



Appeal Decision

Inquiry held on 1 and 2 December and 13 and 14 December 2022

Site visit made on 15 December 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th January 2023

Appeal Ref: APP/U1430/W/22/3304805

Land at Fryatts Way, Bexhill, East Sussex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Gladman Developments Ltd against Rother District Council.
 - The application Ref: RR/2021/1656/P, is dated 29 June 2021.
 - The development proposed is described as 'outline planning application for up to 210 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation, vehicular access point and associated ancillary works. All matters to be reserved with the exception of the main site access'.
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Decision

1. The appeal is allowed, and outline planning permission is granted for up to 210 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation, vehicular access point and associated ancillary works. All matters reserved with the exception of the main site access at land at Fryatts Way, Bexhill, East Sussex in accordance with the terms of the application, Ref: RR/2021/1656/P, dated 29 June 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration save for the access. I have assessed the proposal on this basis and treated the 'Development Framework' plan as simply being an illustration of how the proposal could ultimately be configured.
3. A screening direction was issued on the 22 September 2022 that confirmed the proposal is not Environmental Impact Assessment development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
4. The format of the Inquiry was altered from an in-person event to a digital event at my request. Interested parties were informed and afforded an opportunity to attend and take part. As a result, no party was prejudiced by this course of action. National Highways had 'Rule 6' status but did not attend the Inquiry as they reached common ground with the appellant beforehand.

Main Issues

5. The Council failed to determine the planning application within the prescribed period and therefore the appellant exercised their right to submit the appeal. The Council confirmed through putative reasons for refusal in its Statement of Case that, had it been able to do so, it would have refused the proposal due to several concerns.
6. Subsequent to this, the Council has agreed with the appellant, through a Statement of Common Ground (SOCG)¹, that the proposal would not have a harmful effect on the living conditions of the occupants of 11 and 15 Fryatts Way. This is subject to the imposition of a planning condition that would secure noise mitigation in the form of an acoustic fence or other appropriate boundary structure. This was a finding based on an undisputed technical note prepared by acoustic consultants and submitted at Appendix 5 of Mr Lee's proof.
7. It has also been agreed in the SOCG that the submitted planning obligation, in the form of a s106 Agreement, would adequately address the provision of affordable housing, public open space, drainage infrastructure, off site highway works, the provision of a Travel Plan and measures relating to employment and skills. I will return to the necessity of these obligations later. Similarly, it is common ground that there would be no adverse effect on the Pevensey Levels Special Area of Conservation (SAC) and Ramsar site subject to mitigation, which would be secured through appropriately worded conditions.
8. A separate Statement of Common Ground² has been submitted by the appellant's highways consultants and National Highways (NH). This confirmed that there has been further engagement between the Tetra Tech and NH since the appeal was lodged. Through this it has been agreed that the initial concerns of NH can be addressed through the imposition of a series of conditions limiting the extent of development until specified mitigation along the A259 is in place. As a result, the effect of the scheme on the safety and operational efficiency of the strategic road network (the A259) is no longer a point in dispute and was not challenged by any party at the Inquiry.
9. In light of the foregoing, the main issues in this appeal are:
 - Whether the appeal site is an appropriate location for the proposal, with reference to the spatial strategy in the development plan;
 - Whether the appeal site is an appropriate location for the proposal, with reference to the accessibility of services and facilities; and
 - The effect of the proposal on the character and appearance of the area.

Reasons

The suitability of the location with reference to the spatial strategy

10. To maintain the existing settlement patterns, the role of main service centres and to permit the sensitive evolution of smaller settlements, Policy OSS1 of the Rother Core Strategy 2014 (CS) sets out a strategy for the overall spatial distribution of residential development in the district. The hierarchy set out in this policy seeks to (a) focus new development at Bexhill, (b) provide for some

¹ ID07

² ID06

development in the market towns of Battle and Rye, (c) facilitate the limited growth of villages that contain a range of services, (d) allow small scale infill and redevelopment in other villages, and (e) generally restrict new development in the countryside.

11. Policy OSS1 does not refer to settlement boundaries and nor does it say under (a) that new development should be 'in' Bexhill. Thus, the aim to focus new development 'at Bexhill' could be interpreted as including sites outside the settlement boundary. If this is the case, then the proposal would not be at odds with Policy OSS1 when read in isolation. Instead, it would be consistent with the strategy contained within the policy to focus development 'at' Bexhill.
12. However, Policy OSS1 cannot be read in isolation and is part of a suite of policies tasked with guiding the location of development as part of an overall spatial strategy. To this end Policy OSS2 of the CS explains that development boundaries around settlements will differentiate between areas where most forms of development would be acceptable and where they will not. The supporting text to this policy explains that the approach has been followed to focus development into sustainable locations, protect against intrusive development and to provide certainty.
13. Policy RA3 of the CS flows from this and sets out the types of development that would generally be supported in the countryside. Moreover, Policy DIM2 of the DaSA³ states that new development shall be focussed within defined settlement boundaries principally on already committed and allocated sites. Therefore, the Council's approach of interpreting the phrase 'at Bexhill' in Policy OSS1 as meaning sites at Bexhill that are in the settlement boundary is logical when read in its proper context. The appellant's interpretation also fails to adequately grapple with the general restriction on countryside development in Policy OSS1(e).
14. Save for the site access, the appeal site incorporates land that is outside the settlement boundary of Bexhill and is therefore designated as countryside. The appeal scheme would not amount to any of the types of development supported in Policy RA3 of the CS, such as that related to agricultural or rural tourism. Similarly, when applying Policy DIM2 the proposal does not gain in principle support from any other specific Local Plan policies and a countryside location has not been demonstrated to be necessary for the type of development proposed, that being general housing.
15. Accordingly, the proposal is at odds with the spatial strategy set out in Policies OSS1, OSS2, RA3 and DIM2. For this reason, it is also in conflict with Policy OSS3(i) of the CS. Thus, in conclusion, the proposal would not be a suitable location for the appeal scheme when applying the spatial strategy in the development plan, which is a carefully drafted and considered statement of policy. Instead, the proposal would undermine the objectives of the strategy. This would be harmful given the public interest in having a genuinely plan led system that provides consistency and direction.

The accessibility of services and facilities

16. The appeal site is located on the edge of a suburban area on the periphery of Bexhill. Plan LDR1 supplied by the appellant confirms that there are very few if

³ Development and Site Allocations Local Plan 2019

any services and facilities within an 800m walking distance of the appeal site. This is important because Manual for Streets (MfS) states that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes/800m walking distance of residential areas. This is a realistic distance when considering convenience, inclement weather and when accounting for young children, those with mobility issues and the distance and time taken to undertake the whole journey, including the return leg.

17. Accordingly, the appeal scheme would not be part of a walkable neighbourhood, and this would notably curtail opportunities to promote walking. This would especially be the case for those with reduced mobility and for trips where a residents would spend a short time at the intended destination, such as convenience shopping at Little Common.
18. By way of example, the Council has focussed on the accessibility of Glenleigh Park Primary Academy, which is the nearest primary school to the appeal site. Given the distance and walking environment parents are likely to accompany their child on the walk to school and would stay for a short period when dropping them off. It is unlikely that they would use Ellerslie Lane because it has no pavement or streetlights. Other routes exist, but some of these involve uninviting alleyways. Nevertheless, regardless of which route the parent opts for, or the improvements that would be secured to walking routes as part of the appeal scheme (dropped kerbs etc...), they would still have a minimum round trip of around 2.8km twice a day. This is too long a distance to provide a genuine opportunity to walk young children to school.
19. There is no substantive evidence before me that the parking situation at the primary school is so challenging that parents would choose to walk such a long way. Similarly, statutory walking to school distances⁴ are of limited assistance as a guide to an acceptable walking distance because the evidence before me does not explain how the figures were arrived at. In any event, the figures have a different purpose inextricably linked to funding issues⁵. Such an approach is also contradicted by Mr Regan's evidence that a 2km yardstick should be applied.
20. That said, MfS also states that 800m is not an upper limit and in doing so refers to PPG13⁶, which in turned stated that walking offers the greatest potential to replace short car trips, particularly those under 2km. However, PPG13 is no longer extant and therefore this statement should be given limited weight. All the more so because the authors of MfS do not seem to directly endorse the 2km figure, the document simply quotes PPG13. In any event, there is little substantive evidence before me suggesting most people would walk 2km. In fact, when giving his evidence Mr Regan suggested that 80% of walking journeys are under 1.5km/one mile. In cross examination Mr Richardson did accept that a 2km distance can be acceptable as an upper limit, but he did qualify this by explaining it is dependent on the purpose of the trip, the quality of the route and the ability of the pedestrian. Therefore, the 2km figure needs to be considered with some considerable caution.
21. Therefore, many of the facilities listed at Appendix LDR3 of Mr Regan's proof are outside a comfortable walking distance as they are around 2km away from

⁴ 2 miles (3.2km) for those under 8 years of age and 3 miles (4.8km) for those above this age.

⁵ The figures are from the Education Act and specify when free transport is to be provided to a catchment school

⁶ Planning Policy Guidance Note 13

the centre of the appeal site. The distance is such that this would be the case regardless of how attractive the route is. Nevertheless, when using a maximum upper limit of around 1.5km, which is more justifiable, some facilities become accessible by walking. These include a park, some dispersed retail, a public house, a restaurant, a dentist and a post office.

22. Moreover, on occasion some residents may walk into the town centre if they intend to stay there for some time to break up the journey, although if carrying shopping the return trip uphill would be challenging. Similarly, they may also infrequently walk to Collington Rail Station, which is around 1.9km away. Bexhill Academy is also located around 1.6km from the centre of the appeal site and therefore pupils may walk regularly given that they would be older and would spend all day there. These factors moderately offset the harm that would occur from the appeal scheme being outside a walkable neighbourhood.
23. There is common ground that 5km is a reasonable distance against which to test the range of facilities within cycling distance of the appeal site. Accordingly, nearly all of Bexhill is brought within the range of this mode of transport, including rail stations, the town centre and National Cycle Route 2. Many of the roads around the appeal site and south of the A259 appeared to be reasonably flat and quiet suburban streets conducive to cycling. As a result, the Council is not seeking a contribution towards a cycle route from the appeal site to Little Common Local Centre, despite this being advantageous and set out as a high priority in The East Sussex Cycling and Walking Strategy⁷.
24. Cyclists may be understandably nervous of negotiating the busy A259, which has sections subject to a 40mph speed limit, no segregated or marked cycle lane and no toucan crossing. The East Sussex Cycling and Walking Strategy explains why this is problematic. However, I have not been directed to substantive evidence demonstrating that it is an extremely intimidating barrier. Moreover, there is nothing before me to suggest that if a cyclist chose to dismount and cross the A259, or walk along a short section of pavement with their bike⁸, that this would be a notable barrier to an onward cycling journey south of the A259. In any event, there are several facilities north of the A259 including primary schools. In respect of the latter, I do not consider cycling to schools should be entirely ruled out as an option. This is because the routes appear safe and there is no evidence before me to suggest otherwise.
25. Consequently, there would be genuine opportunities for residents to travel by bicycle, although this would be notably tempered by an inherent limitation that many residents would not have the fitness or proficiency to cycle. Furthermore, the absence of dedicated cycle lanes is unlikely to encourage nervous cyclists to give this mode a try. This is all demonstrated by Mr Regan's evidence⁹, which indicates that only 1.9% of residents in Bexhill travel to work by bicycle. Moreover, some residents may simply not have a bicycle and the draft Travel Plan proposes little to address this.
26. East Sussex County Council (ESCC) recommends that new residential developments should be within a 400m walking distance of a bus stop. This is echoed in guidance prepared by the Institution of Highways and

⁷ CD8.11

⁸ For example, the short stretch between Warwick Road and Sutherland Avenue

⁹ And the cycle to work propensity map in The East Sussex Cycling and Walking Strategy

Transportation¹⁰. That said, the Bus Service Improvement Plan (BSIP)¹¹ prepared by ESCC increases this distance, as it has an objective of ensuring no resident is further than 800m from an available bus service.

27. Table LDR4.1 of Mr Regan's proof sets out local bus services. The nearest bus stop to the appeal site is around 700m walk away from the appeal site, but this only provides two services a day. The planning obligation makes possible provision for bus stops nearer to the site, which would be of some assistance, but not greatly given the limited 11/11A service. Other bus stops are more than 1.2km walk away with the most frequent bus services being over 1.5km. Thus, the appeal site is currently poorly served by bus services, and this seriously reduces the effectiveness of this means of transport as a genuine travel option. Given the poor level of service, it's unlikely the level of bus usage¹² by residents of the appeal scheme would be materially better than the average across Bexhill. It may well be worse.
28. However, the BSIP seeks to improve bus services by launching new Digital Demand Responsive Transport (DDRT) schemes. As part of this, the 96 and 97 bus services would be replaced and therefore DDRT would be available for residents of the appeal site. The planning obligation includes a contribution of £300,000 towards DDRT, which could include an initial discount for residents of the appeal scheme. This was a sum established by ESCC that would run the scheme for three years. The availability of this service would provide future residents of the appeal scheme with access to a bus service.
29. That said, the DDRT scheme is part of the BSIP, which is forecast to cost £1,000,000. ESCC has funding from Government in the region of £41m. This was described in a recent ESCC press release as an 'extremely ambitious funding bid'. Nevertheless, the £41m is some way off the cost of the BSIP. It is unclear what implications this will have and whether additional contributions from developments and other sources would cover the considerable funding gap. Thus, the implications this would have on the long-term viability of DDRT are unclear. This is important as both Mr Richardson and Mr Regan agreed that demand responsive travel requires subsidy to endure. As a result, there is some uncertainty whether the DDRT scheme intended to serve the appeal scheme would last beyond the three years initially funded by the developer.
30. Moreover, the nature of DDRT has some limitations. The scheme aims for 80% fulfilment within one hour of a request during the daytime in weekdays, and 70% during weekends and evenings. This is despite it being a digital scheme which allows real time responses to requests. As a result, users of the service would need to be flexible. Given the variability in fulfilment times, DDRT is unlikely to be particularly useful if the user needed to regularly start work at a specified time or catch a particular train. This would reduce the effectiveness of DDRT as a genuine transport choice. Accordingly, DDRT is more likely to be focussed on residents without access to a car, a point Mr Regan appeared to accept in cross examination. In this respect the Council points to the number of parking spaces the scheme would provide as an indicator of high car ownership, but this is a policy requirement and tells me little. Instead, car ownership levels are more likely to be high because the proposal would be a

¹⁰ Guidelines for Planning for Public Transport in Developments 1999

¹¹ CD8.03

¹² Based on census data relating to travel to work – Table LDR 4.3 of Mr Regan's proof.

development of newly built homes in an apparently affluent area. In this context, DDRT may have limited uptake.

31. Collington Rail Station provides a good service both east and west, albeit with some notable gaps during the morning commute. The much busier nature of Bexhill Station is probably testament to the more limited service at Collington, as are its more basic range of facilities. Nevertheless, Collington Station provides a link with London, Ashford International and other local and regional centres. Collington Station would therefore be a useful facility for future residents of the appeal scheme in addition to Bexhill Station.
32. The appeal site is located about 1.9km from Collington Station and 3km from Bexhill. Neither are within a comfortable regular walking distance of the appeal site, although future residents of the appeal scheme may choose to walk occasionally to Collington. That said, both Collington and Bexhill Rail Stations are within cycling distance of the appeal site and there is secure cycle storage available. The A259 would not provide a significant barrier to cycling for the reasons already set out. The DDRT service would also provide a link between the appeal scheme and rail stations, albeit with the limitations outlined above.
33. Despite the options set out above, it is nevertheless likely that most future residents of the appeal scheme would choose to travel to the stations by car. Nonetheless, their journeys would be short and would facilitate much longer trips by a sustainable mode. For example, a short car ride would allow a trip into London by train. That said, rail use may make less sense for shorter trips, such as those to Eastbourne, where travel by car could prove to be more convenient overall.
34. Car sharing and ultra-low and zero emission vehicles are identified in the National Planning Policy Framework (the 'Framework') as sustainable transport modes. To this end the appellant is proposing a car sharing club involving this type of vehicle. Obligations are proposed to secure seven vehicles for three years. The appellant has not provided details relating to the level of use required to make the club viable. However, the approach is based on discussions with a provider, and this offers some comfort that it would work. Mr Regan suggested that a car could be hired for around £5 an hour. This could tempt some residents away from owning a second car and the expense that entails. That said, I have not been provided with substantive evidence indicating what sort of modal shift would likely occur from private car use to use of the car club. In the absence of this, and given the size of the scheme, the car club's contribution to sustainable transport is likely to be modest.
35. To further assist in promoting sustainable transport, the appellant intends to submit a Travel Plan (TP), a draft of which accompanies the application¹³. This is likely to be focussed on raising awareness of the travel options through travel information packs. There is nothing to suggest the TP would include measures such as vouchers, which could otherwise encourage residents to give non-car travel a go. Figure 2.1 of the TP explains that the proximity of services and facilities is the foundation of what makes a TP work. Given the mixed picture in this respect, providing information in a TP might not result in the target modal shift. Thus, the TP should not be relied upon to establish sustainable travel patterns from a site with the limitations previously set out.

¹³ CD1.19

36. Before summarising, it is important to address Mr Richardson's point that car use is behavioural. In effect, he submits that residents will use a car if they have one and sustainable transport options are not more convenient. That may well be true, and Mr Lee accepted that future residents would use a car. However, there are many factors that affect the uptake of sustainable transport modes and some sit outside the planning system. Therefore, outside areas of the country where 'car free' developments are a requirement, the broad policy objective for significant development, such as that proposed, is to offer a genuine choice of transport modes¹⁴. A sustainable mode of transport needs to be convenient and offer a realistic alternative to car travel to offer a genuine choice, but it need not be *the* most realistic and convenient mode. The proposal needs to be considered in this context.
37. To summarise, Paragraph 112 of the Framework establishes a movement hierarchy by stating that developments should give priority to pedestrian and cycle movement and then, so far as possible, facilitate access to public transport. This makes perfect sense as personal active travel is the most affordable, resilient and low impact mode of transport.
38. The appeal scheme would not be within a walkable neighbourhood, and this is a significant limitation to this mode being a realistic and convenient way of travelling regularly. Alternatively, there would be genuine opportunities to cycle, but there would be inherent limitations with the uptake of this mode. Accordingly, most residents of the appeal scheme would not be predisposed to regularly engage in active travel with the benefits this accrues, including to their health. This is a significant point against the scheme. That said, the impact would be moderately offset by the availability of some facilities within longer walking distances, which could be accessed occasionally on foot.
39. The appeal site is currently served poorly by local bus services. The provision of DDRT would provide a bus service that would facilitate opportunities to travel by this mode. However, the unresolved questions relating to the long-term viability of DDRT after the initial subsidy provided by the appellant moderate the extent to which bus travel would be a genuine long term transport mode. As does the nature of DDRT. Residents of the appeal scheme would be able to access rail services, which is a notable positive despite the likelihood that many would drive to the stations. The car club would also provide some limited opportunities to promote sustainable travel, but not active travel. The TA would also provide some limited assistance
40. In conclusion, given the size of the scheme, its location outside a walkable neighbourhood could result in significant harm. However, the impact would be moderately offset by the ability to walk to some facilities within a mile and longer distances on occasion. Furthermore, there would be opportunities to cycle and access rail services and utilise DDRT and a car club in the short term. As a result, future residents of the appeal scheme need not be entirely car reliant. It is also important to note that the appeal scheme would be located at Bexhill, which is the largest settlement in Rother, and therefore car journeys could be shorter than elsewhere in district. Overall, siting up to 210 homes at the appeal site would result in a moderate level of social and environmental harm linked to additional car use, including air pollution, noise, reliance of fossil fuels and from a failure to encourage the health benefits from active travel.

¹⁴ Paragraph 105 of the Framework

41. Accordingly, I would not characterise access to employment, services and community facilities as 'good'. As a result, there would be a conflict with Policy TR3 of the CS. There would also be a conflict with Policy SRM1 of the CS, which seeks to promote more sustainable travel patterns. It seeks to do this in accordance with Policy TR2 of the CS. However, the latter does not set out a specific development management test. If anything, the appeal scheme would work towards the first aim in the policy of facilitating enhancements to bus and community transport. However, the absence of a conflict in this respect does not outweigh the conflict I have identified with Policies TR3 and SRM1.

The effect on the character and appearance of the area

42. The appeal site is in National Character Area 122: High Weald (NCA) and exhibits some of its key characteristics. In particular, small and medium sized irregularly shaped fields enclosed by a network of hedgerows and mature trees. However, it does not include other characteristics, such as a sense of remoteness, extensive broadleaf woodland and ancient routeways. This is unsurprising given the high-level nature of the NCA. Nevertheless, it's unlikely that any site would exhibit all the key characteristics listed. The fact that some are present is an indicator that the site may have landscape value and that a further assessment should be undertaken to investigate this.
43. The East Sussex Landscape Character Assessment (LCA)¹⁵ has undertaken a more detailed analysis and divided the County into landscape character areas. The appeal site exhibits some of the characteristics listed in Area 5: The South Slopes of the High Weald Landscape Character Area. In particular, the appeal site, along with Broad Oak Park, can reasonably be described as an intricate small-scale landscape with a strong pattern of hedgerows. This is probably because it was, until recently, part of a continuous section of the traditional High Weald landscape, as demonstrated by historic maps¹⁶.
44. However, the appeal site sits within Area 30: Bexhill Urban Area. At first glance it is difficult to understand why that is the case. This is because the appeal site is entirely untypical of the urban area and is part of a green corridor that slopes down from the Highwoods Site of Special Scientific Interest (SSSI) to the section of Broad Oak Park immediately north of the A259. That said, the housing to the east and south of the appeal site, which is generally on higher ground, has an urbanising influence. And the Highwoods Golf Course to the north and west is a manicured feature untypical of the High Weald landscape. Broad Oak Park also has some features untypical of open countryside, including picnic areas, benches and a car park. It is also accessed from within the urban area. Therefore, the inclusion of the appeal site within Area 30 was a deliberate judgment based on a rationale. In this respect Turkey Road is a logical dividing line between Areas 5 and 30.
45. Given the foregoing, it is reasonable to suggest that the character of the appeal site does not fall comfortably within either the Bexhill Urban Area or The South Slopes of the High Weald. It is an isolated remnant of the latter located within the former. The Council's Green Infrastructure (GI) Study 2011 makes this point by broadly explaining that the urban fringe of West Bexhill has the characteristics of the south slopes of the High Weald. However, the appeal site is factually located within Area 30 where there are no specific landscape values

¹⁵ CD7.02 and 7.09

¹⁶ CD1.12 p9

or sensitiveness highlighted in the LCA which the appeal scheme could erode. As a result, the proposal would have only a very limited impact on the South Slopes of the High Weald Landscape Character Area.

46. That said, the appeal site could still have some value as an atypical feature of the Bexhill Urban Area. To this end the Council submit that the site has landscape value because it is designated as countryside in the local plan. This is, however, a policy designation and not a landscape one. All it suggests is that the appeal site has some intrinsic character and beauty as part of the countryside. It does not establish anything further.
47. Map 2 of the CS identifies the appeal site as part of a Strategic Open Space. However, there is no policy to support this 'designation'. The DaSA identifies strategic gaps, including that to the east of Bexhill, but not the Strategic Open Space in which the appeal site is located. Thus, Map 2 is of limited assistance in establishing landscape value.
48. The Council's Green Infrastructure (GI) Study 2011 identifies the appeal site as being within the catchment of several nearby GI sites, but it is not listed as GI itself or as part of a defined network or corridor of GI. Thus, developing the appeal site could not result in a loss of GI contrary to Policy EN5 of the CS. However, when considering the GI study, it is fair to say that the appeal site is located within a green corridor comprised of a collection of different green areas, and it should be afforded some landscape value because of this.
49. The authors of the Landscape and Visual Appraisal (LVA) submitted by the appellant have undertaken an assessment of landscape value that incorporates guidance prepared by the Landscape Institute (LI)¹⁷. This sets out factors to consider when forming a judgment on landscape value. The Council has not sought to challenge the methodology of the LVA and nor has it produced its own systematic assessment of landscape and visual effects.
50. When applying the LI guidance, it is apparent that the appeal site is not covered by any landscape designation or is visible from any land covered by such. In terms of natural heritage, the site is of value due to the extent of hedgerow cover identified in the Ecological Appraisal¹⁸ as being Habitats of Principal Importance. That said, the site is not otherwise designated, and the Ecological Appraisal suggests the semi-improved grass land and scrub in the site is of limited value to biodiversity. As a remnant of a potentially very old and perhaps medieval landscape the appeal site has some cultural value, especially as the hedgerows are broadly intact. This also provides it with some distinctiveness and rarity. However, its detachment from the wider High Weald landscape north of Turkey Road tempers this value. As does the position of the site on the urban fringe of Bexhill, which is the largest settlement in Rother and has a suburban influence on the site.
51. The condition of the site is good due to it being grazed and enclosed by mature trees and hedges, albeit with gaps in some places. The site has no known associations with notable historic events and very limited recreational value as there is no public access. It is however, within the setting of public rights of way. Given the close proximity of housing, the golf course and Broad Oak Park, the site is not perceived as wild. That said, its undeveloped and rural

¹⁷ GLVIA3 and Technical Guidance Note 02-21

¹⁸ CD1.09 and Appendix 6 of Mr Lee's proof

appearance does enhance the tranquillity of Broad Oak Park, which appears to be a well-used semi natural green space.

52. In this respect, the site's main landscape value is its scenic quality as undeveloped countryside visible in foreground views from Broad Oak Park when looking towards Highwoods SSSI. Accordingly, it does have a functional aspect in providing an undeveloped buffer around the northern boundary of this adjacent public open space. In this respect I share the view of the County Landscape Architect that the site is contiguous with the parkland, derives value from this and that the LVA downplays the contribution these perceptual qualities make to the landscape value of the appeal site.
53. However, and significantly, it remains common ground between the appellant and Council that the appeal site is not a 'valued landscape'¹⁹ in accordance with Paragraph 174a) of the Framework. This can be taken to mean that the site, or the landscape in which it is located and is part of, does not have demonstrable physical attributes which would take it beyond ordinary countryside. In this context, the overall conclusion in the LVA that the site and its environs is of medium landscape value is a fair one despite it underplaying some qualities.
54. The construction of up to 210 homes at the appeal site would be a large body of housing. The sloping nature of the site means many of the houses would be visible as blocks. This would urbanise a small remnant of the High Weald landscape north of Broad Oak Park and irreversibly erode the green corridor identified in Map 2 of the CS. This would harm the tranquillity of the northern section of Broad Oak Park and dilute the functional role the appeal site plays as an undeveloped buffer to this public open space. It is therefore understandable why the appeal site formed part of a parcel of land that was 'rejected' in the Strategic Housing Land Availability Assessment²⁰.
55. That said, the appeal scheme could be designed with the front elevations of houses facing towards Broad Oak Park. These buildings could be attractively designed and pleasantly set amongst generous levels of planting. As a result, the interface could have some positive aspects. Moreover, the scheme could ultimately be designed to reflect the surrounding suburban character, with buildings of a similar scale set in discernible building lines and behind front gardens in a generally verdant setting. Therefore, the development could assimilate with the surrounding Bexhill Urban Area over time. Furthermore, there is nothing to suggest the scheme could not be of good quality design guided by the tools advocated in the Framework²¹, including design review, the National Design Guide and Building for a Healthy Life criteria.
56. It would also be possible to retain and supplement most of the existing hedges and therefore preserve these key landscape features as a nod to the historic field scape. However, the hedges derive much landscape value from enclosing grass fields, and this would no longer be the case. In effect, the appeal scheme would largely extinguish the ability to experience the appeal site as a remnant of the High Weald landscape. That said, the potential for a net increase in hedge and tree cover, alongside the requirement to provide street

¹⁹ ID07 Para 4.7.1

²⁰ CD6.12

²¹ See Paragraph 129 and 131 and footnote 51 of the National Planning Policy Framework

trees²² and public open space, would provide an important softening effect which over time would provide some moderate mitigation.

57. The appeal scheme would also erode the gap between Little Common and Sidley, but the space between these neighbourhoods is not identified in the DaSA as a strategic gap that requires specific protection. Notwithstanding this, Little Common and Sidley are both part of the Bexhill Urban Area so there would be no coalescence of distinct settlements. Furthermore, the scheme would retain a similar gap to that found between Foxhill and Eastergate. Accordingly, the harm to landscape character in this respect would be limited.
58. Overall, the appeal scheme would have a very limited impact on the wider High Weald landscape north of Turkey Road. However, the provision of a large body of houses in a discernible green corridor, on a remnant of the High Weald landscape, and adjacent to a relatively²³ tranquil semi natural green space, would have a major/moderate adverse impact on local landscape character. That being the appeal site and its immediate environs. Added to this is some limited harm from eroding the gap between Little Common and Sidley. However, the position of the site in the Bexhill Urban Area LCA, the urban fringe setting and influence, the modest size of the scheme relative to Bexhill, the potential for mitigation and the localise nature of the impact, on what is a landscape of medium value that is not 'valued', reduces the overall magnitude of the effect. Overall, the scheme would have a moderate net adverse impact on landscape character in the long term.
59. The Council do not seek to challenge the findings of the LVA in respect of visual effects. In this regard the visual receptors for the proposed development have been identified in the LVA as including residents within close proximity of the site, users of the local highway network, users of public rights of way and users of the northern extent of Broad Oak Park and Highwoods Golf Course. Visual receptors are largely limited to those located close to the site and areas that often already are influenced by existing built development. More distant views are heavily screened by intervening features.
60. It is therefore fair to say that the visual impacts would be localised within a limited visual envelope. Within this envelope the LVA indicates that the proposal would generally have a moderate adverse impact from construction through to completion, with a major impact in private views from some nearby residential properties. Accordingly, the LVA concludes that the resultant visual impact would be no more than moderate in the long term, and I consider this to be reasonable given the balance of the evidence before me.
61. In conclusion, the proposal overall would result in a moderate level of harm to the landscape. In this respect the net impact would be an adverse one that detracts from the character and appearance of the area. This would result in a conflict with Policies OSS4, RA3 and EN3 of the CS. The failure to maintain and reinforce landscape character would also result in a conflict with Policy DEN1 of the DaSA. The loss of grass fields and the erosion of a discernible, albeit undesignated, green corridor would also result in a failure to protect landscape features contrary to Policy EN1 of the CS.

²² Paragraph 131 of the National Planning Policy Framework

²³ When compared to the urban area of Bexhill

Other Matters

62. Several interested parties have raised concerns that the appeal scheme would harm highway safety and would result in congestion. However, the appellant, through their highway consultants, have submitted a SOCG with the Local Highway Authority (LHA)²⁴. This confirms that there is common ground over several highway matters relating to safety and congestion.
63. In particular, there would be safe and suitable access into the site and the traffic impacts on the local highway network, including the narrow Ellerslie Road, would not be significant. These findings flow from a Transport Assessment²⁵ prepared by the appellant's highway consultants and tested by the LHA. This includes a traffic flow analysis and traffic impact assessment which demonstrates the trips that would occur in the morning and evening peak hours could be safely and satisfactorily absorbed by the highway network. There may be some increases in queues and delays due to the traffic from the development, but these would be low and generally not noticeable to existing users. Substantive technical evidence is not before me that would justify departing from this expert evidence, or that there would be cumulative harm to highway safety with the homes currently under construction in Fryatts Way.
64. Substantive evidence is not before me that the proposal would adversely impact on local infrastructure, including schools and health facilities. I understand that Rother District Council has adopted a Community Infrastructure Levy in any event. For reasons I go into, the evidence before me demonstrates the scheme would deliver a net gain to biodiversity. Furthermore, the provision of GI and a circular walk within the site would deter visits to other designated sites, including the Highwoods SSSI. This can be secured at the reserved matters stage. The Flood Risk Assessment submitted with the application demonstrates there would be a low risk of flooding from all sources subject to mitigation including a drainage strategy. The appeal site is not previously developed land, but I have not been directed to any policy that states housing should only be permitted on brownfield sites.
65. The proposal would result in the loss of land that could be used for agriculture but there is nothing before me to suggest it is the best or most versatile agricultural land or that there is poorer quality land that should be preferred.
66. The Council submitted an appeal decision²⁶ during the Inquiry but did not refer to it when giving evidence. Its relevance is unclear given that it relates to a site in a different local planning authority area covered by a strategic gap policy. As a result, it is a matter of very limited weight.

Other Considerations

67. The appeal scheme would be at odds with the development plan when taken as a whole. A proposal should be determined in accordance with the development plan unless material considerations indicate otherwise.
68. The Council are currently unable to demonstrate a five-year housing land supply and therefore the most important policies for determining the application should be deemed out of date. However, they should not be

²⁴ ID15

²⁵ CD1.18

²⁶ ID25

disregarded. Instead, in this instance²⁷ Paragraph 11 of the Framework states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.

69. Paragraph 60 of the Framework sets out the objective of significantly boosting the supply of housing. Paragraph 73 sets out a requirement for local planning authorities to provide a minimum five-year housing land supply. The most recent housing land supply in Rother currently stands at 2.79 years²⁸ despite the adoption of the DaSA three years ago.
70. This can be explained in part because the Local Housing Needs (LHN) figure is to be applied instead of the housing requirement in the CS, because the CS is more than 5 years old. On an annualised basis this has increased the housing requirement from 335 homes per year to 737. However, the Council has never delivered the CS figure over the plan period. In fact, the average delivery rate has been only around 200 homes per year. Moreover, even on its own figures, which are doubtful, the Council has not been able to demonstrate a five-year supply since 2015/16 and its Housing Delivery Test result was only 57%.
71. It must therefore prepare an Action Plan, apply a 20% buffer to the LHN figure and is subject to the presumption in favour of sustainable development on this account. It is also important to note that the situation got marginally worse over the past twelve months, as the housing supply fell from 2.89 years to 2.79. It is therefore fair to suggest the current housing supply position is chronic when looking at past delivery and future supply.
72. There is some considerable doubt that the Council's Action Plan will remedy this situation. This is because it primarily seeks to address the shortfall by granting planning permission for the DaSA allocations now that additional infrastructure is in place. It is true that there will likely be an upsurge in supply over the next 6-7 years, but the DaSA allocations sought to address the housing requirement in the CS and not the much larger LHN derived requirement. As a result, the current trajectory²⁹ is that housing supply over the next 7 years will only meet LHN in 2027/28 and will never come close to meeting LHN with a 20% buffer.
73. Furthermore, the DaSA sites in the trajectory for the next five-year period up to 2027 are taken account in the 2.79 years housing supply figure in any event. Moreover, the approach in the Action Plan is also based on the assumption that the DaSA allocations will proceed smoothly, but that may not be the case. To this end the appellant has pointed to their difficulties in gaining planning permissions on allocated sites. Alternatively, there is no substantive evidence before me to suggest windfalls or Neighbourhood Plan allocations can be relied upon to address the shortfall.
74. A second limb of the Action Plan is the establishment of a Local Housing Company (LHC). However, this is only aiming to deliver 1000 homes over 15 years. The 200 already permitted are factored into the 2.79 years supply figure. It would seem that the contribution to be provided by the LHC will likely be helpful rather than transformational in respect of the housing supply.

²⁷ Given the conclusions I have reached in the appropriate assessment below, there are no policies in the Framework that protect areas or assets which provide a clear reason for refusing the development proposed

²⁸ ID05

²⁹ ID05 Appendix 6

75. The third limb of the plan relies on the adoption of the emerging Local Plan (eLP) as this would allocate new sites and thus identify additional supply. However, the timetable has already slipped since the publication of the Action Plan, and it is common ground that the early stage of the eLP means it cannot currently be given any weight. The policies in the eLP, including draft allocations, will gain weight the closer it gets to adoption, but it could be years until this stage is reached.
76. The settlement boundaries were established when there was a much lower housing requirement. Ms Gibbons indicates in her evidence that these were tightly drawn. Moreover, the statement in the DaSA that development west of the A269 would unnecessarily erode the countryside was made in the context of meeting the housing requirement in the CS. Circumstances have since changed significantly due to LHN. As the appellant's put it, the spatial strategy in respect of housing supply has failed, is failing and will fail in the future. Thus, a rigorous application of the spatial strategy would continue to frustrate attempts to remedy the housing supply deficit. The conflict with the Council's spatial strategy needs to be considered in this context.
77. That said, the settlement boundary is logically drawn given the harm that would occur, and I have not been directed to anything in the Framework to suggest settlement boundaries should not be used. In fact, Paragraph 20 provides for a local approach. As a result, I attached moderate weight to the conflict with the spatial strategy in the development plan.
78. Added to this I have concluded that the appeal scheme would not, overall, provide genuine travel choice in large part due to the poor accessibility on foot or by bus. As a result, there is a conflict with Paragraph 105 of the Framework. However, there would be moderate harm flowing from this because the impact is offset by the ability to cycle, use local rail services and access DDRT and a car club, at least in the short term. The moderate harm, and the conflict with national and development plan policies flowing from this, attracts moderate weight.
79. The proposal would also result in harm to the character and appearance of the area contrary to Paragraph 130c) of the Framework. This also needs to be considered in the context that Paragraph 174 of the Framework states that decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside. I fail to see how the appeal scheme would do this, as the intrinsic character and beauty of the appeal site as a collection of fields of moderate landscape value cannot be acknowledged, contributed to or enhanced by constructing up to 210 homes upon it. Nevertheless, for the reasons already set out, the harm to the landscape would be of moderate magnitude. Moreover, when applying Paragraph 174 of the Framework there is no explicit protective policy aim in this instance because the site is not a 'valued' landscape. As a result, the harm, and the conflict with national and development plan policies flowing from this, also attracts moderate weight against the proposal.
80. Weighed against this the appeal scheme would deliver housing that would contribute to addressing the acute supply shortfall. The delivery of up to 210 homes in the next five-year period could be a very significant benefit to housing land supply. Especially so when considering the appeal site adjoins the largest settlement in the district and is in the small portion of Rother that is

outside the High Weald Area of Outstanding Natural Beauty and/or nationally and internationally designated nature sites.

81. However, Mr Lee explained in his evidence that only the majority³⁰ of the approved homes would be delivered in the next five-year period. This is because the appellant is a land promoter rather than a developer and therefore has no real control over delivery. This could be the case even with conditions in place to secure a commencement in three years, because housebuilders tend to complete around 40 homes a year. The site delivery table in Mr Lee's evidence provides some reassurance that commencement would occur within three years, but this may not amount to the clear evidence required for the site to be considered deliverable. It nevertheless explains that the average time taken from outline permission to commencement is 24 months. Mr Lee's suggestion of 18 months to commencement therefore seems optimistic, especially in the current economic climate.
82. That said, Rother is a high value area and there is nothing to suggest there would be any unusual challenges in bringing the appeal site forward promptly. Reference has been made to a Section 52 agreement but correspondence³¹ from a Director at the Council indicates that it would not unreasonably adhere to the covenant if planning permission was granted. Mr Lee also explained that the appellant does not have difficulty identifying developers to take their sites forward.
83. Nevertheless, perhaps a third to half of the homes could be delivered in the late 2020s (and perhaps into 2030 if there is slippage in the delivery timeframe) if commencement occurs in 24 months and the build out proceeds at around 40 homes a year. As a result, a significant proportion of the new homes may start to be delivered when the housing supply position is becoming healthier due to the adoption of a new Local Plan. As a result, the contribution to the housing supply position is a matter of significant, rather than very significant weight in favour of the scheme.
84. The appeal scheme would deliver 30% affordable housing (up to 63 homes). This is a policy requirement but is a benefit nonetheless. This matter needs to be considered in the context that delivery is failing to keep up with need, meaning the backlog is getting worse. This is demonstrated in the Affordable Housing Needs Statement at Appendix 1 of Mr Lee's proof. Some of the pertinent points in this document, undisputed by the Council, are that house prices are 13.82 times the medium income in Rother³², that a high number of households cannot afford to rent or buy in the district, and that the need has likely increased from 97 homes per annum between 2011-2028 to 295 homes per annum between 2019-39. The provision of up to 63 affordable homes would therefore be a very significant benefit.
85. In addition, there would be some short-term benefits to the construction industry and further economic benefits from the spend of future occupants as demonstrated in the appellant's Economic Assessment³³, which is also unchallenged by the Council. This is a matter of moderate weight in favour of the scheme. The Ecological Appraisal³⁴ submitted with the application also

³⁰ I take this to mean more than half

³¹ ID13

³² This is higher than England, the Southeast and East Sussex

³³ CD1.05

³⁴ CD1.09 and Appendix 6 of Mr Lee's proof

demonstrates that there would be the potential for some, albeit not extensive, biodiversity enhancements and a net gain. This is a point of moderate weight given the current pressing need to improve biodiversity.

86. The appeal scheme would have to provide a policy compliant level of public open space. Although the extent of GI could be greater, at around 39% of the site, if a scheme along the lines of that in the Development Scheme ultimately comes forward. As a result, there need be no conflict with Policy DEN4 of the DaSA. The provision of a policy compliant level of public open space would be a benefit as it would be available for existing and future residents to use. However, given the proximity of Broad Oak Park, and the lack of interconnection between the site and this area, the proposed open space is likely to be predominately used by future residents of the appeal scheme. It is therefore a limited benefit. Similarly, the ability of existing residents to use the DDRT and car club funded as part of the scheme would be a minor benefit.
87. In conclusion, the appeal scheme would have high order benefits that would deliver positively against several policies in the Framework³⁵. Most notably the aim to significantly boost the supply of housing, including delivery of affordable housing. Against this there would be moderate harm occurring in the context of others³⁶, as well as the policies of the development plan. Overall, the adverse impacts of the appeal scheme would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Accordingly, on this occasion other considerations indicate the decision should be taken otherwise than in accordance with the development plan.

Appropriate Assessment

88. The proximity of the appeal site to Dungeness, Romney Marsh and Rye Bay Special Protection Area (SPA) and Hastings Cliffs Special Area of Conservation (SAC) means the appeal scheme could conceivably affect their integrity. However, in screening the development there is no impact pathway to Hastings Cliffs SAC. The impact on the water quality of the SPA would be insignificant as sewerage effluent can be treated within capacity limits at Hastings and Bexhill wastewater treatment plant. Moreover, the appeal site is outside the strategy area where recreational disturbance needs to be mitigated. Thus, there would be no likely significant effect, alone or in combination, on the SPA or Hastings Cliff SAC. This is a conclusion supported by Natural England.
89. The appeal site is located in the Pevensey Levels Hydrological Catchment Area and consequently there is an impact pathway from the appeal scheme to the Pevensey Levels SAC and Ramsar site. This is because the integrity of the SAC depends on being supplied with fresh water that is sufficiently free of pollutants. The construction and operation of the appeal scheme could result in pollutants and non-native plants entering surface water and flowing into the SAC. This could have a significant adverse effect alone or in combination with other plans and projects. Hence, an appropriate assessment, in accordance with the Habitat Regulations³⁷, is required to consider the implications of the proposal on the Pevensey Levels in view of its conservation objectives.

³⁵ Including Paragraphs 60, 63, 74, 81 and 98

³⁶ Including Paragraphs 20, 104, 105 and 110, 130 and 174

³⁷ See Regulation 63 Conservation of Habitats and Species Regulations 2017 (as amended)

90. The Pevensey Levels was designated as a SAC and Ramsar site on account of its importance to several qualifying features including freshwater snails, breeding and over-wintering birds and other rare aquatic plants and invertebrates. The conservation objectives of these sites can be summarised as ensuring their integrity, by maintaining or restoring the habitats, supporting processes and populations of the qualifying features. As identified above, polluted water and non-native plant species entering the Pevensey Levels can harm its integrity and undermine the conservation objectives.
91. The vulnerability of the Pevensey Levels to new development within its hydrological catchment area is recognised within the CS and DaSA. Policy SRM2 of the CS requires Sustainable Drainage Schemes (SuDS) for all developments that would create impermeable surfaces in the catchment area. Policy DEN5 of the DaSA states that within the Pevensey Levels Hydrological Catchment Area, SuDS should be designed to incorporate at least two stages of suitable treatment.
92. The appeal scheme is submitted in outline and therefore a detailed scheme for managing surface water run-off is not before me. Nevertheless, an Outline Surface Water Drainage Strategy is provided and demonstrates that surface water management can be delivered at the appeal site in a policy compliant manner to include two stages of treatment to intercept and treat surface water run-off. This would be in the form of boundary swales and attenuation basins at a suitable capacity above ground water levels. Other technical solutions have been proposed if this would not be possible following ground water monitoring. Permeable paving would also be used on private roads, shared surfaces and driveways with the water cleaned and channelled to basins.
93. Conditions and the planning obligation would ensure the provision of a suitable drainage scheme during construction and operation with subsequent maintenance and management. Further conditions would prevent non-native planting, management of landscaped areas and ensure construction is undertaken in a way that follows specific pollution prevention and control measures. Following the resolution of some questions, Natural England has confirmed that it is content with this approach as it provides the requisite certainty that a likely significant effect can be mitigated. This is unsurprising, as they are tried and tested measures that have also been used to mitigate the likely significant effects from site allocations in the DaSA. Thus, the proposal would not adversely affect the integrity of the Pevensey Levels, the condition of which need not deteriorate because of the proposal.

Planning Obligation and Conditions

94. *Open Space* – To support health and wellbeing, Policy CO3 of the CS requires the provision of open space, sport and recreation facilities to ensure adopted standards in the Rother Open Space, Sport and Recreation Study are maintained. To this end, the appellant is proposing to provide public open space as part of the proposal in line with the standards. The Site Development plan demonstrates this would be possible. The provision, maintenance, and management of open space would be secured through the planning obligation.
95. *Affordable Housing* – Policies LHN2 of the CS and DHG1 of the DaSA require 30% affordable housing on-site on schemes of 10 or more homes. Accordingly, the appellant is seeking to provide this as the need is not disputed. This provision would be secured through the planning obligation. The appeal

scheme would also deliver 25% of the affordable housing as first homes, as required by national policy³⁸.

96. *Self and Custom Housing* – Policy DHG6 of the DaSA requires schemes proposing 20 or more dwellings to provide 5-10% of the total number of dwellings as serviced plots for self and custom housebuilders. Accordingly, the appellant is seeking to provide this as the need is not disputed. This provision would be secured through the planning obligation.
97. *Sustainable drainage system* – As explained earlier, Policies SRM2 of the CS and Policy DEN5 of the DaSA require suitable SuDS systems at sites within the Pevensey Levels Hydrological Catchment Area. The management of the SuDS system would be secured through the planning obligation.
98. *Highway works and sustainable transport contribution* – This includes £300,000 towards DDRT and £5k towards progressing a traffic regulation order to limit parking in Fryatts Way if required. Several highway works would be undertaken to improve pedestrian permeability, including the provision of dropped kerbs and tactile paving. These measures are all required by the LHA to offset the accessibility and highway impacts of the proposal and flow from Policies TR2 and 3 of the CS. Policy TR3 also requires residential developments of more than 50 homes to produce, and be subject to, a Travel Plan. In addition, the planning obligation would require the developer to use reasonable endeavours to establish a car club for a minimum of three years. There is no specific policy reference to this in the development plan, but it is part of a package of sustainable transport measures advocated by the appellant. In this respect it is a response to the requirements of Policy TR3. These measures would be secured in the planning obligation. They would not fully mitigate the sustainable transport impacts of the scheme but would assist in reducing them to the point that the harm would be moderate.
99. The obligations identified above are necessary to make the development acceptable when applying the requirements of the development plan and are directly, fairly and reasonably related in scale and kind to the proposal and its impacts. As a result, I can take them into account.
100. The planning obligation also seeks to provide a play area, but there is no policy basis for this, and it is not a determinative benefit. As a result, the Council has suggested that this obligation is unnecessary, and I share this view. Similarly, there is no explicit policy basis for an employment and skills plan and monitoring contribution. The Council has referred to Policy LHN1 of the CS, but this is concerned with achieving a mixed and balanced community and makes no reference to the need for employment and skills plans. The Council has not referred me to any other substantive evidence to justify what it is seeking. As a result, these are unnecessary obligations that I have not taken into account.
101. Turning to conditions. I have had regard to the advice in the Planning Practice Guide and the conditions suggested³⁹. In addition to standard commencement conditions, amended to secure commencement within three years (Conditions 2 and 3), it is necessary to define the reserved matters and require their approval (1). A drawings condition (4) relating to the position and design of the external access is necessary in the interests of certainty and highway safety.

³⁸ Written Ministerial Statement of the 24 May 2021

³⁹ ID32

As are conditions requiring the access to be implemented (18) and for visibility splays to be provided and maintained (19). To protect the strategic highway network, it is necessary to impose the conditions recommended by NH securing highway works (25, 26 and 27).

102. Landscaping and layout are reserved matters, so it is unnecessary to secure details of the location, extent and arrangement of GI. This would be controlled through the reserved matters and with reference to Policy DEN4 of the DaSA, Policy CO3 of the CS and the standards in the Rother Open Space, Sport and Recreation Study. However, it is necessary to secure at this stage that non-native planting is not proposed (5). This is due to the findings of the appropriate assessment. It is also necessary to secure tree protection (14) in the interests of the character and appearance of the area and wildlife.
103. To protect health and living conditions in accordance with Policy DEN7 of the DaSA, it is necessary to secure details of construction management (10 and 11), foul drainage (15) and for anticipated and unknown land contamination to be addressed (7 and 8). This is especially so as the appeal site may have been, in part, used in the past for landfill, or is close to a historic landfill site. For similar reasons, it is necessary to secure an air quality assessment/mitigation (9) having regard to relevant guidance⁴⁰ and to implement measures to mitigate the impact of vehicle noise on the occupants of 11 and 15 Fryatts Way (24) and limitations to construction hours (13).
104. In the interests of heritage, it is necessary to require a scheme of archaeological investigation (6) given the potential for medieval deposits. In the interests of wildlife and flood protection, including the mitigation of likely significant effects on the Pevensey Levels, it is necessary to secure a Construction Environment Management Plan for biodiversity (12) and for surface water drainage details to be provided (16) with evidence of implementation secured prior to occupation (17). For similar reasons, and in the interests of the character and appearance of the area, it is necessary to secure details of external lighting (20). To protect and enhance biodiversity and again in the interests of the character and appearance of the area, it is necessary to secure details in the form of a Landscape and Ecological Management Plan (21), biodiversity enhancements (22) and maintenance and management schedules for communal areas (23).

Conclusion

105. The appeal scheme would conflict with the development plan taken as a whole. However, in this instance material considerations, namely the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan. Accordingly, the appeal has succeeded.

Graham Chamberlain
INSPECTOR

⁴⁰ The Air Quality and Emissions Mitigation Guidance for Sussex (2021)

APPEARANCES

FOR THE APPELLANT:

Mr Martin Carter of Counsel
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He called:

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Mr Luke Regan, MSc, MCIHT, CMILT
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Ms Claire Caudwell
CSA Environmental

FOR THE LOCAL PLANNING AUTHORITY:

Mr Yasser Vanderman of Counsel
instructed by Mr Lyall Jasprett on behalf of Rother District Council

He called:

Mr. Peter Dijkhuis BLArch MCPUD TRP(SA) MRTPI
Town Planner and Landscape Architect, Consultant on Contract, on behalf of Rother District Council,

Mr. Nick Richardson BA(Hons) MA CTPP CGeog FCILT FCIHT FRGS MTPS
Technical Principal, Mott MacDonald, on behalf of East Sussex County Council

Ms. Clare Gibbons BA, Dip TRP, MRTPI
Development Management Team Leader, Rother District Council

Mr Lyall Jasprett
Solicitor on behalf of Rother District Council

INQUIRY DOCUMENTS

ID01	Map Route for Inspector's site visit
ID02	CLG Strategic Housing Land Availability Assessments - Practice Guidance 2007
ID03	East Sussex Transport Hub Senior Technical Officer Email 12th September 2022
ID04	Rother District Council Local Plan Core Strategy Adopted 29th September 2014
ID05	Rother District Council Housing Land Supply and Housing Trajectory April 2022 position statement - published October 2022
ID06	Statement of Common Ground on Highways and Transport Matters between the Appellant and National Highways
ID07	Statement of Common Ground between the Appellant and Rother District Council - Planning Matters
ID08	Draft Planning Conditions
ID09	Rebuttal Proof of Evidence of Luke David Regan MSc MCIHT CMILT on Highways and Transportation Matters
ID10	Rother District Council Policy Extracts DEN1, DEN2, DEN5, DHG1, DHG6, EN1, EN3, EN7, IM2, RA2, SRM1, TR2, TR3,
ID11	s52 Agreement dated 22 July 1976
ID12	s52 Plan relating to ID11
ID13	Email from Ellerslie Area Residents Association dated 1st November 2021 about s52 Agreement (ID11 and ID12) with quote from Ben Hook Rother Director of Place and Climate Change
ID14	Summary Proof of Evidence of Peter Dijkhuis
ID15	Highways Statement of Common Ground (ESCC and Appellant)
ID16	ESCC Highways Consultee Response to Application RR/2020/565 - Land at 11 Ellerslie Lane, Moleynes Mead, Bexhill TN39 4LJ
ID17	Rother District Council Super Output Area + Red Line Appeal Site Boundary
ID18	Land off Bournebridge Hill, Halstead CO9 1GE 16/11/2022 (APP/Z1510/W/22/3299178)
ID19	Appellant's opening
ID20	Appellant's Appearance List
ID21	LPA's Opening Statement

ID22	Core Strategy
ID23	Development and Site Allocations Local Plan
ID24	Comparison of (direct) Rail Services at Collington and Bexhill
ID25	Land East of Newgate Lane East, Fareham, Hampshire, PO14 1AZ 23/11/2022 (APP/A1720/W/22/3299739)
ID26	Draft Planning Conditions – Response to Inspector’s Comments
ID27	s106 Agreement with manuscript amendment
ID28	Clarification from Mr Richardson regarding Bexhill and Collington stations
ID29	LPA’s Closings
ID30	Appellant’s Closings
ID31	Extracts from Policy CO3
ID32	Proposed Conditions Following Inquiry Session - Clean Version
ID33	Executive Summary of Rother's Open Space, Sport and Recreation Study
ID34	Final Planning Obligation dated 16 December 2022

SCHEDULE OF PLANNING CONDITIONS

1. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority prior to the commencement of development and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
3. The development hereby permitted shall commence not later than 1 years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan (drawing number 9309-L-01 (G)) and Site Access Design (drawing number A115791-27-C-P001-01).
5. The landscaping details to be submitted pursuant to Condition 1 shall not include any non-native or invasive/alien plant species listed at Schedule 9 of the Wildlife and Countryside Act 1981 and specifically those which may colonise watercourses.
6. The Reserved Matters application shall be accompanied by a report containing the result of a programme of archaeological works that have been undertaken in accordance with a Written Scheme of Investigation that has first been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until provision is made for analysis, publication and dissemination of results, and archive deposition, as appropriate, has been secured in line with the approved programme of archaeological works.
7. Prior to the commencement of development, a scheme to deal with contamination of land, the presence of ground gas and potential contamination of controlled waters shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following measures, unless the Local Planning Authority dispenses with any such requirement specifically in writing:
 - a) A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the result of the analysis. The report shall include a detailed quantitative human health and environmental risk assessment;
 - b) A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined;
 - c) A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with

the necessary documentation detailing what waste materials have been removed from the site.

8. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development [or relevant phase of development] is resumed or continued.
9. Prior to the commencement of development, an air quality assessment, inclusive of any necessary mitigation measures shall be carried out by a suitably qualified person and shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
10. Prior to the commencement of development, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to in full throughout the entire construction period. The Plan shall include details of the following:
 - a) the anticipated number, frequency and types of vehicles to be used during construction;
 - b) the method of access to and egress from the site;
 - c) the parking of vehicles by site operatives and visitors;
 - d) the loading and unloading of plant, materials and waste;
 - e) the storage of plant and materials used in construction of the development;
 - f) the erection and maintenance of security hoarding;
 - g) the provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway; and
 - h) details of public engagement both prior to and during construction work.
11. Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following details:
 - a) Results of a full site investigation that has been carried out to identify any potential sources of contamination, (including the declaration of the source of any fill material and evidence that it is free of contaminants) and proposals for appropriate safeguards to ensure that no contamination is transferred during or as a result of the construction works, including to the watercourse;
 - b) Details of the source of any inert fill material for land raising including evidence to demonstrate that it is free from contaminants that could potentially enter the Pevensey Levels;

- c) Measures necessary to prevent silt entering the SAC/Ramsar and avoid water quality impacts on the Pevensey Levels during the construction phase that are set out in Section 2 of the Local Planning Authority's 'Habitat Regulation Assessment: Screening Matrix and Appropriate Assessment Statement' (Appendix H to Document CSA/CSA/4648/01_ Revision C), including all site staff to understand the sensitivity of hydrology on the site, any fuel spills to be reported to the site manager and acted on immediately, loose construction material (e.g. sediments, cements and other potential pollutants) not to be stored adjacent to the watercourse and a site wide intercept for silt and other potential pollutants;
- d) Detailed measures to manage flood risk, both on and off the site, during the construction phase;
- e) Risk assessment of potentially damaging construction activities including any associated mitigation measures;
- f) General noise and dust control measures;
- g) Complaints and public consultation procedure.

Thereafter the construction of the development shall be carried out strictly in accordance with the approved CEMP.

12. Prior to the commencement of development a Construction Environmental Management Plan for Biodiversity (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP: Biodiversity shall include the following:

- a) risk assessment of potentially damaging construction activities;
- b) identification of 'biodiversity protection zones';
- c) practical measures (both physical measures and sensitive working practices to avoid or reduce impacts during construction that may be provided as a set of method statements);
- d) the location and timing of sensitive works to avoid harm to biodiversity features;
- e) the times during construction when specialist ecologists need to be present on site to oversee works;
- f) responsible persons and lines of communication;
- g) the role and responsibilities on site of an ecological clerk of work (ECoW) or similarly competent person; and
- h) use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

13. Construction activities associated with the development hereby permitted shall not be carried out other than between the hours of 08.00 and 18:00 hours on Mondays to Fridays inclusive and 08:00 and 13:00 on Saturdays and not at any time on Sundays, Bank and Public Holidays.
14. Prior to the commencement of development details of the protection of existing trees on the site and adjacent to it to be retained shall be submitted to and approved in writing by the Local Planning Authority. The details shall identify existing trees and hedgerows on and adjacent to the site that are to be retained, together with a scheme for protection, which shall include

locations for protective fencing, ground protection and no dig surface construction methods. The approved scheme shall be implemented prior to the commencement of development and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority:

- a) No fire shall be lit within 10m from the outside of the crown spread of any tree which is to be retained;
 - b) No equipment, machinery or structure shall be attached to or supported by a retained tree;
 - c) No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area.
15. The Reserved Matters applications shall be accompanied by a drainage strategy and implementation timetable detailing the proposed means of foul water disposal to the main sewer network for approval in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved scheme and none of the dwellings shall be occupied until the drainage works to serve the development have been provided. The scheme shall thereafter be retained as approved for the lifetime of the development.
16. The Reserved Matters applications shall be accompanied by a detailed surface water drainage strategy including the timing of its implementation for the approval in writing of the Local Planning Authority. The surface water drainage system shall incorporate the following:
- a) Detailed drawings and hydraulic calculations. The hydraulic calculations shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water flows can be limited to the mean annual runoff, Q_{bar} for all rainfall events including those with a 1 in 100 (plus climate change) annual probability of occurrence. An allowance for urban creep (recommended 10% increase in impermeable area) shall be incorporated within the calculations;
 - b) The details of the outfalls of the proposed surface water attenuation structures and how they connect into the watercourses shall be submitted as part of a detailed design including cross sections and invert levels;
 - c) The detailed design of the surface water attenuation structures shall be informed by findings of groundwater monitoring between autumn and spring. The design shall leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. In the event this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system shall be provided;

- d) Details of the measures proposed to manage exceedance flows shall be submitted to the Local Planning Authority. This shall also include details of how the existing overland surface water flows have been retained;
 - e) Details to prevent the discharge of surface water from the proposed site onto public highway and similarly to prevent the discharge of surface water from the highway onto the site;
 - f) Evidence that the existing watercourse and culverts on site have been retained within a communally maintained space.
17. Prior to occupation of the development, evidence (including as built drawings and photographs) shall be submitted showing that the drainage system has been constructed in accordance with the final approved drainage design.
18. The development shall not be occupied until details of the layout of the new access as shown on drawing number A115791-27-C-P001-01 (Site Access Design) and the specification for the construction of the access have been submitted to and approved in writing by the Local Planning Authority and the development shall not be occupied until the construction of the access has been completed in accordance with the approved specification.
19. The access shall not be used until visibility splays of 2.4m x 40m are provided in each direction. The splays are to be cleared of all obstructions exceeding 1 metre in height and kept clear thereafter.
20. Prior to the commencement of development, a detailed outdoor lighting scheme shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall (i) identify those areas/features on site that are particularly sensitive for bats and badgers (including breeding sites, resting places and important routes used to access key areas of their territory and (ii) include details of the type of lights, the orientation/angle of the luminaries, the spacing and height of lighting columns, the extent/levels of illumination over the site and on adjacent land and measures to contain light within the curtilage of the site. The development shall be implemented and thereafter retained in accordance with the approved scheme.
21. Prior to the first occupation of the development, a Landscape and Ecological Management Plan (LEMP) for all landscaped areas (except for private domestic gardens) shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:
- a) description and evaluation of features to be managed;
 - b) ecological trends and constraints on site that might influence management;
 - c) aims and objectives of management;
 - d) appropriate management options for achieving aims and objectives;
 - e) prescriptions for management actions, together with a plan of management compartments;
 - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) details of the body or organisation responsible for implementation of the plan;
 - h) on-going monitoring and remedial measures; and

- i) how contingencies and/or remedial action will be identified, agreed and implemented in the event where the results from monitoring show that conservation aims and objectives of the LEMP are not being met so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The LEMP shall thereafter be implemented in accordance with the approved details.

- 22. Prior to the commencement of development, details of a scheme for the protection and enhancement of biodiversity, together with details of the timing/phasing of the respective elements forming the scheme and proposed management arrangements, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented prior to the occupation of the final dwelling and retained as such thereafter.
- 23. Prior to the occupation of the development, a landscape management plan, including management responsibilities and maintenance schedules for the communal areas and maintenance schedules for the communal hard and soft landscape/open space areas, including any street furniture and minor artefacts therein, shall be submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved.
- 24. A 1.8 m high structure to mitigate noise from the access road shall be installed at the boundaries with Nos 11 and 15 Fryatts Way, the position as described in Miller Goodall report 102252-3_Technical Note, 04/11/22. Details of the 1.8 m high structure and the 20mph speed limit along the access road shall be submitted to and approved in writing by the Local Planning Authority and the approved details shall be implemented prior to the operation of the access road.
- 25. No more than 50% of the dwellings shall be occupied until the scheme of works at Little Common (A259) roundabout shown on (Ardent Consulting Engineers) drawing 180300-033 Revision F has been fully implemented and opened to all traffic.
- 26. No more than 50% of the dwellings shall be occupied until the scheme of works at the Bexhill Leisure Centre (A269)/King Offa Way (A259) junction shown on (Prime Transport Planning) drawing P18063-004 has been fully implemented and opened to all traffic.
- 27. No more than 50% of the dwellings shall be occupied until the junction improvement works at the Little Common Road (A259)/Broadoak Lane junction shown on (Tera Tech) drawing 7840A115791-TTE-00-XX-PL-D-002 Revision P01 have been fully implemented and opened to all traffic.

End of Schedule