brick and flint farm building, with hipped slate roof, of the local vernacular tradition in reasonable intactness. There are limited remains of other traditional buildings, generally reduced to parts of exterior walls. The loss of the very limited heritage value that could be attributed to these remnants would not be harmful. The heritage significance of the remaining barn is to be found in its functional relationship to the agrarian land use and the palette of traditional materials used. It is not a particularly unique building and its relationship within any wider or complete historical farmyard context has already been lost. Accordingly, the significance of the heritage asset is limited, and its loss would not be harmful.

Heritage conclusion

46. To conclude on heritage matters. I find there would be no harm to the heritage significance of the listed buildings, in terms of their setting, at Barnham Court, Curacoa or Luckham Cottage. I also find that the appeal proposal would not result in unacceptable harm to non-designated heritage assets when applying the balanced approach at paragraph 203 of the NPPF. Due to the adverse effect of the appeal proposal on the setting of the BCLCA there would be less than substantial harm to the heritage significance of this asset. This harm would be towards the lower end of the spectrum.
47. Accordingly, in respect of the conservation area, the proposal would be contrary to Policies HER SP1 and HER DM3(f) of the ALP and Policy ES7 of NP1. It would also conflict with modified Policy ES7 of eNP2. Collectively these policies seek to resist development that would prejudice designated heritage assets and their settings and to ensure that development would preserve or enhance the character or appearance of conservation areas. Policy ES7 of NP1 is inconsistent with national policy and as such the conflict with it is only of limited weight. I also note these policies do not replicate the balanced approach set out in Section 16 of the NPPF, including for this appeal at paragraph 202 of the NPPF. Reference is also made to the Arun Design Guide 2021 but other than a baseline assessment of heritage I see little in the SPD that specifically relates to the LPAs reason for refusal on this main issue.
48. Given that heritage assets are an irreplaceable resource which should be conserved in a manner appropriate to their significance, taking into account Section 72(1) of the 1990 Act in terms of the special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas, I attach appreciable weight to the identified harm to its setting in respect of any balances in this decision. In respect of the less than substantial harm and the approach at paragraph 202 of the NPPF, I undertake the required heritage balance in the final concluding section of this decision.

Whether the proposal would make appropriate and safe provision for linkages to local facilities or whether it would result in an over-reliance on the private car

Linkages via Yapton Road to Barnham Station and facilities

49. The appeal site is within easy walking and cycling distance of Barnham Station and the various facilities along the B2233 including convenience stores, the Murrell Arms public house and the Community Hall. Facilities such as the primary school and the St Philip Howard High School are slightly further but still within reasonable walking and easy cycling distances¹⁰. There are also nearby bus stops along on the B2233 and on Lake Lane, generally within only a few minutes' walk of the appeal site served by a frequency of services that coincide with schools and commuting. The appeal site is in a highly sustainable location.
50. In terms of the quality of the connecting routes for pedestrians, the most direct and desirable route for occupiers of the appeal proposal to the station, local shops and schools would be via Marshall Close and then an existing pedestrian cut through onto Yapton Road and along the B2233 under the railway bridge. The appellant proposes to ensure a minimum 1.5 metres wide continuous footway on public highway land through Marshall Close as far as Yapton Road¹¹. The connection to Yapton Road, when accounting for the proposed improvements, would be comfortable, safe, well-lit and desirable for those on foot. Similar would apply to the short length of footway along the B2233 beyond the railway bridge to the shops and other facilities around the station.
51. The footway along the B2233 from the Marshall Close cut through to the railway bridge is approximately 60 metres in length and varies in width¹². This includes a narrower point where the footway passes under the bridge between a point at its north-west abutment and the safety railings to the B2233 carriageway. There is no scope at present to improve the footway width at this location, but it is sufficiently wide for pedestrians to pass through, with reasonable room either side to wait. I accept the arrangement is likely to be tight for those with pushchairs and for wheelchair and mobility scooter users. In this regard I place significant weight on the fact that other major housing developments have also been approved elsewhere on Yapton Road (against comparable thresholds of highway safety in the NPPF) that would similarly rely on the same quality of footway connection. Overall, I find the condition of the footway along Yapton Road, including under the rail bridge, would not deter occupiers of the appeal site in making the short journey by foot to access the station and other facilities in this part of the village.
52. I recognise the route via Church Lane connects to a butcher, the Murrell Arms, to nearby bus stops on Yapton Road and to the Community Centre. This would involve pedestrians negotiating a short length of Church Lane which has no footway. Despite the Marshall Close and Yapton Road junctions there are few on-street parking restrictions in this part of Church Lane such that pedestrians would be likely to have walk out into the carriageway. Whilst at present this part of Church Lane carries relatively low volumes of traffic, that would change with the appeal proposal. The arrangement would be less than ideal. However,

¹⁰ Dominic Smith Proof of Evidence, Figures 3.1 and 6.1

¹¹ Drawing ITB14160-GA-010B

¹² Drawing ITB14160-GA-019A

it involves only a very short length of Church Lane which is reasonably lit, within a 30mph speed limit and with scope to safely step-off using the edge to the pub car park or the entrance to Greenbank. Most pedestrians would be using the arm of the junction adjacent to the Murrell Arms to access either the pub, the bus stops or the Community Hall. This arm is amply wide enough for pedestrians and vehicles to safely pass before those on foot can connect onto the footway along Yapton Road. As such I find the pedestrian environment on this part of Church Lane to be within the margins of a safe and suitable access to those facilities east on Yapton Road, thus providing a convenient alternative to the car for the readily walkable distances involved.

53. In respect of cyclists, this would involve using Marshall Close and Church Lane to access the B2233, including to the main centre of Barnham, the station and onwards to the schools. There would be no dedicated cycle path provision such that cyclists would have to use the road carriageway. This would all be within 30mph speed limit and generally well-lit. In respect of Marshall Close and Church Lane, subject to the proposed improvements to widen and manage on-street parking in Marshall Close, this highway, given the relatively low levels of traffic, would be safe for cyclists. With regards to the B2233 this is clearly a busier road, which may deter some less confident cyclists, including school children. There are no planned improvements on the B2233 for cyclists and the general tightness of the highway under the rail bridge appears to present an intractable constraint. As such I accept that any modal shift to cycling at the appeal site to access facilities to the north in Barnham would be lessened to some degree by the circumstances on the B2233. However, any inhibiting of modal shift to cycling would be readily compensated by the fact that most facilities in Barnham are within a recognisable 1600metre reasonable walking distance of the appeal site.
54. The LPAs related reason for refusal refers to a “comprehensive package of mitigation” of which a potential objective appears to be a direct link from the appeal site to Barnham station. Given the relatively short walking distance via Marshall Close and Yapton Road it is not clear why a direct link would be necessary to make the appeal development acceptable in planning terms. Consequently, I do not consider the absence of a direct link to the station to be harmful.

Linkages via FP323 and south-west towards Bognor Regis

55. The public footpath (FP323) across the appeal site connects to Church Lane to the south via a good quality footbridge over Barnham Rife. To the north, the path crosses the railway lines before traversing fields to reach the perimeter of the St. Philip Howard High School where the path divides. At present these are rural footpaths, which largely function as leisure routes given their relative seclusion and informal surfaces. In its current form and condition, I do not consider FP323 to be a particularly attractive route for future occupiers of the appeal site to access into Barnham on foot, including for pupils at the St. Philip Howard High School and Ormiston Academy, especially in winter months.
56. In time, however, the nature of this path north of the branch line will change as shown on the BEW Framework Masterplan. It will become a more functional link, indicatively to cycle route standard in places. FP323 will also become a desirable connection from the appeal site to local centres, schools and sports facilities in the BEW development and to a more direct footpath

connection into Gospond Road (close to the centre of Barnham). I have observed the standard of the current foot crossings at 'Birch' and 'West Barnham' and the alignment of the approaching rail lines and general speed of trains, bearing in mind the proximity of Barnham junction and station. Taking these factors into account I am concerned about the likely increased usage, particularly for vulnerable users requiring a longer crossing time.

57. Furthermore, I am concerned more generally that the very proximity of housing to the railway lines would tempt younger persons to explore, play and take risks by accessing the railway line at the unmanned 'Birch' crossing. For these reasons, without some form of mitigation there would not be safe and suitable access for all from the site via FP323 across the railway lines, and these concerns would increase over time once the BEW development is implemented. Overall, the existing condition of the footpath crossing on the rail lines validates the LPA's concerns about the limited connectivity of the appeal site to the adjacent planned strategic development at BEW.
58. At the time the Council made its decision there was no proposal to mitigate either the 'Birch' or 'West Barnham' crossings as part of the appeal development. As the appeal has progressed, the appellant has agreed a form of condition with Network Rail that would preclude occupation of any dwelling on the appeal site until a necessary Order for the extinguishment or diversion of FP323 is in place. Based on the detail at Section 5 of Network Rail's objection (2 September 2021), the most likely form of a crossing at 'Birch' would comprise an overbridge, although the condition would leave appropriate flexibility for the precise form of any crossing improvement. Network Rail advise from preliminary assessment that a form of crossing would be feasible within their operational land and as such necessary consents, design and construction could be achieved within, broadly, a two year timeframe¹³. This would not unduly delay housing delivery. From my site observations there is an appreciable margin of land either side of the branch line within the boundary fencing such that I am satisfied with the preliminary evidence provided by Network Rail. In respect of 'West Barnham' there is an existing underpass a short distance to the west of the foot crossing. Again, the condition proposed is suitably flexible to consider the form of any crossing improvement here.
59. I deal with conditions separately at the end of this decision, but I am satisfied as part of this main issue that there is a reasonable prospect of securing necessary rail safety improvements to the unmanned level crossings within the time-limits imposed by any permission. With the imposition of a Grampian style condition, I am satisfied that the appeal site would be appropriately connected to the BEW development and an alternative safe route for pedestrians (and potentially cyclists) into the centre of Barnham. The scope to address the public safety risk at these crossings, through the proposed condition, is a benefit of moderate weight in favour of the appeal proposal.
60. In respect of FP323 south of the site occupiers of the appeal proposal would be able to connect by foot to various footpaths in this part of the Parish. In terms of cycle connectivity from the appeal site to the 'Barnham Link' and the proposed cycle link along the former canal to Ford, the route would be via Marshall Close and along Church Lane. This would be a safe route and only a modest detour which would make little material difference to journey lengths

¹³ See paragraphs 5.18-5.24 Network Rail objection (September 2021)

for anyone cycling to Bognor Regis or in the future to Ford. Overall, the site would be appropriately connected to available linkages to the south-west.

Highway Safety and Capacity

61. I am satisfied that with the improvements proposed the public highway within Marshall Close could safely accommodate the number of vehicles likely to be generated by the appeal proposal, including in the AM and PM peak periods. The junction of Marshall Close with Church Lane has good visibility and whilst the width of the highway on Church Lane is likely to be constricted by on-street parking at most times there would be sufficient capacity for vehicles to safely wait and pass. In respect of the junction with Yapton Road I generally find there would be sufficient visibility at the junction. Alternatively, some vehicles might use the arm of the triangle in front of the Murrell Arms to make the right-hand turn onto Yapton Road. The B2233 is of reasonably straight alignment at this point, with traffic already at no more than 30mph and westbound traffic likely to be slowing down in readiness to pass under the rail bridge. Overall, I find the Church Lane / Yapton Road junction could safely accommodate the additional vehicular traffic generated by the appeal proposal.
62. In respect of Church Lane more widely, I cannot see why vehicular traffic from the appeal site would negotiate Church Lane south of the Marshall Close junction given it is primarily a no-through road. There would be no logic in vehicular traffic seeking to access the B2233 via the tortuously narrow route involving Church Lane and Hill Lane. Accordingly, the appeal proposal would not adversely affect the highway safety of pedestrians and other users on Church Lane, south of Marshall Close.
63. I note that up to 200 dwellings would be served by one point of vehicular access. To my mind that does create some risk should there be an emergency or an accident. I note, however, that WSCC as the local highway authority and as the Fire and Rescue Access Manager raise no objection provided the access road maintains a clear width of 3.7 metres. The various proposals to moderately widen Marshall Close and manage on-street parking into demarcated bays, which would form part of the approved plans at this outline stage, would assist in maintaining such clear access. On this basis I am satisfied that the degree of risk from the single point of vehicular access would be acceptably managed.
64. In terms of the safety and capacity of the highway network more generally in this part of Arun, the appellant has undertaken an appropriate level of assessment, including additional post-determination traffic impact analysis¹⁴ which has assessed local junctions elsewhere on the B2233 and A29 in Barnham, Eastergate and Yapton, in accordance with WSCC methodology¹⁵. The analysis, including the appellant's updated sensitivity testing around various growth trajectory scenarios, shows that when factoring in background growth in traffic, and attributing an appropriate allowance for BEW, capacity generally exists (or will exist with planned improvements elsewhere) to safely accommodate the likely volume and distribution of vehicular traffic generated by the appeal proposal such that the residual cumulative impacts on the local road network would not be severe. National Highways have raised the issue of the impact of cumulative growth in Arun, including the appeal proposal, on the

¹⁴ Document MG/MS/ITB14160-101B

¹⁵ Summarised at Section 4 of Transport Statement of Common Ground between appellant and WSCC (Aug 2021)

junction capacity and strategic function of the A27, which is a short distance to the north of Barnham. A planning obligation is proposed in relation to this, and I deal with this separately under the main issue on 'infrastructure' below.

Connectivity Conclusions

65. In conclusion on this main issue the appeal proposal, I find that the appeal proposal, subject to conditions, including a 'Grampian' style condition relating to the railway foot crossings, would make appropriate and safe provision for linkages to local facilities. It would not result in an over-reliance on the private car. Moreover, the location and connectivity of the appeal proposal to facilities in Barnham presents genuine prospects for meaningful modal shift as part of the need to achieve radical reductions in greenhouse gas emissions, improve public health and active lifestyles and address air quality. Proposed travel planning measures, as outlined in the Framework Travel Plan¹⁶, would optimise the potential for modal shift in the appeal development. Moreover, safe and suitable access to the site can be achieved for all users, subject to conditions requiring off-site improvements within the public highway on Marshall Close.
66. The appeal proposal would therefore be consistent with ALP Policies T SP1, T DM1, D DM1(10) and QE DM3 which, amongst other things, require development to reduce the need to travel by car, ensure ease of movement, prioritising safe pedestrian and cycle access, make provision for safe access to the highway network and appropriately address the contribution to air pollution from traffic. In terms of improving local transport infrastructure and efficiency there would be no conflict with Policy GA1 of NP1. The potential to improve the local footpath network, including safer crossings of the rail lines, would be consistent with Policy GA2 of NP1. Similar would apply in relation to proposed Policies GA1 and GA2 of eNP2. At this outline level, the appeal proposal would generally accord with the relevant key design objectives of the Arun Design Guide 2021 in terms of 'ease of movement' and 'accessibility and inclusion' and the applicable parts of the design guidance in Part F on movement frameworks.
67. Importantly, the appeal proposal would accord with the objective of the NPPF to promote sustainable transport including the principle at paragraph 105 to focus significant development on locations which are sustainable such as Barnham where the need to travel is limited by the range of facilities and a genuine choice of transport modes exist. More specifically, the appeal proposal would be consistent with NPPF paragraphs 110-113 including, amongst other things, achieving safe and suitable access for all users, ensuring no severe adverse impact on highway safety or the performance of the road network more generally, and taking all reasonable steps to prioritise and implement (including through a travel plan) modes of travel other than the car.

Whether the site can be successfully drained, in respect of both foul and surface water drainage.

68. The site adjoins the Barnham Rife, a modest watercourse that flows south-west away from the main settlement at Barnham. The appeal site has a lengthy boundary with the Rife, with land on the appeal gently sloping down to the watercourse. The principal means of access into the appeal site is proposed to cross the Rife at a point near to existing housing on Marshall Close. The Rife intermittently floods and this has adversely affected property and land close to

¹⁶ Document DS/AI/ITB14160-004A

the appeal site in recent years. Matters are aggravated by effluent surcharging from the local foul sewer network in peak events. Accordingly, there are strong views on the need to reduce flood risk from all sources.

69. The proposed housing on the appeal site would not be situated within areas of higher flood risk associated with the Rife. In terms of flood risk elsewhere, it is recognised that the Barnham Rife is a slow-moving, gently gradient-ed watercourse, such that its receiving capacity in peak events will be challenging. Accordingly, on-site attenuation and the managed discharge of surface water will be critical. The appeal proposals would provide for sustainable drainage solutions (SUDS) which would mitigate surface water run-off at a rate better than the existing unmanaged run-off from the site. These are technical matters that can be determined at a detailed reserved matters stage. At this stage there is adequate evidence, including in the appellant's updated Flood Risk Assessment¹⁷, to conclude that the appeal proposal would not increase fluvial flood risk on the Barnham Rife and that the proposed development would be safe throughout its lifetime, including when factoring in latest climate change allowances.
70. On this basis the appeal proposal would also not exacerbate fluvial flood risk immediately downstream at the historic Barnham Court. The housing at Marshall Close is a short distance upstream of the appeal site, however the generally very shallow gradients and low-lying nature of the Rife floodplain still mean that effective on-site attenuation will be vital, particularly with predicted fluctuations in the intensity of precipitation as the climate changes. Again, I am satisfied that the preliminary work to date demonstrates an in-principle effectiveness of on-site attenuation for the scale of development proposed and that necessary details can be secured by condition, with the LPA maintaining necessary control over what is implemented.
71. The principal access to the housing would require crossing the Rife. At the time the LPA made its decision, this was an unresolved matter. The appellant has undertaken further design and modelling on crossing solutions and has engaged in further dialogue with the Environment Agency (EA) since the appeal was lodged. Consequently, it has been agreed with the EA¹⁸ that a clear span bridge form of crossing can be secured that would not detrimentally impede the function and flow of the Rife. The precise position, design and appearance of this crossing, which is within the appeal site, would be a matter for later determination but parameters have been agreed with the EA and these can be secured by condition at this stage. Accordingly, I am satisfied that the construction of an appropriate crossing can be safely implemented without increasing flood risk within the site or elsewhere.
72. In respect of foul water disposal, the sewer network from this part of Barnham to the Lidsey Waste Water Treatment Works (WWTW) passes through the site, directly alongside the Rife. There are existing connection points within the appeal site, the nearest being approximately 1km from the Lidsey WWTW. Notwithstanding the ability to readily connect the appeal proposal on-site into the sewer network 'downstream' of existing built development in Barnham, Policy W DM1 of the ALP clearly identifies that drainage within the catchment of the Lidsey WWTW is an issue. This is articulated at paragraph 18.2.6 of the ALP which echoes the submissions from the local community in terms of the

¹⁷ Document reference A326-R001E, dated 6 August 2021

¹⁸ Correspondence of 1 September 2021, reference HA/2021/123526/01

history in Barnham of foul water flooding affecting properties and polluting watercourses. The issue appears to stem from surface water inundation of the sewerage system compromising its effective operation. The implementation of SUDs at the appeal site, should not exacerbate the surface water situation but it is also important that the receiving foul water network has existing or potential capacity to appropriately accommodate additional flows from the appeal proposal. Overall, Policy W DM1(3) does not preclude development within the Lidsey WWTW catchment but it does raise the likelihood of careful phasing of development through the use of conditions in terms of the implementation of both surface and foul water drainage systems. Similar is presented in Policy ES1 of NP1.

73. The appeal proposal is estimated to generate an additional foul water flow of 1.1litres per second as established with Southern Water through a Level 1 Capacity Check process. The appellant's uncontested calculations on the hydraulic capacity of the receiving sewer network between the site and Lidsey WWTW are that the additional flow from the appeal proposal would amount to an increase of 2% to the in-pipe flow. Whilst Southern Water advised that additional flow may increase the risk of flooding to existing properties and land, I am satisfied that technical options exist for mitigation were it to be established on further detailed assessment that the modest 2% increase on in-pipe flow could not be accommodated within the existing calibre of the network. This could include upgrading the diameter of some 370metres of public sewer within the appeal site to create additional capacity as well as other infrastructure to provide network capacity.
74. Ultimately, it is noted that Southern Water raise no objection to the appeal proposal, confirming their obligations to connect the development to the public sewerage network under Section 106 of Water Industry Act 1991. This detailed work, which would involve hydraulic modelling under the sole custodianship and use of Southern Water, means that any identified network reinforcement is for Southern Water to identify and may take up to 24 months to implement from the date of planning permission. Were this to take longer, the onus would be on the water utility company to operate an interim solution. There is nothing unusual about water utility companies not engaging in the detailed analysis of foul water drainage solutions until there is sufficient certainty in the planning process. Southern Water have suggested a condition clearly linking occupations with sewer capacity being made available and this, together with other related conditions, would give the LPA appropriate control.
75. Drawing the threads together on foul water and acknowledging the legitimate concerns given recent events in Barnham, there is sufficient evidence at this stage that the modest additional foul water flows from the appeal proposal can be adequately catered for without increasing the risk of related flooding elsewhere.
76. Technical solutions to foul water drainage, will take time, including any necessary consents for sewer capacity reinforcement work affecting water vole habitats and within close proximity of the Barnham Rife watercourse (flood risk activity). In terms of the ability of the appeal proposal to meaningfully assist housing delivery in the next five years, the evidence from Southern Water¹⁹ indicates a 24 month timeframe for reinforcing the local network or an

¹⁹ Southern Water email dated 13 July 2021, Appendix C to Mr Abley's Proof of Evidence

alternative method of drainage should any required infrastructure not be in place within this timeframe. On this basis, I do not see foul water drainage unduly delaying implementation of the appeal proposal. Speculative references to ongoing national issues regarding waste-water treatment standards does not point to a moratorium on future windfall development in Barnham or any substantiated issues regarding the receiving capacity at the Lidsey WWTW.

77. I therefore conclude that, subject to conditions, the site can be successfully drained, in respect of both foul and surface water drainage. Accordingly, the proposal would accord with Policies W DM1, W DM2 and W DM3 of the ALP and Policy ES1 of NP1. There would be no conflict with emerging Policies ES1(a)-(c) of NP2. The proposal would also accord with NPPF paragraphs 159-169 on planning and flood risk. The revised FRA accompanying the appeal proposal meets the requirements in the related PPG chapter on 'Flood Risk and Coastal Change' including those at paragraphs 30-32 on the level of detailed required for site-specific assessment.

Whether the proposal would make appropriate provision for affordable housing and other infrastructure

78. An agreement pursuant to S106 of the 1990 Act deals with a number of matters, including those pertaining to the LPAs reasons for refusal Nos. 6 (A27 junctions) and 9 (mitigating the impact of development and providing affordable housing). Arun District Council has instigated a Community Infrastructure Levy (CIL) to ensure development more widely can viably contribute towards the facilities and services necessary to ensure development would be sustainable. Nonetheless, individual developments will give rise to specific site or locational requirements. Accordingly, I am required to examine whether the proposed obligations would lawfully meet the tests at CIL Regulation 122 (repeated at NPPF paragraph 57).
79. The agreement is submitted in form a deed, binding those with an existing and future interest in the land to various obligations. Plans clearly show the relevant titles of land affected. The agreement contains an obligation to provide monitoring fees to Arun District Council at £2,400 (index linked). The sum sought appears reasonable and fair and the PPG on 'Planning Obligations' at paragraph 23b-036-20190901 confirms that authorities can charge a monitoring fee through S106 planning obligations. Accordingly, the obligations relating to the ADC monitoring fees meet the necessary tests.
80. The submitted obligations would provide for the delivery of 30% of the dwellings to be affordable housing on a tenure split of 75% affordable rent and 25% intermediate housing. The obligation provides for an affordable housing scheme to be submitted to and approved by the LPA and appropriate trigger points for the delivery of the housing. The obligation contains a reasonable mechanism to transfer the affordable dwellings and a schedule of recognised affordable housing providers is appended to the obligation. In terms of the occupation of the dwellings, Arun District Council would have nomination rights in the first instance and then cascading to the affordable housing provider. This would ensure appropriate focus on those with the highest housing need. The obligation contains an appropriate backstop in the form of a reasonable commuted sum payment. Overall, the obligation would meet the requirements of ALP Policy AH SP2 and the relevant tests and so I have taken it into account.

81. The agreement contains an obligation to submit and obtain approval for a scheme for the provision of public open space and play areas prior to first occupation of any dwelling. The public open space will comprise of play areas (0.242ha) within approximately 7ha of natural and semi-natural green space, allotments and community orchard (approximately 0.3ha) and amenity green space (approximately 0.54ha). The scheme would including trigger points for provision linked to the delivery of housing, to be approved by the LPA. In terms of management and maintenance, the obligation provides for either a private management company or transfer to the District Council together with a sum equivalent to fund 20 years' worth of annual maintenance. The agreement ensures that reasonable public access will be maintained to the open space unless otherwise agreed by Arun District Council.
82. Policy OSR DM1 of the ALP requires housing development to provide open space in accordance with guidance, for which I have been referred to the Council's Supplementary Planning Document (SPD) 'Public Open Space, Playing Pitches and Built Facilities' (2020). Looking at the SPD I am satisfied that the amount of play space, allotments and amenity green space meet the required on-site contributions for the scale of development proposed. Similar applies for the proposed maintenance contributions should the areas be transferred to the Council. The proposed area of natural and semi-natural greenspace would appear to be significantly in excess of what the SPD seeks. That said, the area proposed positively contributes to the necessity to secure biodiversity net gain and to ensure appropriate buffers to the Barnham Rife and to south-west of the site. Overall, I find the obligation relating to public open space to meet the necessary tests.
83. The ALP identifies that growth in this part of the District will have consequences for the capacity and performance of the A27 strategic road network, with improvements at nearby Arundel a particular priority. National Highways have sought a financial contribution to address their concerns regarding the potential impact of the appeal proposal. The sum proposed is £103,116 (index linked) which is based on a per dwelling figure of £515.58 as per the Enterprise Bognor Regis Transport Review 2017. The obligation would ensure no occupation until an A27 Works agreement had been entered into, which would trigger payment prior to the occupation of the 101st dwelling. As set out in the LPAs CIL compliance statement I am satisfied that the obligation is necessary and directly related to mitigate the cumulative impact of growth on the A27 in Arun and Chichester. The amount sought is demonstrably fairly and reasonably related in scale and kind to the development based on established proportionate formula. On this basis the obligation would accord with Policy T SP1(c) of the ALP in relation to contributing to new road schemes that enhance the connectivity of Arun and would meet the relevant tests.
84. In accordance with Policy T SP1(e) of the ALP, and following a Transport Assessment of the appeal proposal, a Travel Plan would need to be implemented to promote alternative modes of transport to the car. An obligation provides for a final Travel Plan to be submitted, based on the Framework Travel Plan provided as part of the appeal proposals, and to be approved prior to any occupation. In order for the Travel Plan to be effective and deliverable, in accordance with Policy T SP1(e), it would need to be audited by WSCC as the local highway authority. As such the proposed obligation is necessary and directly related to the development. A modest £3,500 the Travel Plan Monitoring Fee for a development of up to 200 dwellings would appear to

be fairly and reasonably related in scale and kind. On this basis the appeal proposal would accord with ALP Policy T SP1(e).

85. A further obligation relates to proposed off-site improvement works to FP323 to Church Lane. This short leg of the footpath comprises a pleasant leisure route for able pedestrians, it is not a key route to local services and facilities. Whilst NPPF paragraph 100 refers to enhancing public rights of way, the path, unimproved, would continue to function as a leisure connection. I have been referred to the existing permissive cycle route to Bognor Regis and to the proposed upgrade of the path along the former canal route to Ford. Whilst upgrading this part of FP323 would be desirable for cyclists in terms of connecting to these routes, an alternative route would be available on suitable highway through Marshall Close and along Church Lane which on bicycle would only involve a modest detour of a few minutes. Accordingly, the obligation to seek improvements to this part of FP323 is not necessary to make the appeal proposal acceptable in planning terms. As such it would not meet the necessary tests and so I have not taken it into account. Similarly, the monitoring obligation to WSCC relating to footpath improvements does not meet the tests, and consequently I have also not taken it into account.
86. Invariably there are concerns about the capacity of local infrastructure to accommodate demands arising from future occupiers of new dwellings and whether the appeal proposal would absorb available infrastructure capacity to the potential detriment of the viability of planned strategic development (BEW). If allowed, the appeal proposal would be subject to a CIL liability in terms of contributing to wider infrastructure needs such as health and education. Additionally, through the planning obligations assessed above, the appeal proposal would make necessary, directly related contributions of a fair scale to ensure the development mitigates its own impacts in a way which would be compliant with the development plan.
87. I therefore conclude that, subject to the planning obligations that meet the relevant legal tests and various conditions, the appeal proposal would make appropriate provision for affordable housing and other infrastructure. The proposal would therefore accord with Policies AH SP2, T SP1, OSR DM1 and INF SP1 of the ALP and Policy CLW8 of NP1 (which is also retained in eNP2). In terms of the mechanisms for the provision of affordable housing and infrastructure the proposal would also comply with various objectives for sustainable development set out in the NPPF, summarised at paragraph 8(a) and (b). More specifically, it would accord with the NPPF at paragraph 63 for identified needs for affordable housing, paragraph 92c) in relation to green infrastructure and paragraph 104a) for addressing potential impacts on transport networks.

Whether there are other Material Considerations

The Supply of Deliverable Housing Land

88. The LPA and the appellant have entered into a SOCG on housing land supply matters. There is no dispute that the housing requirement over the relevant five year period (1 April 2020 to 31 March 2025) is 6,360 dwellings reflecting the stepped housing trajectory in the ALP. It is also agreed that since 2011 (the base date of the plan period) there has been a shortfall in housing delivery of 2,045 units. The SOCG confirms that the shortfall should be recovered within a five year period. Having regard to paragraph 74 of the NPPF and reflecting

recent delivery, a 20% buffer should be applied to both the requirement and shortfall. On this basis there is a total need for 10,079 homes over the relevant five year period, equivalent to 2,016 dwellings per annum (dpa). This compares to an average annual delivery in Arun since 2011 of some 609 dpa²⁰.

89. The LPA acknowledges there is not a deliverable supply of housing land to meet this five year requirement. Accordingly, matters focus on the extent of the under-supply and in particular the likely trajectory of some 15 disputed sites. Overall, the LPA anticipates a deliverable yield from all sources of 6,110 dwellings, equivalent to 3 years' worth of supply. There is reasonable agreement between the parties on the supply from smaller sites and windfall. On the larger sites, the appellant invites a more circumspect approach, resulting in a position no better than 2.5 years' worth of deliverable supply.
90. In terms of demonstrating a deliverable housing land supply, the onus is on the LPA²¹. The Planning Practice Guidance (PPG) chapter on 'Housing Supply and Delivery' sets out how authorities can demonstrate deliverable housing land supply. The PPG advises for decision-taking purposes that the latest available evidence from the Housing and Economic Land Availability Assessment (HELAA) and Annual Monitoring Report (AMR) should be used. For Arun the latest HELAA update and the most recent AMR (covering 2019/20) were published in December 2020.
91. The NPPF defines what is to be considered a 'deliverable' housing site. The acid test for 'deliverable' is that a site for housing should be available now, suitably located and with a realistic prospect that a quantum of housing delivery will be achievable within five years. For assessing 'deliverable' the NPPF sets out two general propositions. The first is that small sites with planning permission and major sites with detailed planning permission are to be considered deliverable unless there is clear evidence to the contrary. The second is that major sites with outline permission, development plan allocations and other sources of non-consented supply will only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. The disputed sources of land supply in Arun predominantly fall within the second category.
92. Accordingly, the responsibility falls on the LPA to provide "clear evidence" of a realistic prospect of housing completions on these sites before 31 March 2025. The PPG at paragraph 68-007-20190722 sets out that such evidence may include current planning status and whether there are mechanisms such as a Planning Performance Agreement (PPA) that sets out milestones for progressing a planning permission. The evidential threshold also includes "firm progress being made towards the submission of an application", including for example written agreements between the LPA and site developer(s). Other evidence could include firm progress with site assessment work and relevant information about site viability, ownership, infrastructure provision and funding bids.
93. The 2020 AMR deals with housing land supply. In terms of what engagement has been undertaken and what data exists, including written agreements, I have found matters to be somewhat opaque. The summary information in the appendices to the AMR comprising 'deliverability comments' and 'latest status

²⁰ HLS SOCG Table 2

²¹ PPG paragraph 68-004-20190722

comments' are generally not of the detail that the PPG envisages. Similar concerns were raised at the recent Flansham appeal²².

94. As part of the HLS SOCG, the LPA has provided additional commentary as of November 2021 on site delivery (the red text). Generally, there is very little substance or background to underpin this update in terms of what would ordinarily be considered the threshold of "clear evidence" of delivery. I appreciate that the timing of this appeal means looking at data towards the end of the shelf-life of the 2020 AMR. However, it would not be transparent or robust to consider matters on the shifting sands of part-year data. That said, given the current predicament of Arun's housing land supply situation I have sought to adopt a constructive approach where there are credible indicators that a more positive outlook should be taken in respect of deliverable supply.

Large Site Commitments

95. The LPAs deliverable supply makes an allowance for 100 dwellings in 2024/5 on two separate parcels of land in Bognor Regis that were covered by the same detailed planning permission (reference BR/156/16/PL). This consent has now lapsed and there is no clear evidence that a new or revised scheme is forthcoming in the short term. Whilst these regeneration sites are within the District Council's ownership and the Council has recently secured levelling-up funding from the Government, there is little before me in terms of any clear intention for the future use of these car park sites. Accordingly, I discount the 100 dwellings profiled by LPA and make no allowance for housing delivery on these sites within the required period.

Made Neighbourhood Plan Allocations

96. The Bartons County Infants School site (NEWBE10) is a relatively small allocation at 20 units. It was clearly being promoted to the LPA by the landowner in 2020 but there is little evidence of subsequent "firm progress" being made in terms of disposal of the site or the preparation of a planning application. I appreciate that as a small site 20 units would be capable of implementation by 2024/25 but the test of "clear evidence" of "firm progress" has not been met. I therefore make no allowance within the required period.
97. In respect of Land North of the Littlehampton Academy (LU12) the 2020 evidence confirms the site is being promoted and the intention to submit an outline planning application in 2021/22. Whilst it remains that an application is to be submitted, this is nonetheless a site where there appears to be realistic prospect of activity within the five year period. Noting the intention for an outline application and the likely timescales for subsequent details, discharge of conditions, site preparation and construction I consider 50 completions in 2023/24 is too optimistic. Accordingly, I only make an allowance of 50 units in year 5 (2024/5) compared to the LPAs assessment of a total 100 units delivery within the five year period.

HELAA Sites

98. Site LU12B is similarly to the North of the Littlehampton Academy and again the site has been promoted with the intention to submit an outline application in late 2021 with 80 units profiled for delivery by the LPA within the five year period. I take a similar approach to site LU12 above that completions in

²² APP/C3810/W/19/3236911 Paragraphs 48 & 49

2023/24 would be too optimistic and any prospect of delivery should be realistically pushed back by 12 months. Accordingly, the deliverable supply should be reduced to 50 units. In respect of the site '78 Clock House' this amounts to only 13 units. It was promoted in 2020 with the intention to submit a planning application and delivery has been forecast in 2022/23. That may well slip, but there is buffer of years 4 and 5 to deliver what is a modest site such that I do not discount this capacity from the deliverable supply.

Strategic Site Allocations

99. Various contested sites comprise part of the wider BEW strategic site, referred to elsewhere in this decision. Various parts of the wider BEW site have been separately identified as potentially coming forward sooner rather than later. The first is Site BA11B which comprises of land north of Barnham Road, including the Fordingbridge Industrial Site, within what was referred to as 'phase 1' of the BEW. The site was promoted in 2020 and has been the subject of a preliminary scoping opinion. The LPA, based on a submitted trajectory from the site promoters, estimates 125 units being delivered on this site by 31 March 2025. I am concerned, however, about what I heard regarding the slippage of approximately 12 months in the delivery of the A29 link road towards the end of 2024/5 and the general lack of certainty about what capacity, if any, could be brought forward on this site in advance of any necessary highway improvements being implemented. The LPA states that a planning application is due shortly but acknowledges this would take time to determine. Even when taking a positive outlook on the grant of an implementable permission and the discharge of conditions I am not convinced that any units would be completed on site by 2024/25.
100. Site NEWEG1 is presented as a discrete part of the wider BEW where there is evidence of planning application activity providing a reasonable prospect of delivery within the five year period. Even so, the site trajectory of 75 completions in 2023/4 is too buoyant. Accordingly, any delivery should only be counted from 2024/25 onwards. As pointed out by Mr Veasey, there does appear to be an element of double counting on the same planning application reference and so I have reduced deliverable capacity of this site to 44 units.
101. Site WE4 on land east of Westergate Street has been the subject of a hybrid application which was refused in 2020. There is little evidence of a re-submitted application or alternative proposal. That said, technical evidence will exist to potentially support any re-submitted scheme and thus enable a timely decision but even so the LPAs trajectory of 100 completions in 2023/4 is too ambitious. A more moderated outlook would be realistic rather than to discount deliverable supply completely, and I make a more measured allowance of 50 units by 2024/5.
102. Site WE6 at Ryefield Farm & Woodgate Centre is also part of the wider BEW. I am advised that the site, despite a past refusal, is now subject to an application for full planning permission. The LPA has adjusted the trajectory such that 50 units are forecast for 2023/24 and a further 50 units in 2024/5. On balance, this would be feasible and whilst I have taken a firmer line on "clear evidence" elsewhere, this does appear to be a relatively straightforward site of the size and scale attractive to volume housebuilders seeking to deliver a steady 50 units per annum. Accordingly, I make no adjustment to the LPAs forecast delivery of 100 dwellings. The final part of BEW under consideration is

Site 18AL4 on Lidsey Road which is forecast to deliver 27 units in the required period. Given the varying degrees of planning activity at this location and the modest scale of delivery I make no adjustment to the LPAs figure for this site.

103. As part of wider ALP Strategic Site SD3 West of Bersted, Site 18BE1 is forecast to deliver 22 units with the LPA anticipating a planning application in 2021/22. The HLS SoCG identifies that Site SD3 requires a masterplan-led approach. Notwithstanding the site being promoted in 2020, the relative uncertainty about how this site would come forward in the context of the wider SD3 site and the timeframes for securing permission means a more cautious outlook must be applied. Consequently, I have not counted any delivery on this site within the relevant period to 31 March 2025.
104. In terms of the wider SD3 site (also referred to as the Bognor Regis ECO Quarter) I am advised that the wider site is split into two principal elements, the first with a capacity for 2,000 homes and the second area for 500 homes. In terms of the 2,000 homes, a planning application for outline permission is anticipated shortly and the LPA has entered into a PPA in terms of a work schedule on the application. Given the likely timeframe to determine the outline application, deal with any planning obligations, consider detailed proposals and discharge conditions, I am not persuaded of that there would be a realistic prospect of delivery on this part of SD3. With regards to the smaller 500 units area, Mr Roberts advised that there is currently an undetermined Section 78 appeal for a 225 homes outline scheme. There is uncertainty but should the appeal be allowed there would still be a lead-in time from outline permission to first completions. Nonetheless, and erring on the side of being positive, I make a nominal allowance of 50 units in year 5.
105. The final disputed site is Land to the West of Osborne Refrigeration which forms part of ALP Strategic Site SD2 (Pagham North). The site was promoted in 2020 but does not have planning permission and I have little evidence that a planning application is forthcoming in the short term. Mr Roberts referred to the grant of approval for reserved matters on an adjacent site facilitating access and therefore acting as a potential catalyst for this site. Prior to the HLS SoCG the LPA was assessing this site as 'developable' and whatever may have been granted planning permission on the adjoining site is not "clear evidence" that this site will yield completions in the required period. Consequently, I make no delivery allowance from this site.

Findings on deliverable housing land supply and prospects of recovery

106. I find the disputed sites would at best deliver some 384 units within the five-year period. On this basis I find the deliverable housing land supply position is currently less than 3 years and by my assessment would be approximately 2.63 years. The current scale of the shortfall of deliverable housing land to meet identified housing need in Arun District is therefore substantial.
107. Matters may well change in the near future with any publication of the 2021 AMR and the anticipated update to the HELAA in early 2022. I am mindful that the LPA is anticipating a number of planning applications, particularly on its large strategic sites. Be that as it may, there is relatively little to suggest that a combination of completions and new permissions are going to significantly improve the situation given the considerable degree to which housing delivery is now adrift from the evidence that informed the ALP housing trajectory. This is highlighted in the most recent Housing Delivery Test results which have

progressively shown worsening performance in the District from 91% in 2018 to just 61% in 2020.

108. In part, Arun's housing land supply difficulties arise from a reliance on a small number of large strategic sites that will invariably take time to deliver including complex planning application processes and intricate infrastructure interdependencies. I am also mindful that local communities, including Barnham, have apprehensively accommodated major growth, particularly the BEW, through a recent plan-led process which is expected to provide certainty. It is a difficult situation, but as the LPA recognises in both its Housing Delivery Test Action Plan 2019 and its recent Interim Housing Statement of February 2021 (the IHS), housing land supply matters are so askew from where they need to be to meet the identified housing need, that unallocated but deliverable HELAA sites should be given positive consideration.
109. This interim strategy is perhaps unsurprising given that plan-led options to assist the housing land supply situation in Arun have been prevaricated. This includes not pursuing the intended NSSA DPD, which could have positively allocated medium sized sites to provide a buffer of supply in addition to the ALP strategic sites and from smaller sites in neighbourhood plans. More recently, delays in preparing a full replacement of the ALP, means there is little prospect of plan-led recovery of the housing land supply situation in the short term.
110. In respect of the HELAA, the appeal site is assessed and concluded to be 'deliverable', although site specific constraints are identified. In relation to the IHS principal requirements, the appeal site is adjacent to the BUAB. The site also falls within the capacity threshold of up to 300 dwellings that the IHS considers could be 'deliverable'. The IHS does not rule out outline proposals provided, amongst other things, a parameter plan is submitted, as is the case here. During the Inquiry the LPA inferred that technical matters relating to foul water drainage and rail safety could delay delivery, but I have found little to lead me to deviate from the appellant's more considered assessment²³, which reflects these matters, and reasonably forecasts 100 homes being delivered by end of March 2026. The IHS sets out a 'Tick List' assessment for appraising individual sites. In my view, including the consideration of the main issues in this appeal, the appeal proposal would score positively against most, if not all, of the fundamental NPPF considerations identified in the tick list, especially in terms of sustainable location. I accept against some factors, notably the conservation area, the appeal proposal is likely to induce a negative when using the tick list. This in itself is not determinative that a proposal should be refused. As set out above, the harm to the heritage significance of the BCLCA is less than substantial, engaging the NPPF paragraph 202 balance.
111. Ultimately, the appeal site has been assessed by the LPA as being 'deliverable' through the HELAA. In principle, it is the type and capacity of site the IHS is seeking to pragmatically consider in order to expedite housing delivery in sustainable locations outside of the development plan process. The IHS is a material consideration for this decision.
112. In relation to affordable housing, the HLS SoCG recognises that some 1,150 net additional affordable homes have been delivered in the plan period to date. On average affordable housing delivery has been approximately 21% of total net housing supply, equating to some 128 net affordable homes per annum.

²³ Chiefly presented at paragraphs 2.4-2.8 of Mr Ross' Rebuttal Proof

This contrasts with the minimum 30% requirement for affordable housing on qualifying sites sought by ALP Policy H SP2. The appellant refers to the Council's housing needs evidence that informed the ALP and to the more recent Arun Housing and Homelessness Strategy 2018 (the AHHS). The former indicated a net affordable housing need of 480dpa, the AHHS sets an annual target of 250 affordable homes (2019-2021). I also note that in 2018, there were some 900 households on the Council's housing waiting list. Accordingly, the evidence²⁴ points to a substantial deficit in meeting the need for affordable housing.

Conclusion on the housing land issue

113. There is a significant housing need in Arun, compounded by appreciable shortfalls in delivery since 2011. This includes a critical need for affordable homes. It is undisputed that there is not the required supply of deliverable housing land equivalent to five years' worth. On my assessment of the evidence, the deliverable supply is at best 2.63 years. There is little to indicate that the situation will markedly improve in the short term. Two broad conclusions follow from this. First, the scale of shortfall in meeting in housing need is substantial and the consequential deprivation of opportunity to secure a suitable, decent home for those in housing need is significantly harmful. The corollary of this is that the public benefit of deliverable housing supply, including affordable housing, should be afforded substantial weight in any balancing exercise. Second, and notwithstanding the imminent making of eNP2, on the basis of having less than 3 years deliverable supply, a planning balance undertaken in the terms of NPPF paragraph 11(d)(ii) should be tilted in the presumption in favour of sustainable development, as echoed at ALP Policy SD SP1. Allied to this, those development plan policies relevant to the supply of housing are out-of-date and so the weight to any harmful conflict with them is to be reduced.

114. Furthermore, in response to the increasing gap between housing need and delivery, the Council has invoked various measures including taking a more positive outlook to those deliverable HELAA sites which may comprise sustainable development. This includes the IHS, which was published as Council policy in early 2021. The IHS is a material consideration in the decision-making process. Accordingly, were I to find, on balance, that the appeal proposal comprises sustainable development this potentially further moderates any harm from the locational conflict with the development plan and with plan-led certainty more generally.

Other Matters

Biodiversity

115. The site currently has a relatively modest biodiversity value. Key features such as boundary hedging and trees would remain largely in-tact. Approximately half the area of the appeal site would remain undeveloped as open space, including a meaningful block of land in the south-west corner of the site. This area would include scope for a diversity of habitats, the details of which can be determined at a later stage. Those parts of the site adjacent the Barnham Rife would remain undeveloped and measures to protect water vole

²⁴ Appendices DV1 & DV2 to Dominic Veasey Proof of Evidence

- populations could be secured by condition. The proposed span crossing over the rife can be designed to safely enable water vole movement²⁵.
116. The Ecological Appraisal accompanying the appeal proposal shows that boundaries around the site are used by bats for commuting and foraging. Other than a very small section that would be removed to facilitate the access, including trees T5 and T6, most hedgerows and trees around the site would be retained, with scope through conditions to improve provision of planting and green buffering around the site. This, together with maintaining openness along the shallow valley floor of the Rife, would ensure that a network of coherent corridors for biodiversity are maintained around the appeal site.
117. The eNP2 shows proposed 'biodiversity corridors' including a 'Corridor 4' which follows the route of FP323 as it cuts diagonally across the open, plain sward of the appeal site. It is difficult to see what the biodiversity value of this corridor is as it crosses the appeal site²⁶. In my view, the identification of that part of 'Corridor 4' in eNP2 along FP323 should not inhibit the appeal proposal. Layout and landscaping are reserved matters and would allow for proper consideration of the final environment through which the footpath corridor would pass. This would include that part of the path corridor within the proposed area of open land to the south-west of the appeal site. Overall, I find no inherent conflict with Policy ES15 of eNP2.
118. The appeal site is beyond a 12km buffer to the Singleton and Cocking Tunnels Special Area of Conservation (SAC)²⁷. Furthermore, there is no recorded data of Barbastelle or Bechstein's bats at the appeal site. The appeal proposal therefore would not have an adverse impact on the integrity of the SAC site. Accordingly, there would be no conflict with Policy ES17 of eNP2.
119. The appellant has undertaken biodiversity net gain calculations. These have been recalibrated during the appeal to use the latest DEFRA metric²⁸ and this has adjusted the net gain from 16% to 10.2%. Subject to the planning obligation on open space provision and various conditions at the end of the decision, there would be genuine and demonstrable gains for biodiversity. This would amount to a moderate benefit to be weighed in any planning balance. Overall, the appeal proposal would be consistent with NPPF paragraph 174(d) and Planning Practice Guidance on Net Gain at paragraphs 20,23,25-28 of the 'Natural Environment' chapter. It would also accord with those parts of Policies ES10 and ES15 of eNP2 relating to net gain.
120. The appeal site is in equestrian use, mainly to grazing with a small range of modern stables and a modest training manège. Emerging NP2 at Policy EE8 seeks to retain existing equine businesses and resist the loss of land or buildings in equine use unless the site has been appropriately marketed for at least a year. The purpose of the policy sits under the objective of supporting employment and enterprise in Barnham. Accordingly, the proposal would conflict with Policy EE8. Given the scale of equine activity at the appeal site any economic harm to this aspect of the local economy from the appeal proposal would be very small.

²⁵ Aspect Ecology Technical Review of Crossings, August 2021 (Project 1005907) - paragraphs 5.1-5.4

²⁶ Appendix A to eNP2 emphasises the western arm of Corridor 4 along the treeline and watercourse (page 7)

²⁷ Mr Ross Rebuttal Proof, Appendix 5907/4 (12.75km)

²⁸ PPG Paragraph 8-023-20190721

Balances and Conclusion

121. As set out above, given the less than substantial harm to the heritage significance of the BCLCA I am first required to undertake a balance in the terms set out at paragraph 202 of the NPPF. This will determine the engagement of the wider tilted balance at NPPF paragraph 11(d).

Heritage Balance

122. For the reasons set out in paragraphs 42, 43 and 46 above the degree of harm to the conservation area's heritage significance would be towards the lower end of a spectrum of less than substantial harm. That said, heritage assets are an irreplaceable resource, and an aspect of the conservation area's rural, pastoral setting would be perceptibly reduced. NPPF paragraph 199 states that great weight should be given to the asset's conservation. As such I attach appreciable weight to the heritage harm identified. In terms of the public benefits to be considered against this harm, in heritage terms, the appeal proposal would deliver publicly accessible open space along the Barnham Rife which would allow for a wider appreciation of the conservation area, which is currently not available. This in itself would be a public benefit of moderate weight. In particular, the provision of up to 200 homes, including the provision of affordable housing, would be public benefits of substantial weight in the context of the shortfall in housing delivery and scale of undersupply of deliverable housing land. Other significant public benefits that would accrue from the appeal proposal include on-site biodiversity net gain, the wider benefit of 7ha of public accessibly open space and improved public safety at rail crossings. There would also be modest economic benefits from construction and ongoing expenditure from future occupants in the local economy.
123. Cumulatively, these public benefits would transparently outweigh the less than substantial harm to the significance of the designated heritage asset. On balance the change to the setting of the conservation area would be acceptable. As such the heritage harm identified does not provide a clear reason for refusing the development and so paragraph 11(d)(i) of the NPPF is not activated.

Planning Balance

124. Given a five year supply of deliverable housing sites cannot be demonstrated, the tilted balance at paragraph 11(d) (ii) is engaged and those policies relevant to the supply of housing are out-of-date and the conflict with them is of reduced weight. I am mindful that eNP2 is scheduled to be made in January 2022 but NPPF paragraph 14 does not annul invoking the tilted balance. It clarifies that the adverse impact of allowing development that conflicts with a neighbourhood plan would likely significantly and demonstrably outweigh the benefits in a tilted balance. The application of paragraph 14 is caveated including at sub-section c) that the LPA has at least a three year supply of deliverable housing sites against its five year requirement. As set out above at paragraph 106, I have concluded on the evidence before me that Arun's deliverable housing land supply is some 2.63 years. In my mind, that does not require me to put aside any harm from the conflict with the emerging neighbourhood plan, rather the elevation created by paragraph 14 is not assured given the scale of unmet housing need.

125. Given the housing land supply situation in Arun, I give substantial weight to the benefit from up to 200 dwellings that can be delivered on the appeal site. There are no impediments to a meaningful start being made at the appeal site within the next couple of years and for a notable number of completions to be yielded within the next five years. A further substantial social benefit would be the delivery of affordable housing in compliance with development plan policy requirements at 30% of total provision (up to 60 units).
126. Due to its highly sustainable location, on the edge of one the larger village settlements in the District and within easy walking and cycling distances of facilities, including a railway station with frequent services, the appeal proposal would deliver significant environmental and social benefits. I also attach appreciable weight to the wider public benefit that would arise from addressing rail safety matters at local unmanned crossings. Other social and environmental benefits would arise from the sizeable 7ha of on-site public open space and green infrastructure which would be accessible to the wider community and allied with it the scope for measurable net gains in biodiversity compared to the existing use of the site. Again, I give significant weight to these benefits. Additionally, there would also be reasonable economic benefits from the construction of the new homes and in terms of additional expenditure in the retail, leisure and service sectors in Barnham.
127. There would be no harm to highway safety, infrastructure capacity or flood risk, subject to conditions or planning obligations. These are neutral in any balance, as these should be pre-requisites for sustainable development in any event.
128. On the other hand, locationally, the appeal proposal would be contrary to those relevant development plan policies that seek to manage the supply of housing to predominantly within the BUABs and to protect the countryside and the setting of settlements. Those policies are out-of-date and of reduced weight, reflecting that the District Council itself recognises that as part of interim strategy to boost the supply of housing to meet its full objectively assessed housing need, unallocated but 'deliverable' sites in the HELAA, such as the appeal site, are now to be pragmatically considered. Nonetheless, for a community such as Barnham, which has taken substantial growth as part of the ALP and has more recently proactively considered additional local growth as part of an updated neighbourhood plan which has now reached a very advanced stage, I nonetheless attribute appreciable harm to the conflict identified with development plan and eNP2 policies on the location of new major housing development.
129. In site specific terms there would be some limited environmental harm to the character and appearance of the area, including within Marshall Close and to important local views. To some extent the harms identified will moderate over time, through landscaping of the extensive green buffer within the site and with the increasing consolidation as the adjacent BEW development builds out adjacent to the appeal site. Nonetheless the identified localised environmental harms would be contrary to development plan policy and the Arun Design Guide SPD. I give this harm moderate weight.
130. There would also be less than substantial harm to the heritage significance of the BCLCA which I re-input into this balance, and the appreciable weight to this harm as I have ascribed as above. There would also be a limited economic

harm from the loss of equine activity on the appeal site, which the eNP2 seeks to protect.

131. I have applied myself to the fact that eNP2 is on the very cusp of being made as part of the development plan and the guidance on prematurity at NPPF paragraph 49. However, the housing land supply situation is particularly challenging in Arun. The IHS does not filter out deliverable HELAA sites in parishes where neighbourhood plans are coming forward. Barnham is clearly one of the more sustainable locations in inland Arun. The appeal site is relatively contained and would provide a reasonably logical consolidation of development in this part of Barnham including with the adjoining BEW. In my view, the appeal proposal would not be so substantial, or its cumulative effect would be so significant, that it would undermine the plan-making process as it relates to eNP2. To some extent the eNP2 was not considering sites of the magnitude of the appeal site in any event, given the respective roles of neighbourhood plans and the aborted NSSA DPD. Accordingly, in the terms at NPPF paragraph 14 I do not find the conflict with eNP2 to significantly and demonstrably outweigh the identified benefits.
132. Pulling all of the above together, and in applying the required tilted balance, the various harms identified would not significantly and demonstrably outweigh the significant and comprehensive benefits, particularly those arising from boosting the supply of sustainably located housing, including new affordable homes. Overall, the proposal would amount to sustainable development for which there is a presumption in favour of in both national planning policy and at ALP Policy SD SP1.

Overall Conclusion

133. I have found that the development, when considered as a whole, would amount to sustainable development. I have taken into account the level of local objection, including correspondence from the local MP, but the challenging circumstances around housing delivery, and the lack of a clear prospect that there will be a plan-led solution in Arun in the short term, means, a decision other than in accordance with the development plan and eNP2 is supported by clear material considerations in this case. Accordingly, the appeal should succeed for the reasons given.

Conditions

134. A list of conditions was provided at the inquiry [ID16] which was largely agreed between the two main parties in the event of planning permission being granted. I have considered the suggested conditions having regard to Planning Practice Guidance on the use of conditions and paragraphs 55 and 56 of the NPPF. A number of pre-commencement conditions are proposed. As the 'agreed' list was submitted to the inquiry by the appellant, and as further clarified by Mr Ross at the Inquiry, I am satisfied that the appellant has provided their agreement to these pre-commencement conditions in the terms sought by Section 100ZA(5) & (6) of the Town & Country Planning Act 1990 (as amended).
135. In addition to the standard time limit conditions (1 & 2) for the submission of reserved matters and commencement of the development, a condition (3) requiring the development is carried out in accordance with the approved plans is needed in the interests of proper planning and for the avoidance of doubt.

136. In terms of achieving a well-designed place a condition (4) requiring submission of details of the materials and external finishes of the buildings, existing and proposed levels, and surfaces of roads and footways is required and for development to be implemented in accordance with those details. The site is not especially sensitively located and so the requirement to provide samples of materials and finishes is not necessary and so I have removed it.
137. Given the location of the appeal site a condition (5) specifying the landscaping details to be submitted is necessary. This should include details of existing trees and hedgerows to be retained, new boundary treatments and landscape design within the development. It should also include specific measures to secure appropriate water vole mitigation along the Barnham Rife and other recommendations set out in the Ecological Appraisal (November 2020) including the buffer zone between the dwellings and the railway line. Allied to this condition, a further pre-commencement condition (15) is necessary requiring an arboricultural method statement to be submitted to ensure that healthy trees to be retained are protected and continue to provide positive value to the landscape, biodiversity and amenity in this part of Barnham. To ensure appropriate implementation of the approved landscaping details, a further condition (29) is necessary to ensure the landscaping takes place at an appropriate part of the year and that there is an appropriate mechanism to replace tree or plant specimens where necessary.
138. In order to ensure the proposed development is safe for its lifetime from the risk of flooding and does not increase flood risk elsewhere a number of conditions are necessary. These are necessarily pre-commencement conditions to ensure that technical solutions, including the required SUDS solution, would be effective. Conditions (6 & 8) requiring the submission of details of the proposed surface water drainage scheme and its ongoing maintenance and management are both necessary prior to development commencing given the need to carefully manage surface water and avoid overloading the receiving Barnham Rife watercourse. The condition necessarily prevents the occupation of any dwelling until the approved surface water drainage scheme has been satisfactorily implemented in accordance with the agreed details and is to be maintained thereafter. Allied to this, it is also necessary to impose a condition (7) requiring any details regarding the discharge flows into watercourses and any works likely to affect any watercourse on or adjacent to the appeal site to be submitted to and approved in writing by the LPA before construction works start. This would ensure run-off rates would be no greater than pre-development values and that the adjoining watercourse is not restricted and can be properly maintained so as not to inhibit its function and capacity. I also accept, given the particularly sensitive drainage circumstances in Barnham that a further condition (20) is also necessary to require 'as-built' drawings of the implemented surface water drainage scheme to be submitted to the LPA prior to first occupation of any dwelling together with an independently audited report confirming that the built scheme is fit for purpose. This should appropriately safeguard the local community and environment from the risk of ineffective drainage solutions and mitigate against any protracted retrospective issues.
139. In respect of foul water disposal sufficient evidence exists to establish a reasonable prospect of a satisfactory solution being implemented within the timeframe of the planning permission. Accordingly, a condition (9) requiring details of the foul water drainage proposals prior to development commencing

and inhibiting occupation of the dwellings until the solution has been fully implemented is necessary. The condition would satisfy the requirements of ALP Policy W DM1 and would meet the tests at NPPF paragraph 56 and the guidance at PPG paragraph 21a-009-20140306.

140. The August 2021 Flood Risk Assessment update contains various measures, including detailed parameters for the design of the access road crossing over the Barnham Rife, which have enabled the Environment Agency to withdraw its objection. Accordingly, these measures, including minimum finished floor levels, compensatory flood storage, removing the Tars Farm culvert and ensuring the new access road crossing meets a required span design and height are all necessary to ensure the development would be safe and that the proposal would not increase the risk of fluvial flooding elsewhere. As such a condition (27) would secure the implementation of these measures prior to first occupation, ensuring the development would accord with NPPF paragraph 167 and PPG on Flood Risk and Coastal Change.
141. A condition (10) requiring submission of a detailed ecological mitigation and enhancement method statement (including re-confirmation that a minimum 10% biodiversity net gain can be achieved) would be necessary. Initial ecological assessment cannot conclusively rule out badger activity on or in the vicinity of the appeal site and so a precautionary condition (12) requiring further survey work prior to any construction, site access or demolition works is also necessary, together with a mitigation strategy, if required, to be agreed by the LPA in writing, following engagement with Natural England.
142. Given the access to the appeal site is through an existing residential area, the submission and approval of a Construction Management Plan prior to any demolition or construction work is necessary. A condition (11) would reasonably secure this and require the submission of recognisable details necessary to protect the amenity of residents on Marshall Close and Church Lane and to maintain highway safety. To ensure fire hydrants are appropriately located within the layout of the development, a condition (13) requiring this detail to be approved prior to commencing development is necessary to ensure the safe occupation of the appeal proposal. The condition would also reasonably require that no buildings would be occupied until the hydrant(s) required to serve that building have been satisfactorily installed.
143. Given the challenge of climate change, a condition (14) requiring the pre-commencement submission of details for the provision of on-site renewable energy generation equivalent to meeting 10% of the energy requirement of the buildings on the appeal site would be necessary. In this way, the appeal proposal would meet the requirements of Policy ECC SP2 of the ALP and paragraphs 152 and 157 of the NPPF. Preliminary assessment identifies the moderate potential for archaeological interest at the appeal site and so a pre-commencement condition (16) requiring approval of a programme of pre-construction archaeological work is necessary in accordance with Policy HER DM6 of the ALP and PPG paragraph 18a-041-20190723. A further condition (17) requiring the submission of an Employment and Skills Plan would be necessary prior to commencement to ensure that the appeal proposal, as a qualifying development that meets the thresholds set out in Policy SKILLS SP1 of the ALP, deploys reasonable endeavours to employ local workers and support the local supply chain.

144. In terms of ensuring appropriate connectivity by means other than the private car and to maintain appropriate highway safety in accordance with ALP Policies T SP1 and D DM1 various conditions need to be imposed. This includes a condition (18) requiring the off-site highway improvements in Marshall Close shown on drawing ITB14160-GA-10B to be implemented prior to the first dwelling being occupied. In the absence of any phasing plan or appropriate trigger point, a separate condition (21) is also necessary to ensure that the details of proposed surfacing works to FP323 across the appeal site are submitted, approved and implemented prior to first occupation of any dwelling. This would ensure that the site is appropriately connected from an early stage on foot by routes other than Marshall Close. A condition (23) requiring the vehicular access into the site to be constructed in accordance with the approved details is necessary to ensure highway safety. A further condition (24) would provide the implementation mechanism to ensure that turning areas and parking spaces for cars, motorcycles and cycles in relation to the dwellings are laid out prior to first occupation and subsequently maintained as such. This condition would be necessary for highway safety and achieving a well-designed place. Similarly, for highway safety and place-making reasons, a further condition (32) is required to ensure that garages on the site are of an internal scale to practicably accommodate modern vehicles and to ensure garages are inclusive and accessible environments.
145. A separate condition (25) requiring the provision of electric vehicle charging points is necessary to help futureproof the development in terms of the forthcoming shift away from new petrol and diesel vehicles and to support the transition to a low carbon future. It would also assist in improving air quality. The principle of the condition would meet the requirements of Policy QE DM3(c) of the ALP and the objectives of the Arun District Parking Standards SPD.
146. The decision above sets out in some detail the necessity, in respect of the public safety risk, to undertake a precautionary approach regarding both the 'Birch' and 'West Barnham' unmanned level crossings. Without repeating the content of this decision at paragraphs 56-59, the proposed condition (28) is necessarily a Grampian style condition that would inhibit any occupation of the dwellings until such point that an Order²⁹ has been made and confirmed in respect of how FP323 safely negotiates operational railway land. The condition also properly countenances the scenario where the person lawfully seized of the decision whether to confirm the Order, refuses to confirm. The wording of the condition specifically reflects the relevant sections of the Highways Act 1980 in terms of expeditiously focussing the Order making decision on railway safety-led matters, thus avoiding unnecessary delay. The condition also maintains appropriate flexibility on how FP323 would be diverted but as indicated above, preliminary evidence indicates a reasonable prospect of the necessary action being implemented within the timeframe of the planning permission.
147. I am mindful that WSCC (Public Rights of Way Team) are concerned about references in the condition to the 'extinguishment' of sections of FP323. As I understand this is a procedural necessity. I agree with those submissions that any proposed Order to solely extinguish the route would be likely to be the subject of significant objections³⁰. In principle, I note that the imposition of a

²⁹ Provided for under sections 118A and 119A of the Highways Act 1980

³⁰ Paragraph 3.12, Network Rail objection (September 2021)

similar Grampian condition in respect of rail safety has recently been found to meet relevant tests at appeal³¹. Furthermore, Mr Lopez on behalf of Network Rail submitted a relevant Court of Appeal judgment [ID14] which similarly found that the operation of a Grampian condition in respect of rail safety³² is likely to meet the required tests in the NPPF. Overall, I am satisfied that the proposed Grampian condition would meet the required tests³³ at NPPF paragraph 56 and the PPG guidance at paragraph 21a-009-20140306. It would necessarily satisfy ALP Policies T SP1, T DM1 and D DM1 in respect of contributing towards the provision of a network of convenient, accessible, safe, comfortable and attractive routes for pedestrians and cyclists.

148. In addition to separate conditions on the submission of details pertaining to layout, design and materials a further condition (19) is necessary requiring specific details of proposed openings, brickwork detailing, eaves detailing and rainwater goods to ensure that the necessary attention to detail secures high quality design and a beautiful place in accordance with Policy D DM1 of the ALP, the Arun Design Guide SPD 2021 and paragraphs 126 and 130(b) and (d) of the NPPF. I have amended the condition slightly to require submission of these details once construction has reached slab level so as not to unduly delay development. In terms of design and amenity considerations, a condition (22) is necessary requiring details of the provision of refuse and recycling bins and suitable space for their storage to be submitted, approved and implemented prior to the first occupation of any dwelling. This would ensure the development accords with ALP policies D DM1 and WM DM1.
149. The appeal proposal would provide a new edge to Barnham, on slightly elevated land, where there is relatively little external lighting in the landscape and evidence of bat foraging along boundary vegetation. Accordingly, a condition (26) is necessary requiring the details of external lighting including mitigation measures to minimise potential glare and spillage to be submitted, approved and implemented prior to the first occupation of any dwelling. This would ensure the appeal proposal met the requirements of ALP Policies D DM1 and QE DM2 together with eNP2's ambitions to maintain the sense of dark skies around Barnham.
150. In addition to a condition requiring a construction management plan, a separate condition (30) is necessary in the interests of the living conditions of residents on Marshall Close and Church Lane that construction and demolition work only takes place within reasonable working hours. With regards to the living conditions of those proposed dwellings along the western boundary of the site adjoining the 'branch line' it is necessary to impose a condition (31) requiring that the detailed design and layout of the plots incorporates the measures identified in the appellant's Noise and Vibration Assessment report (November 2020). This condition would ensure compliance with ALP Policy QE DM1.
151. The centre of the appeal site contains a complex of buildings and associated areas that appear to have been used for external storage. Accordingly, it is necessary to impose a precautionary condition (33) requiring a remediation strategy to be submitted and approved were construction work to identify a

³¹ APP/D3830/W/18/3218035 - Land at Friars Oak Fields, East of London Road, Hassocks, West Sussex

³² Albeit in reference to s257 & s259 of the Highways Act 1980 (here we are dealing with ss118a and 119a)

³³ See paragraph 5.15 of Network Rail objection (September 2021)

currently unanticipated issue, in the interests of public health and environmental safeguarding.

152. I am invited to impose a pre-commencement condition requiring a strategy to be submitted demonstrating that the highest available headline speed of broadband provision would be made available to future occupants. I have read Policy TEL SP1 of the ALP but it seems illogical, in an age of increased home internet demands, that any development would not procure the highest available headline speed of broadband. There is no evidence that Barnham cannot access superfast broadband (>24Mbps). As such I find the condition would not be necessary to make the development acceptable in planning terms or mitigate an identified harm.
153. A further condition seeks to secure 100 of the proposed homes to M4(2) and 8 dwellings to M4(3) in terms of the optional technical standards on accessible and adaptable dwellings, including wheelchair user dwellings. It is a matter for planning policy to transparently introduce the optional technical standards³⁴ and this is reaffirmed at PPG paragraphs 56-002-20160519 and 56-008-20160519. This is the case for the Nationally Described Space Standards at ALP Policy D DM2. In contrast neither ALP Policies H DM1 or D DM1 clearly refer to the optional technical standards on accessible and adaptable homes. I have been referred to the Arun Design Guide but as SPD this cannot introduce new policy requirements. Policy D DM1 generically refers to "adaptability" and in this context the Council has published a policy document 'Accommodation for older people and people with disabilities' [ID15] which introduces proposed standards at Section 4, as a 'material consideration'. The general evidence in the policy document is recognised in terms of the aging population, disabilities and long-term illness in Arun and likely cost benefit of adaptable housing compared to care options. However, the policy document will not have been scrutinised to the same extent as development plan policy, contrary to the clear expectations in the NPPF and PPG regarding introducing optional technical standards. As such I cannot conclude that the condition would be necessary or reasonable and so I have not imposed it.

David Spencer

Inspector.

³⁴ NPPF - footnote 49 to paragraph 130

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Felicity Thomas, Of Counsel

Instructed by Caroline Perry, Legal
Services, Arun District Council

She Called

Karl Roberts
BSC(Hons) Dip ARCH/HER MRTPI

Director of Place
Arun District Council

FOR THE APPELLANT:

John Litton, Of Queen's Counsel

Instructed by Nexus Planning for
Gleeson Strategic Land

He Called

Colin Richards DipTP MRTPI

Richards Urban Design Ltd

Andrew Crutchley
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Director, EDP Ltd

Leigh Abley

Director, Abley Letchford Partnership Ltd

Dominic Smith BA(Hons) MCIHT

Associate Partner, i-Transport LLP

Adam Ross BA (Hons) DipTP MRTPI

Executive Director, Nexus Planning

Dominick Veasey BA(Hons) DipTP MRTPI Director, Nexus Planning
took part in the discussion on housing land supply and deliverable sites.

James Smith – Director, James Smith (Planning Law Services) Limited
took part in the discussion on the S106 Agreement

INTERESTED PARTIES

Chris Allington
Cllr Isabel Thurston
Barbara Edwards
Richard Kalinski
William Bolland
Juan Lopez

Chairman, Barnham and Eastergate Parish Council
Arun District Councillor for Barnham Ward
Local Resident
Local Resident
Local Resident
Of Counsel
Instructed by Damian Hajnus, Network Rail
Town Planner, Network Rail
Liability Negotiations Manager, Network Rail
Operations Risk Advisor, Network Rail

Anna Woodward MRTPI
Damian Hajnus
Toby Willson

Inquiry Documents (IDs) submitted at the event

- 1 Neighbourhood Plan Note from Adam Ross
- 2 Updated Housing Land Spreadsheet from Dominick Veasey
- 3 Opening Statement for the Appellant
- 4 Hallam Land Management Ltd v Secretary of State for Communities and Local Government [2017] EWHC 2865
- 5 Appellant Summary Note on Hallam Land Management [2017] EWHC 2685
- 6 Opening Statement for the LPA
- 7 Letter from Andrew Griffith MP from Barnham & Eastergate Parish Council
- 8 Statement of Cllr Isabel Thurston
- 9 Post Examination Barnham and Eastergate Neighbourhood Plan including Appendices [November 2021]
- 10 Officer Report for BN/43/16/PL, Angels Nursery, Barnham
- 11 Statement of William John Bolland
- 12 Network Rail email of 25 November 2021 with final draft wording of proposed Grampian condition re rail safety
- 13 West Sussex County Council email of 26 November 2021 regarding proposed Grampian Condition and FP323
- 14 Court of Appeal Decision - R. (Network Rail Infrastructure Ltd) v Secretary of State for Environment, Food and Rural Affairs [2018] EWCA Civ 2069
- 15 Arun District Council Policy on 'Accommodation for older people and people with disabilities'
- 16 Final Draft List of Conditions 26 November 2021
- 17 Site Visit Itinerary Map
- 18 LPA closing submission
- 19 Court of Appeal decision, Gladman Developments Limited v SSCLG, Corby Borough Council and Uttlesford District Council [2021] EWCA Civ 104
- 20 Appellant closing submission

Documents submitted after the Inquiry event

- 21 Engrossed Planning Obligation – 3 December 2021

Schedule of Conditions

- 1) The permission hereby granted is an outline permission under s92 of the Town and Country Planning Act 1990 (as amended) and an application for the approval of the Local Planning Authority to the following matters (hereinafter called 'the reserved matters') must be made not later than the expiration of 3 years beginning with the date of this permission:
 - (a) Appearance;
 - (b) Landscaping;
 - (c) Layout; and
 - (d) Scale.
- 2) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.

- 3) The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing Number 1311.01 – Location Plan.
Drawing Number ITB14160-GA-017 - Site Access Plan
Drawing Number 1311.04A – Land Use Parameter Plan.
- 4) The details referred to in condition 1 shall include details of the materials and external finishes of the buildings, existing and proposed levels, surfaces for roads/footways, means of enclosure and the parking of vehicles, and the provision of samples of such materials and finishes as required.
Development shall be carried out in accordance with the approved details.
- 5) The landscaping and layout particulars to be submitted in accordance with Condition 1 shall include:
 - i. Details of all existing trees and hedgerows on the land, showing which are to be retained and which removed;
 - ii. Details of the positions, height, design, materials and type of boundary treatment to be provided);
 - iii. Details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree;
 - iv. The detailed landscape design for the development;
 - v. Details of the play areas and public open spaces;
 - vi) A Water Vole mitigation statement demonstrating an 8m buffer zone around the ditches in accordance with the recommendations in the Ecological Appraisal November 2020; and
 - vii) A 20m buffer zone between the dwellings and the railway line in accordance with the recommendations in the Ecological Appraisal November 2020.No hedge or tree shall be felled, uprooted or otherwise removed before, during or after the construction period except where removal is indicated on a plan approved by the Local Planning Authority.
- 6) Development shall not commence, other than works of site survey and investigation, until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, and the recommendations of the SuDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and winter Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. No building / No part of the extended building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the details so agreed shall be maintained in good working order in perpetuity.
- 7) The development shall not proceed until details have been submitted to and approved in writing by the Local Planning Authority for any proposals: to discharge flows to watercourses; or for the culverting, diversion, infilling or obstruction of any watercourse on or adjacent to the site. Any discharge to a

watercourse must be at a rate no greater than the pre-development run-off values. No construction is permitted, which will restrict current and future landowners from undertaking their riparian maintenance responsibilities in respect to any watercourse or culvert on or adjacent to the site.

- 8) Development shall not commence until full details of the maintenance and management of the surface water drainage system is set out in a site-specific maintenance manual and submitted to, and approved in writing, by the Local Planning Authority. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturer's recommended design life. Upon completed construction of the surface water drainage system, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
- 9) Prior to the commencement of development details of a proposed foul drainage system shall be submitted to and approved in writing by the Local Planning Authority (including details of its siting, design and subsequent management / maintenance) and no dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
- 10) Prior to the commencement of demolition or construction works a Detailed Ecological Mitigation and Enhancement Method Statement shall be submitted to the Local Planning Authority for approval in writing and will be based on the mitigation measures and biodiversity net gain recommendations within the Ecological Appraisal (Aspect Ecology, November 2020) to demonstrate biodiversity net gain of a minimum of 10%. All approved details shall then be implemented in full and in accordance with the agreed timings and details.

Should the detailed layout of the site require the removal of further trees which have the potential to support bats, a climbed tree inspection survey will be required.

- 11) Prior to the commencement of development, including any works of demolition, a Construction Management Plan shall be submitted for approval in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters:
 - The anticipated number, frequency and types of vehicles used during construction,
 - The method of access and routing of vehicles during construction,
 - Full details of the construction compound,
 - Soil resources plan,
 - Dust mitigation measures,
 - Noise reduction measures,
 - The parking of vehicles by site operatives and visitors,
 - The loading and unloading of plant, materials and waste,
 - The storage of plant and materials used in construction of the development,
 - The erection and maintenance of security hoarding,

- The provision of effective wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
 - Details of public engagement both prior to and during construction works
- 12) No development including site access, demolition or associated construction activities, shall take place on the site unless and until a badger survey has been undertaken in order to ensure that badgers are not using the site. If a badger sett is found on the site, then the applicants shall provide a mitigation strategy to the Local Planning Authority for approval in writing to be determined in consultation with Natural England.
- 13) No development shall commence until a scheme for the location and installation of fire hydrants has been submitted to and approved in writing by the Local Planning Authority. For the purposes of this condition the scheme shall be in accordance with the Guidance Note: The Provision of Fire Hydrants and an Adequate Water Supply for Fire Fighting as published by West Sussex Fire and Rescue Services (as amended from time to time). No building hereby permitted shall be occupied until the fire hydrant(s) required to serve that building have been installed in accordance with the approved scheme.
- 14) Prior to commencement of development a scheme identifying the principles to be incorporated into detailed building design, together with on-site renewable energy devices, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide on-site renewable energy generation of 10% of the annual energy requirement of the buildings. The approved scheme shall be implemented in full.
- 15) Prior to commencement of development an Arboricultural Method Statement (AMS) and a Tree Protection Plan shall be submitted to and approved in writing by the Local Planning Authority, to both describe and illustrate the mitigation measures which are to be employed to ensure that the trees survive without detriment to their vigour and vitality and are given adequate protection both above and below ground. The development shall be undertaken in strict accordance with the details so approved.
- 16) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Local Planning Authority.
- 17) Prior to commencement of development the applicant shall prepare and submit for approval in writing an Employment and Skills Plan. Following approval of the Employment and Skills Plan the developer will implement and promote the objectives of the approved plan.
- 18) No part of the development shall be first occupied until such a time as the pedestrian and carriageway improvements to Marshall Close have been constructed in accordance with the drawing titled 'Proposed Improvements to Marshall Close' and numbered ITB14160-GA-010 Revision B and brought into use.

- 19) There shall be no development above slab level unless and until details are submitted pursuant to condition 1 above for the approval of the Local Planning Authority in writing showing the details of proposed windows and doors, details of the depth or recess/ reveal from the brickwork, sills and lintels, brick bonding, brick detailing, eaves detailing and rainwater goods of all of the proposed house types. The details so approved shall be used in the construction of the buildings.
- 20) Immediately following implementation of the approved surface water drainage system and prior to occupation of any part of the development, the developer/applicant shall provide the local planning authority with as-built drawings of the implemented scheme together with a completion report prepared by an independent engineer that confirms that the scheme was built in accordance with the approved drawing/s and is fit for purpose. The scheme shall thereafter be maintained in perpetuity.
- 21) No part of the development shall be first occupied until such time as plans, details and construction specification showing the proposed surfacing works for Right of Way no. FP323 within the red line boundary to upgrade the footway to a cycle route have been submitted to and approved in writing by the Local Planning Authority.
- 22) No dwelling shall be occupied until refuse and recycling bins have been provided and space has been laid out for their storage in relation to that dwelling in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter these areas shall not be used for any purpose other than the storage of refuse and recycling bins.
- 23) No part of the development shall be first occupied until such time as the vehicular access serving the development has been constructed in accordance with the details shown on the drawing titled Site Access Plan ITB14160-GA-017.
- 24) No dwelling shall be occupied until space for that dwelling has been laid out for the turning spaces, the parking of cars, motorcycles and cycles in relation to that dwelling in accordance with a drawing and schedule to be submitted to and be approved in writing by the Local Planning Authority. These areas shall thereafter not be used for any purpose other than the manoeuvring and parking of cars, motorcycles and cycles.
- 25) Prior to occupation of any of the dwellings, a scheme for the provision of facilities to enable the charging of electric vehicles to serve the approved dwellings shall be submitted to the Local Planning Authority for approval in writing and thereafter implemented in accordance with the approved details and the charge points shall thereafter be permanently retained and maintained in good working condition. The scheme shall accord with the requirements set out in the Arun District Parking Standards SPD.
- 26) Prior to occupation of any dwelling, a scheme for details of the external lighting shall be submitted and approved in writing by the Local Planning Authority. The lighting details should include:
 - a) Details of Zone E2 (Rural) lighting luminaires (lux levels);

- b) Mitigation measures to minimise potential glare and spillage;
- c) Location of lighting columns;
- d) Design and appearance of lighting columns;
- e) Timings of lighting (reduced coverage between 11.00pm and 7.00am); and
- f) Phasing for the implementation of the scheme.

The approved lighting system shall be implemented in accordance with approved details and be retained thereafter.

- 27) The development shall be carried out in accordance with the Flood Risk Assessment dated 6 August 2021 (Ref: A326-R001E produced by the Albey Letchford Partnership), drawings A326-050 & A326-051, and the Hydraulic Modelling Technical note dated March 2021 (Ref: WE17213-100-TN-1-2-3-Flood), and the following mitigation measures detailed therein:
- Finished floor levels for all residential dwellings shall be set no lower than 4.45 metres above Ordnance Datum (mAOD) (section 4.12 of the FRA)
 - Compensatory flood storage shall be provided in accordance with the submitted drainage strategy (dwg ref: A326-050) and flood compensation details (dwg ref: A326-051) (also referenced in section 4.51 of the FRA)
 - The existing Tars Farm access track culvert crossing the Barnham Rife (downstream of the proposed new bridge) shall be removed and replaced with an open channel reach (as per section 3.6 of the Hydraulic Modelling Technical note, March 2021)
 - The crossing of the Barnham Rife shall be a clear span bridge with a soffit level set no lower than 3.74 metres above Ordnance Datum (mAOD) (sections 4.37 & 4.38 of the FRA)
 - The proposed access road level shall be set no lower than 4.45 metres above Ordnance DATUM (mAOD) (section 4.39 of the FRA).

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the schemes timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

28) The Development shall not be occupied until a rail crossing (extinguishment or diversion) order has been made and confirmed in respect of a section of footpath 323, to include where footpath 323 crosses operational railway land at the site of both Birch level crossing and West Barnham level crossing, and the section(s) of footpath 323 has been lawfully extinguished or diverted. This condition shall apply unless either the relevant local authority or the Secretary of State, whoever is the person lawfully seized of the decision whether to confirm the order, refuses to confirm.

29) All planting, seeding or turfing comprised in the approved details shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

30) The hours of operation for the construction and demolition works, including deliveries to / from the site, to be limited to 07:00 hours and 18:00 hours on Mondays to Fridays inclusive; 08:00 hours and 13:00 hours on Saturdays; not at any time on Sundays or Bank Holidays.

31) The layout of the site shall be designed so the dwellings along the western boundary of the site provide an acoustic barrier for the rest of the development. External amenity areas which are 20m from the railway line shall adopt 1.8m high closed boarded timber fencing to the gardens closest to the railway as detailed in section 4.28 of the Noise and Vibration Assessment, November 2020.

32) Garages provided on the site shall measure a minimum of 6 metres x 3 metres internally.

33) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

Schedule ends.