STATEMENT OF CASE

Planning appeal against Wealden District Council's non-determination of planning application WD/2017/0340/F for the *'Siting of three temporary agricultural workers' dwellings for a period of 5 years together with an agricultural barn with PV array and alterations to existing highway access to provide three affordable smallholdings to new entrants to ecological agriculture.'*

on

Field south of Copyhold Cottages, Arlington Hailsham, BN26 6RU

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Version: 2

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	Name	Date
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Brett Spiller is a chartered town planner with over 19 years practical experience. He has worked across the consultancy, corporate and public sectors. He led Purbeck District Council's Planning Policy Team, before joining a national waste management and renewable energy company to eventualy head the Planning Property and Permitting Team. He founded Chapman Lily Planning in 2015. Throughout his career he has a keen interest in low impact development. Brett has extensive experience of EIA development and HRA issues; dealing with a number of complex projects in and around lowland heaths.

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1.0 INTRODUCTION

1.1 This appeal statement has been prepared on behalf of the Ecological Land Co-operative ["the Appellant"]. On behalf of the Appellant, Chapman Lily Planning has lodged an appeal against Wealden District Council's ["the LPA"] non-determination of planning application ref: WD/2017/0340/F). The application sought permission for the *'Siting of three temporary agricultural workers' dwellings for a period of 5 years together with an agricultural barn with PV array and alterations to existing highway access to provide three affordable smallholdings to new entrants to ecological agriculture'* [the "Proposed Development"] on a field to the south of Copyhold Cottages, formerly part of Wilbees Farm, Arlington, Hailsham, BN26 6RU ["the Appeal Site"].

1.2 The Appellant is a social enterprise and not-for profit community benefit society set up in 2009 to address the lack of opportunities for new entrants to ecological farming and horticulture. The Appellant provides an affordable and supported route into ecological horticulture and small scale mixed farming by providing new entrants to farming with: plots of land; off-grid services; a barn; permission to site a temporary dwelling; vehicle access and hardstanding and ongoing support for their new farm businesses, all well below market rates. The Appellant also monitors the small holdings against a set of objectives, reporting annually, on (among other things) the financial performance of each business, the impact of the development on landscape quality and biodiversity.

1.3 The Appellant has already established a much-lauded cluster of three affordable smallholdings at Greenham Reach in Mid Devon district.[1] This has proven to be a highly successful scheme and, subject to obtaining planning permission, the Appellant would be able to bring its operational experience to bear in ensuring that the three small holdings proposed at Arlington are truly sustainable.



[1] Granted on appeal ref: APP/Y1138/A/12/2181808 – 821 - 807 dated 4th April 2013

1.4 This Statement of Case responds positively to the guidance set out in Annexe J of the Procedural Guide – Planning Appeals in England document dated August 2016, particularly that relating to the information required to support proposals relating to Agricultural Workers Dwellings.

2.0 THE APPEAL SITE AND ITS SURROUNDINGS

2.1 The Appeal Site is located to the south of the village of Arlington. It measures c.0.5ha and enjoys frontage along Chilver Bridge Road (part of the national cycle route). It is level and forms part of a larger 7.5ha holding (formerly part of Wilbees Farm) owned by ELC.

2.2 The wider holding is crossed by a public footpath, which connects through to the heart of the village. The northern boundary of the wider holding is delineated by a post and wire fence beyond which lie small field and paddocks. The eastern boundary is delineated by a mature woodland copse, the southern boundary by a mature hedgerow beyond which lies a solar park and the western boundary a mature hedgerow interspersed with mature trees.

2.3 Section 5.7 of the Wealden Landscape and Settlement Character Assessment 2014 prepared by Chris Blandford Associates describes the immediate area as falling within the Eastern Low Weald (15) County Landscape Character Area and at a more localised level: E3: Arlington and of moderate landscape sensitivity. '*The fieldscapes around Arlington are predominantly comprised of ancient field patterns. Abutting the settlement edge to the south is an extensive tract of regular piecemeal enclosure, and further to the northwest and south are areas of consolidated strip fields, with a large area of isolated enclosure between the western settlement edge and the reservoir. …'* Unsurprisingly the landscape is considered to make a major contribution to the setting of the village.

2.4 Photographs of the Appeal Site and surrounding area are attached at appendix [A].

3.0 RELEVANT PLANNING HISTORY

3.1 The Appeal Site is in agricultural use. There is little relevant history pertaining to the application site itself, albeit a small part of the wider holding was encompassed within the original planning application for the neighbouring 9.3ha solar park (including the installation of solar panels, transfer housings security fencing, cameras and other associated works), granted under planning permission WD/20104/1838/MEA on 14th November 2014. For ease of reference a copy of the decision notice and approved site plan form appendix [B] of this statement. It is noteworthy that the officer report states that the proposed solar park: *'… would not be harmful to the setting of the South Downs National Park. The site itself is not protected by any landscape designation, falling within the wider Low Weald character area covered by Saved Local Plan EN8 which is not a high status countryside designation that could draw support from the NPPF.'* The solar park has been fully built out, and subsequent consents secured for associated infrastructure – namely the grid connection cable and drainage scheme.

3.2 It is evident that the planning permission obtain by ELC on appeal for Greenham Reach in Mid-Devon is also relevant. For ease of reference, the appeal decision ref: APP/Y1138/A/12/2181808 – 821 - 807 dated 4th April 2013 is attached as appendix [C]. Whilst it is recognised that each application must be determined on its merits there are clear parallels between the proposals at Greenham Reach and Arlington.

3.3 The Appellant cited an extensive body of appeal decisions and case law within the application documents. For the sake of brevity and in the absence of a decision by the LPA it is not intended to recite them in full within this statement, unless relevant to the key issues set out in section 7 of this Statement.

4.0 THE PROPOSED DEVELOPMENT

4.1 The proposed development comprises the *'Siting of three temporary agricultural workers' dwellings for a period of 5 years together with an agricultural barn with PV*

array and alterations to existing highway access to provide three affordable smallholdings to new entrants to ecological agriculture'. The proposal also includes significant tree planting within the wider holding.

4.2 The physical aspects of the proposal are described in detail within the Design and Access Statement accompanying the planning application. For the sake of brevity, I have not replicated the same level of detail within this statement. However, I would highlight that it is a matter of common ground that the dwellings sought would fall under the Caravan Act 1968 and as such full details are not required at this stage.

4.3 As explained within the planning supporting statement a temporary consent is sought so that the LPA can garner comfort that the small holdings are viable and operating in a sustainable manner, ahead of contemplating a permanent consent. A key tenet of the proposals is the security brought be the ELC's ongoing management that will see the careful selection of tenants and programme of ongoing monitoring and reporting as set out in the proposed management plan forming appendix 4 of the Planning Policy Statement accompanying the original application.

4.2 The proposal evolved through an iterative process informed by:

- Site opportunities and constraints.
- The operational needs of prospective ecological smallholdings.
- The ELC's ideological principles, notably the delivery of a low impact development.
- Extensive community engagement – as outlined in section 5 of the design and access statement accompanying the original application. This included hosting a community meeting on 26th September 2016 and latterly engaging with Arlington Parish Council and Ward Councillors. Comments and suggestions were actively encouraged and number of changes were made to the application submission as a result of the feedback received. Some of the changes are encapsulated in a letter from the ELC to Parish Council dated 6th December 2016 – for ease of reference this forms appendix [D] of this statement.

- The findings of the technical assessments which accompanied the planning application.
- Preapplication discussions with the LPA – including a request for pre-application advice and participation in a meeting on 16th November 2016, culminating in written advice dated 12th December 2016 (attached as appendix [E]) followed by a presentation to the Head of Planning on 18th January 2017.
- Viability – ensuring that the proposals remain affordable and deliverable.

4.3 The planning application was registered by the LPA on 27th March 2017. It was accompanied by a comprehensive suite of supporting information, as follows:

- Covering letter
- Completed Application Form and Ownership Certificates
- Plans and drawings:
    - Site location plan LP01 rev (a) at a scale of 1:2,500@A4
    - Site location and proposed block plan L-001 rev (a) at a scale of 1:10,000/ 1:1,000@A1
    - Proposed barn floor plans and elevations L-002 at a scale of 1:100@A2
    - Proposed new road junction and visibility splay L-003 at a scale of 1:100@A3
- Planning Statement
    - Appendix 1: Greenham Reach decision
    - Appendix 2: Example of annual monitoring report for Greenham Reach
    - Appendix 3: Draft unilateral undertaking
    - Appendix 4: Draft management Plan
    - Appendix 5: Proposed conditions
    - Appendix 6: Letters of support
    - Appendix 7: Tree and hedge planting proposals
    - Appendix 8: ELC publication 'Small is successful'
    - Appendix 9: ELC Business plan
    - Appendix10: Table of Planning decisions for farm / horticultural businesses on less than 10 acres

    - Appendix 11 Illustrative smallholder functional need
    - Appendix 12 Details of proposed photovoltaic panels
- Design and Access Statement
- Ecological Assessment prepared by Dr Tingle and L Holloway
- Effect of the proposed scheme of the Ashdown Forest SAC
- Completed CIL form.

4.4 The planning application attracted wide ranging interest and a substantial number of consultation responses from organisations sympathetic to the Appellants cause. Arlington Parish Council and a number of local residents did respond. Regrettably Arlington Parish Council felt unable to support the application, with local residents broadly split expressing support and objection in equal measure. A number of statutory / technical consultees also responded.

4.5 In response to concerns raised during the determination the ELC collated evidence on the need for small holdings in East Sussex titled 'Addressing the Crisis for New Entrants to Farming in East Sussex', commissioned further viability evidence (business plans) relating specifically to the proposal and supported by further contextual information in the form of 'A Matter of Scale' prepared by Rebecca Laughton of the Landworkers Alliance', as well as the submission of an amended site plan L-001 rev (b) to reduce the overall quantum of hard standing. These were duly submitted to the LPA on 20th November 2017 and form part of the information underpinning the evidence base.

5.0 RELEVANT PLANNING POLICY

5.1 National Policy

5.1.1 The National Planning Policy Framework ["NPPF"] sets out that the purpose of the planning system is to contribute to the achievement of sustainable development[2]. It

2 National Planning Policy Framework, Paragraph 6

is supplemented by Ministerial Statements and Planning Practice Guidance, designed to aid interpretation.

5.1.2 There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

an economic role – *contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*

a social role – *supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and,*

an environmental role – *contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.*[3]

5.1.3 At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision-making this means:

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
    - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*

3 National Planning Policy Framework, Paragraph 7

- *specific policies in the Framework indicate development should be restricted.*[4]

5.1.4 The NPPF sets out 12 core planning principles. Those most relevant to this proposal are, that planning should:

- *not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;*
- *proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;*
- *always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;*
- *take account of the different roles and character of different areas, … … , recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;*
- *support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy);*
- *contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;*
- *promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon*

4 National Planning Policy Framework, Paragraph 14

storage, or food production).

5.1.5 Paragraph 28 of the NPPF establishes a positive approach to sustainable new development in rural areas. Paragraph 55 goes on to state:

'To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. … … Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; … …'*

5.2 The Development Plan

5.2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the adopted Development Plan unless material considerations indicate otherwise. In this instance, the Development Plan relevant to this proposal comprises:

- Wealden Core Strategy adopted in February 2013; and
- The saved policies of the Wealden Local Plan adopted in 1998.

5.2.2 Unsurprisingly the Development Plan does not explicitly cater the type of development proposed by the ELC, tending to focus on the diversification of the rural areas and / or established farming / horticultural enterprises. It is the Appellants contention that despite a resurgence in interest in the provenance of our food, the potential for new agricultural enterprises is generally overlooked in planning policy.

5.2.3 Paragraph 2.6 of the Wealden Core Strategy acknowledges that half of the District's population of around 146,000 live outside the towns, at locations in the rural parts of the District and that this dispersed settlement pattern creates particular challenges. The divergence of population and the major towns (many of which lie outside of the District) which offer both employment and services is seen as a key factor in generating car borne trips and contributing to carbon emissions. Paragraph 2.10 goes

on to state: *'the richness and diversity of its biodiversity, landscape and heritage are significant factors in making the District such a desirable place in which to live. This coupled with a limited legacy of brownfield land places additional pressures on the abundant supply of greenfield land. Our Core Strategy needs to ensure that the growth required to meet needs makes the best use of resources without compromising future requirements, and makes an overall positive contribution to the environment where possible. Working in partnership to manage our natural resources is crucial, ensuring that the attractiveness of the resource is not diminished through uncontrolled visitor pressure or development.'*

5.2.4 Much is made of the need to mitigate climate change by seeking to reduce carbon emissions and other greenhouse gases. Paragraph 2.11 states that *'the District's economy is heavily dependent on the service sector as well as, to a lesser extent, the construction industry, agriculture, fishing, energy and water sector. Whilst this has helped generate high levels of employment, workplace salaries in the District are relatively low. There are high levels of out-commuting with higher paid earners to the north of the District accessing jobs outside of the District compared to the south.'*

5.2.5 Paragraph 3.22 affirms that the Council will improve economic prosperity by *'… encouraging the means of securing what is termed "smart" growth (that is economic growth that does not rely on importing labour or require more land) for example by encouraging more flexible working practices, greater use of technology, and more home-working. This may include the development of live/work units on residential or mixed-use sites, subject to safeguarding residential amenities etc; …*

5.2.6 The Core Strategy Vision states: By 2027 Wealden will have successfully accommodated growth to meet future needs whilst protecting and enhancing its essential rural character and high quality environment and promoting the countryside as a resource for recreation and tourism. Its market towns will have been regenerated providing opportunities for residents to access suitable housing, local jobs, services, facilities and recreational opportunities and a number of its rural settlements will have enhanced their sustainability through successful growth

including provision of affordable housing.

5.2.7 A number of the Core Strategy's spatial objectives are relevant most notably:

*'**SPO1** We will help manage countryside resources and assist in the development of the rural economy whilst protecting and enhancing recognised biodiversity and geodiversity attributes, in particular we will protect the internationally important sites of the Pevensey Levels and Ashdown Forest and other designated areas of bio and geodiversity. We will also protect, and will work with others to enhance and manage, the distinctive landscapes of the District, particularly, but not exclusively, those nationally designated.*

***SPO6** In order to improve economic prosperity we will support the growth of the Wealden economy … … . We will help improve the range of employment opportunities available … . There will be an increase in opportunities for people to work close to where they live, to improve access to jobs, help reduce current levels of net out commuting from Wealden and decrease the net out-migration of 15 to 24 year olds. …*

***SP08** We will maintain and where appropriate enhance through the encouragement of growth, the effective network of villages that will continue to meet the day to day needs of our rural communities, and which will accommodate some additional growth where this would be sustainable.*

***SPO9** We will ensure development takes full account (by mitigation or adaption) of the likely forecast impacts of climate change including: minimising the emissions of greenhouse gases; the use of non-renewable energy and natural resources; and by encouragement of construction using sustainable techniques.*

***SPO13** We will encourage the development of high quality, safe and attractive living environments for communities in both towns and villages, while promoting local distinctiveness through good design in all new development. We want future built development to create spaces and places which are sustainable, distinctive and durable places where people will want to live. These will be expected to make a real contribution to addressing climate change issues …'*

5.2.8 Policy WCS12 titled 'biodiversity' is relevant is so far as it:

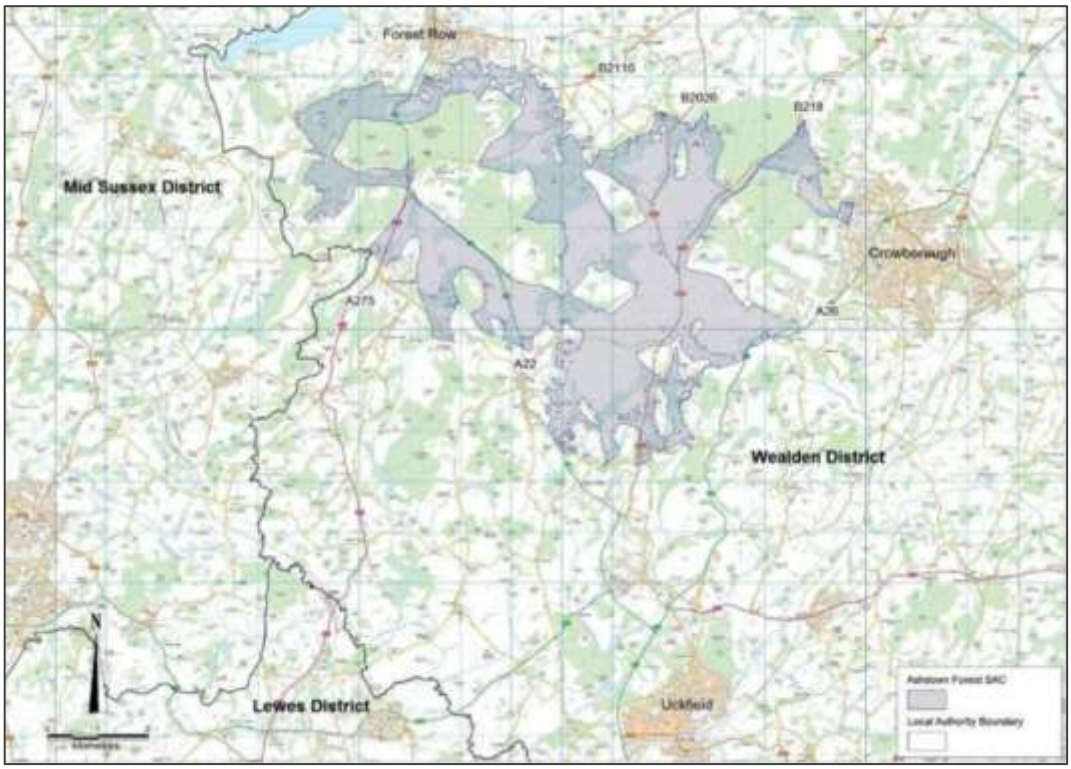
(i) seeks to maintain, restore and enhance habitats, biodiversity features and ecological networks.

(ii) establishes a strategy to reduce recreational pressures upon the Ashdown Forest Special Protection Area ["SPA"] / Special Area of Conservation Area ["SAC"] to avoid potential adverse effects on the integrity of the habitat and the protected species it supports. The strategy included a 400m buffer around designated sites, within which no new (net additional) dwellings would be allowed and the provision (on site or off-site by means of CIL/ a financial contribution) towards suitable Alternative Natural Greenspace ["SANG"] and monitoring and management measures to enable development within 400m – 7km. The final paragraph states:

… …

THE COUNCIL WILL ALSO UNDERTAKE FURTHER INVESTIGATION OF THE IMPACTS OF NITROGEN DEPOSITION ON THE ASHDOWN FOREST SAC SO THAT ITS EFFECTS ON DEVELOPMENT IN THE LONGER TERM CAN BE MORE FULLY UNDERSTOOD AND MITIGATED IF APPROPRIATE.

The map below shows the extent of the Ashdown Forest SAC, albeit the Appeal site is located c.16km (as the crow flies) southeast of Uckfield at the very bottom of the map.



5.2.9 Paragraph 6.44 relates to the Rural Areas Strategy, which states: *'Outside the towns and the rural settlements identified for growth development will be restricted primarily to that required to meet an essential rural need, support rural diversification and sustainability of the countryside, promote tourism or enhance the countryside. More detailed development management policies and proposals will be contained in the Delivery and Site Allocations DPD in relation to development in the countryside. In the meantime the Council will use national policy and retained Local Plan policies to support development management decisions.'*

5.2.10 For the avoidance of doubt the Delivery and Site Allocations DPD has been abandoned in favour of a wholescale review of the Core Strategy. The wholescale review is ongoing and considered further below under the section titled relevant material considerations. As such the saved policies set out in the 1998 Local Plan remain prevalent, albeit the weight attributed to them should be tempered depending on the degree of consistency with those set out in the NPPF[5]. The Appellant opines that the saved policies are in general conformity with the NPPF.

5.2.11 One of the aims of the 1998 Local Plan was to pursue sustainable development, having regard to the principles contained in Government guidance and the Council's own Environmental Strategies. A further aim is to assist the rural community through the promotion of new employment opportunities and the maintenance and improvement of local services in the rural areas. The following sections and saved policies of the development plan are considered to be directly relevant to the determination of this planning application.

5.2.12 Chapter 5 contains Countryside policies. It sets out the Council's objectives as follows:

(1) to balance the needs of the rural economy with the protection of the districts landscape and wildlife;

[5] Paragraph 215 of the NPPF

(2) to assist the rural economy by providing for appropriate alternative uses of land and buildings;

(3) to protect the best and most versatile agricultural land;

(4) to encourage quiet informal recreation enjoyment of the countryside, and to provide a policy framework for organised recreation;

(5) to resist housing development unless it meets particular needs and requires a countryside location;

(6) to support national and local initiatives for sensitive countryside management, particularly in areas vulnerable to change and in relation to agricultural practices.

5.2.13 For the reasons set out in the Planning Policy Statement, Design and Access Statement and the document titled 'Addressing the Crisis for New Entrants to Farming in East Sussex' accompanying the application, the Appellant considers that the proposal positively responds to these objectives.

5.2.14 Saved policies DC2 and DC3 titled 'Agricultural Buildings' collectively present the critical policy test; they respectively state:

DC2: OUTSIDE THE DEVELOPMENT BOUNDARIES, AS DEFINED ON THE PROPOSALS MAP, NEW PERMANENT DWELLINGS WILL BE PERMITTED FOR THOSE EMPLOYED IN AGRICULTURE OR FORESTRY, OR EXCEPTIONALLY IN ANOTHER ENTERPRISE WHERE A COUNTRYSIDE LOCATION IS NECESSARY, WHERE IT CAN BE DEMONSTRATED TO THE SATISFACTION OF THE COUNCIL THAT THE FOLLOWING CRITERIA ARE MET:

(1) THERE IS A CLEARLY ESTABLISHED EXISTING FUNCTIONAL NEED;

(2) NO OTHER SUITABLE ACCOMMODATION IS AVAILABLE ON THE UNIT OR ELSEWHERE IN THE LOCATION;

(3) THE ENTERPRISE HAS BEEN ESTABLISHED FOR AT LEAST THREE YEARS, HAS BEEN PROFITABLE FOR AT LEAST ONE OF THEM, IS CURRENTLY FINANCIALLY SOUND AND HAS A CLEAR PROSPECT OF REMAINING SO;

(4) THE DWELLING IS OF A SIZE COMMENSURATE WITH THE ESTABLISHED FUNCTIONAL REQUIREMENT. DWELLINGS WHICH ARE UNUSUALLY LARGE IN RELATION TO THE NEEDS OF THE UNIT OR UNUSUALLY EXPENSIVE TO CONSTRUCT IN RELATION TO THE INCOME IT CAN SUSTAIN IN THE LONG TERM WILL NOT BE PERMITTED;

(5) THE DWELLING IS SUITABLY LOCATED TO MEET THE IDENTIFIED FUNCTIONAL NEED OF THE ENTERPRISE, INTEGRATES WELL WITH EXISTING BUILDINGS WHEREVER POSSIBLE, IS NOT INTRUSIVE IN THE LANDSCAPE, AND ITS GENERAL DESIGN IS APPROPRIATE TO THE CHARACTER OF THE AREA.

WHERE THE FUNCTIONAL REQUIREMENT IS PROVEN BUT CRITERION 3 IS NOT MET, A TEMPORARY PERMISSION WILL BE GRANTED FOR A CARAVAN OR MOBILE HOME, WHERE IT CAN BE DEMONSTRATED TO THE SATISFACTION OF THE COUNCIL THAT THE FOLLOWING CRITERIA ARE MET:-

(I) CRITERIA (2) AND (5) ABOVE;
(II) THERE IS CLEAR EVIDENCE OF A FIRM INTENTION AND ABILITY TO DEVELOP THE ENTERPRISE CONCERNED;
(III) THERE IS CLEAR EVIDENCE THAT THE PROPOSED ENTERPRISE HAS BEEN PLANNED ON A SOUND FINANCIAL BASIS.

OCCUPANCY CONDITIONS WILL BE IMPOSED ON DWELLINGS PERMITTED IN ACCORDANCE WITH THIS POLICY AND, WHERE APPROPRIATE, ON OTHER DWELLINGS WITHIN THE HOLDING. THE REMOVAL OF occupancy conditions will be resisted unless it is demonstrated to the satisfaction of the Council that there is unlikely to BE ANY NEED FOR SUCH DWELLINGS IN THE AREA IN THE FORESEEABLE FUTURE.

IN APPROPRIATE CIRCUMSTANCES, THE COUNCIL WILL SEEK A PLANNING OBLIGATION TO TIE A PERMANENT DWELLING TO ADJACENT BUILDINGS OR TO THE LAND FORMING THE HOLDING.

DC3: PROPOSALS FOR NEW FARM BUILDINGS, EXTENSIONS AND ALTERATIONS, AND OTHER ANCILLARY DEVELOPMENT WILL BE PERMITTED SUBJECT TO THE FOLLOWING CRITERIA:
(1) BUILDINGS ARE REASONABLY NECESSARY FOR THE PURPOSES OF THE AGRICULTURAL HOLDING AND ARE CLEARLY DESIGNED FOR SUCH USE;
(2) DEVELOPMENT IS INTEGRATED WITH EXISTING STRUCTURES, AS FAR AS PRACTICABLE;
(3) THE SITING, DESIGN AND EXTERNAL APPEARANCE OF BUILDINGS AND OTHER STRUCTURES IS NOT INTRUSIVE WITHIN THE LANDSCAPE AND DOES NOT DETRACT FROM LOCAL AMENITIES OR INTERESTS OF RECOGNISED HISTORIC, ARCHAEOLOGICAL OR NATURE CONSERVATION INTEREST;
(4) PARTICULAR CARE IS TAKEN TO SITING, DESIGN AND APPEARANCE WITHIN AREAS OF OUTSTANDING NATURAL BEAUTY;
5) WHERE BUILDINGS FOR STORAGE, PACKING OR PROCESSING ARE FOR THE USE OF ONE HOLDING OR SHARED USE OF A NUMBER OF HOLDINGS, IT WILL FIRST BE NECESSARY TO DEMONSTRATE THAT THE USE COULD NOT BE CARRIED OUT WITHIN A BUSINESS AREA.

5.2.15 Saved policy DC17 titled 'Housing development in the countryside' is also pertinent, as is saved policy DC22 relating to 'Residential mobile homes' which, from a legal perspective, is what is being sought at Arlington. Saved policy HG12 titled 'special needs housing' and saved policy BS15 titled 'Home working' are equally applicable.

5.2.16 Saved policy EN27 titled 'Layout and design of development' is also relevant. It states:

PROPOSALS FOR DEVELOPMENT WILL BE PERMITTED WHEN THE FOLLOWING LAYOUT AND DESIGN CRITERIA ARE MET:

(1) THE SCALE, FORM, SITE COVERAGE, DENSITY AND DESIGN OF THE DEVELOPMENT AND THE USE OF MATERIALS AND LANDSCAPE SHOULD RESPECT THE CHARACTER OF ADJOINING DEVELOPMENT AND, WHERE APPROPRIATE, PROMOTE LOCAL DISTINCTIVENESS. THE DESIGN MATERIALS AND LANDSCAPING SHOULD BE TO AN APPROPRIATE HIGH STANDARD;

(2) THE PROPOSED DEVELOPMENT SHOULD NOT CREATE UNACCEPTABLE ADVERSE IMPACT ON THE PRIVACY

AND AMENITIES OF ADJOINING DEVELOPMENTS AND THE NEIGHBOURHOOD BY REASON OF SCALE, HEIGHT, FORM, NOISE AND TRAFFIC MOVEMENTS;

(3) THE PROPOSED DEVELOPMENT SHOULD ENSURE A SATISFACTORY ENVIRONMENT FOR THE FUTURE OCCUPANTS, INCLUDING ADEQUATE PROVISION FOR DAYLIGHT, SUNLIGHT, PRIVACY, GARDEN SPACE AND / OR APPROPRIATELY LANDSCAPED AMENITY AREAS;

(4) THE PROPOSED DEVELOPMENT SHOULD NOT CONSTITUTE AN UNACCEPTABLE BACKLAND OR 'TANDEM' FORM OF DEVELOPMENT;

(5) REGARD HAS BEEN PAID TO CRIME PREVENTION MEASURES WHEREVER POSSIBLE OR APPROPRIATE.

5.3 Relevant Material Considerations

5.3.1 The following policy documents are material considerations:

- The emerging Wealden Local Plan: Proposed Pre-Submission Draft dated March 2017.
- South East Local Enterprise Partnership ["SE LEP"] Rural Strategy
- Towards a one nation economy: A 10-point plan for boosting productivity in rural areas; August 2015.
- Landscape Study 2014, as updated 2016: Low Weald Landscape sub area (as referred to within section 2 of this statement).
- Wealden Design Guide SPD.

5.3.2 Whilst the proposed Pre-Submission Draft was put before full Council on 22nd March 2017, Officers have advised[6] that it's publication for consultation will be delayed pending to the progression of the evidence base (drawing on the transport modelling – trip distribution, ongoing air quality monitoring work and research into potential compensatory measures) and findings of the HRA. To this end Officers envisage having to take the plan back through Full Council prior to consultation. No dates have as yet been tabled and it is evident that the timeframe for the finalising the evidence base have been successively extended (the most recent update being 13th October 2017 – see appendix [F]). In accordance with the guidance set out at paragraph 216 of the NPPF, significant weight cannot be attributed to the policies set out in the proposed pre-submission draft.

[6] Telephone conversation with Emma Garner on 02/08/17

5.3.3 Emerging policy RAS2 titled ‘New isolated dwellings’ states:

NEW ISOLATED DWELLINGS IN THE COUNTRYSIDE WILL BE PERMITTED WHERE IT CAN BE DEMONSTRATED THAT:

(A) THE DWELLING IS REQUIRED FOR THE ESSENTIAL FUNCTIONAL NEED FOR A RURAL WORKER TO LIVE PERMANENTLY AT OR NEAR THEIR PLACE OF WORK IN THE COUNTRYSIDE;

… …

(E) DOES NOT DETRACT OR HARM THE CHARACTER AND APPEARANCE OF THE RURAL AREA;

(F) CONSERVES AND ENHANCES ELEMENTS WHICH CONTRIBUTE TO THE WIDER NATURAL AND SCENIC BEAUTY OF THE HIGH WEALD AREA OF OUTSTANDING NATURAL BEAUTY, THE SETTING OF THE SOUTH DOWNS NATIONAL PARK AND PRESERVES THE SETTING OF HERITAGE ASSETS; OR

… …

5.3.4 Emerging policy RAS6 titled ‘Rural Commercial Activities’ states:

SUSTAINABLE RURAL COMMERCIAL ACTIVITIES WILL BE ENCOURAGED IN ORDER TO GAIN LOCAL EMPLOYMENT OPPORTUNITIES AND ECONOMIC, SOCIAL AND ENVIRONMENTAL BENEFITS FOR LOCAL COMMUNITIES.

OUTSIDE OF DEVELOPMENT BOUNDARIES, DEVELOPMENT WHICH MAINTAINS OR IMPROVES THE RURAL CHARACTER, WHILST SUSTAINING ITS VARIED AND PRODUCTIVE SOCIAL AND ECONOMIC ACTIVITY WILL BE SUPPORTED IN PRINCIPLE.

ANY DEVELOPMENT SHOULD BE APPROPRIATE TO THE COUNTRYSIDE LOCATION AND MUST:

(A) CONTRIBUTE TO THE DIVERSE AND SUSTAINABLE FARMING ENTERPRISE OR, IN THE CASE OF OTHER COUNTRYSIDE-BASED ENTERPRISES AND ACTIVITIES, CONTRIBUTE TO THE WIDER RURAL ECONOMY … … AND EITHER:

- **I) BE CONTAINED WHEREVER POSSIBLE WITHIN SUITABLY LOCATED BUILDINGS WHICH ARE APPROPRIATE TO CONVERSION OR, IN THE CASE OF AN ESTABLISHED RURAL INDUSTRIAL ESTATE, WITHIN THE EXISTING BOUNDARIES OF THE ESTATE; OR**
- **II) IN EXCEPTIONAL CASES NEW BUILDINGS OR DEVELOPMENT IN THE RURAL AREA WILL BE ACCEPTABLE PROVIDED THAT IT IS INKEEPING WITH THE RURAL CHARACTER AND SUPPORTS SUSTAINABLE ECONOMIC GROWTH TOWARDS BALANCED LIVING AND WORKING COMMUNITIES AND CRITERIA I. HAS BEEN CONSIDERED FIRST.**

(B) NOT PREJUDICE THE AGRICULTURAL USE OF A UNIT, IF THE PROPOSAL RELATES TO DIVERSIFICATION OF ACTIVITIES ON EXISTING FARM UNITS;

(C) DEMONSTRATE THAT CAR PARKING REQUIREMENTS CAN BE ACCOMMODATED SATISFACTORILY WITHIN THE IMMEDIATE SURROUNDS OF THE BUILDINGS, OR AN ALTERNATIVE, LOGICAL SOLUTION IS PROPOSED; AND

(D) NOT GENERATE TRAFFIC OF A TYPE OR AMOUNT INAPPROPRIATE FOR THE RURAL ROADS AFFECTED BY THE PROPOSAL, OR REQUIRE IMPROVEMENTS OR ALTERATIONS TO THESE ROADS WHICH COULD BE DETRIMENTAL TO THEIR CHARACTER.

… …

5.3.5 The spirit of emerging policy RAS9 titled 'Agriculture' might also be judged relevant in states:

THE SCALE OF NEW AGRICULTURAL DEVELOPMENT, INCLUDING EXTENSION AND ALTERATIONS TO EXISTING BUILDINGS, WILL BE SUPPORTED WHERE:

(A) IT IS DEMONSTRATED THAT THE DEVELOPMENT IS NECESSARY TO SUSTAIN AND MEET THE REASONABLE NEEDS OF THE EXISTING AGRICULTURAL OPERATION;

(B) THE SITING, DESIGN AND EXTERNAL APPEARANCE RESPECT LOCAL DISTINCTIVENESS AND TRADITIONAL FARMSTEAD GROUPINGS;

(C) BUILDINGS OR WORKS ARE NOT INTRUSIVE IN THE LANDSCAPE; AND

(D) RESPECT AND ENHANCE THE VALUED AND SENSITIVE LANDSCAPE CHARACTER OF THE AREA.

5.3.6 With respect to emerging policies RAS6 and RAS9 it is noteworthy that the existing 7.5ha holding would benefit from permitted development rights under Schedule 2, Part 6, Class A of the of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. This would include the erection of an agricultural building of up to 450sqm (far greater that the c.112sqm barn proposed as part of the Proposed Development).

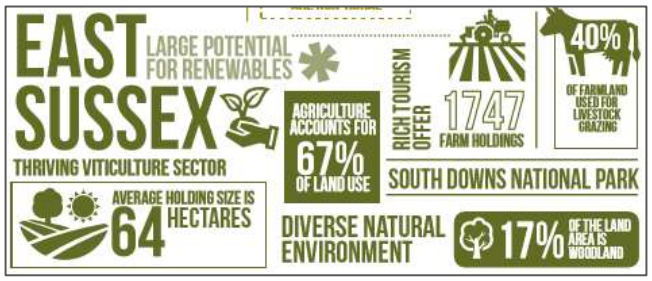
5.3.7 Emerging policy AF1 is relevant insofar as it states that development will only be permitted if it can be concluded that the proposals will not adversely affect the conservation interests of Ashdown Forest.

5.3.8 In March 2014, SE LEP published its Rural Strategy focusing on the local economy, communities and the environment, and aiming to support the area's estimated rural population of 936,000 – nearly a quarter of the 3.9m residents in the whole area. The SE LEP rural strategy states: *'SE LEP's rural economy is a rich mosaic of traditional and innovative land-based businesses, including farming, horticulture, viticulture, forestry and rural tourism. These sit alongside a broad range of non-rural businesses.'*

5.3.8 The launch of the SE LEP Rural Strategy followed hot on the heels of £14.5m of new EU funding announced by SE LEP and DEFRA, to support rural business in the area. As part of the EU's European Agriculture Fund for Rural Development scheme, micro and small businesses will now be able to apply for awards of a minimum £50,000 to help support projects to deliver the aims of the SE LEP Rural Strategy. SE LEP is one of just

five LEPs in the country to have launched this fund.

5.3.9 Amongst a range of activity planned in support of the Rural Strategy, SE LEP also continues its help to establish a network of Food Enterprise Zones in the South East. 'Our Rural Strategy' was approved by the SE LEP Strategic Board on 20th March 2015. It sets out the LEP's vision for rural growth, balancing support of the rural economy, local communities and the environment. The strategic objectives are replicated below.



5.3.10 Whilst the proposed development is modest in scale, it nonetheless embodies the aims and spirit of RC3 Building community capital in out dispersed communities, villages and towns and REn3 Support sustainable development and planning to provide a sustainable future. The outcomes of the former include increased access to affordable rural housing available in rural communities. The outcomes of the latter include reduction in CO2 emissions, increased number of companies involved in the sustainable development sector leading to provision of additional jobs and provision of long-term environmental benefits.



5.3.11 In August 2015, DEFRA published 'Towards a one nation economy: a 10-point plan for boosting productivity in rural areas'. Under Point 7 titled better regulation and improved planning for rural businesses, the Government pledged to:

- Review the planning and regulatory constraints facing rural businesses and measures that can be taken to address them; with a subsequent call for evidence tabled and decisions to be made by 2016 (I am not aware that this was fulfilled);
- Take further action to ensure that planning decisions are taken on time.

The plan pledged to make it easier to live and work in rural areas highlighting that:

Improving the conditions for people to live and work in rural areas would help create more flexibility of labour markets, ensure that people with the right skills can be matched to job opportunities in rural areas, and facilitate the creation of new businesses. … …

Lack of housing is a national challenge but in rural areas it is a particular constraint to labour and entrepreneurial mobility.[32] The stock of housing is limited in rural areas relative to demand and house prices are on average 6.7% higher in rural areas than in urban areas.[33]

5.3.12 The Wealden Design Guide provides helpful guidance, but overall the proposal is considered to be commensurate to the agricultural landscape.

6.0 KEY ISSUES IN THE APPEAL

6.1 This Appeal is for non-determination; however, ELC sought to constructively engage through the LPA through a request for pre-application advice and following submission. The ELC expressed concern early on that officers were approaching the application with a closed mind and seemingly unwilling to entertain the merits of what is undoubtedly a novel scheme (in both purpose and legal construct). This led to a formal complaint being raised. A copy of the respective correspondence forms appendix [G] of this statement and at the time of writing it remains unresolved. Whilst it is recognised that it is not the place of the Planning Inspectorate to arbitrate in such instances, the correspondence is relevant in alluding to potential key issues,

in the absence of any decision notice. Chapman Lily Planning was appointed by the Appellant in August 2017 and endeavoured to positively engage with the LPA pursuant to progressing the application. This has not been reciprocated by the case officer, although Ward Councillors have engaged in a constructive dialogue.

6.2 The key issues that have been flagged up during the pre-application stage and through consultation responses post submission, appear to be:

- The principle of the proposed development.
- Evidence on viability.
- Potential cumulative impacts upon the Ashdown Forest SPA / SAC by virtue of nitrogen emissions associated with new development.

6.3 The planning, design and access statements aptly describe the benefits of the proposed development. The Appellant firmly believes that the proposed development would deliver economic, social and environmental benefits that are closely aligned to the spatial objectives and policies of the Development Plan:

- Promote sustainable economic growth, enterprise and rural diversification.
- Access to ecological farming and rural employment, helping to create a living working countryside and maintain a thriving village community;
- Minimise the need to travel – both in terms of commute and food miles;
- Using the land sustainably to deliver multiple benefits – food production, biodiversity enhancement; decentralised energy and rain water harvesting.
- Provide much needed affordable accommodation tied to the use of the land.
- Support the transition to a low carbon future

6.4 As set out in the planning statement accompanying the original planning application, the LPA is unable to demonstrate a 5-year housing land supply. Indeed this continues to be the case and the LPA's position statement of 30th June 2017 indicates that the district only has a 2.35-year housing land supply. As such paragraph 14 of the NPPF prevails and sustainable development should be approved without delay. As set out in section 5 of this statement, paragraph 55 recognises that special circumstances

such as the essential need for a rural worker to live permanently as or near their place of work in the Countryside. Coupled with the compelling benefits of the scheme set out in paragraph 6.3 of this statement, the Appellant considers that the proposal constitutes a truly sustainable development.

7.0 CONSIDERATION OF THE ISSUES

7.1 The principle of the proposed use

7.1.1 Whilst the pre-application advice (see appendix [E]) made a number of suggestions, it reserved judgement on the acceptability or otherwise of the principle of the development (although perversely the submission of an application was discouraged on the basis that it would allegedly be an 'unusual and complex case').

7.1.2 On behalf of the LPA, Rural Planning Limited reviewed the planning application and issued a consultation response dated 11th April 2017 (see appendix [H]). It is seemingly a matter of common ground that paragraph 55 and saved policy DC2 are relevant and should be attributed weight. The Appellant does not dispute the interpretation of these policies, nor their spirit, albeit saved policy DC2 was clearly intended to be applied retrospectively to 'current' agricultural enterprises. This comes at the expense of innovation and the wider objectives of both national and local planning policy. As Rural Planning Limited duly recognise *'… there is no National or Local Planning policy covering Wealden that specifically supports the provision of temporary accommodation, or permanent self-build homes, to form residential smallholdings as a means to promote ecological/ LID based food production, as advocated by the ELC'.* That being the case the converse is also true. The Development Plan cannot be expected to cater for every conceivable form of development, nor would it be desirable to do so. The ELC are the first to champion that this is a novel proposition and thus where the Development Plan is silent or out-of-date, the policies set out in the NPPF are to be followed. Rural Planning Limited are quick to dismiss the relevance of the Appeal Court decision Petter and Harris v Secretary of State for DETR 1999, drawing out the differences between the facts of

that case and the Appeal Proposal. The differences are recognised by the Appellant, however, the principles established through this decision are still considered to apply. Paragraph 58 of the NPPF is clear in stating: *'Planning policies and decisions should aim to ensure that developments … … respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation'.*

7.1.3 In the event, it is evident that the Planning Policy Statement did adhere to the spirit of saved policy DC2 and gave due consideration to (i) functional need, (ii) a firm intention and ability, and the proposed development being (iii) planned on a sound financial basis. Whilst the ELC does not dispute that these matters apply equally to temporary and permanent accommodation, the former clearly provides a fail safe and a means of retrospective review. Matters (i) and (ii) are considered further here; whilst (iii) is considered in section 7.2 below.

7.1.4. In the interest of brevity, it is not intended to replicate the functional need case here. The functional need for on-site dwellings is necessary owing to the ecological nature of the proposal, as compellingly borne out through:

- Paragraphs 5.7-5.17 of the Planning Supporting Statement submitted with the original planning application, together with the appendices 10 and 11. A number of appeal and judicial decisions are cited – for ease of reference the full decisions form appendix [I] of this statement.
- The case studies set out in the documents in appendix 2 of the Planning Supporting Statement submitted with the original planning application and supplemented by the 'A Matter of Scale' report.
- As alluded to in section 5.3 of this report such objectives can also be seen in the SE LEP Rural Strategy and the Governments 'Towards a one nation economy: a 10-point plan for boosting productivity in rural areas'.
- The sample business plans bespoke to the proposed development.

7.1.5 It is the Appellants opinion that the functional need argument has also been bolstered

through both the 'New Entrants to Farming' report which helps to establish the need for the Proposed Development relative to the spatial objectives set out in the Development Plan. It serves to highlight the acute 'affordability' challenges faced by those looking to remain or enter farming. Indeed, it is evident that the unique purpose, management and legal construct provided by the Appellant that new entrants to ecological farming are likely to gain a foot hold and thrive. It is considered that the management plan for the site (to be secured by means of a legal agreement) is provides sufficient evidence of firm intention and ability.

7.1.6 The proposals will fulfil the wider objective of allowing people to live and work within the rural area and contribute towards village life. Arlington is within easy walking distance of Appeal Site – the majority of the route being via a footpath crossing the wider holding. The Appeal Site lies adjacent to a national cycle route, affording easy access to the nearby settlements of Berwick and Hailsham by bicycle. Berwick Station is identified as Neighbourhood Centre within the rural area and together with the larger town of Hailsham offers a broad range of shops, services, employment, education and leisure opportunities. Both also possess rail stations providing regular services to a host of destinations. A weekly bus service (route 42) operates from the Arlington, connecting Berwick Station and Hailsham. Thus, given the nature of the proposal, it is considered that the Proposed Development should be considered sustainable in environmental and social terms.

7.2 Financial viability

7.2.1 In addition to the broad body of evidence demonstrating that small holdings of this scale are viable (see appendix 2 of the Planning Policy Statement that accompanied the original application), ELC would also draw the Inspectors attention to *'A matter of scale'* authored by Rebecca Laughton of the Land Workers Alliance, published in 2017 and referenced within the sample business plans that are bespoke to the Appeal Site.

7.2.2 During the course of the determination period, the ELC reflected upon the detailed viability points raised by Rural Planning Limited. In response, ELC commissioned Iain

Tolhurst of Tolhurst Organic Partnership and Mark Measures of Mark Measures Associates to prepare sample business plans. These take account of the specific attributes of the Arlington Site including potential: crop enterprises, rotations, crop areas and yields, crop inputs, livestock, machinery and equipment, infrastructure, labour requirements, financial budget, conversion and establishment for each plot. Ultimately the report concludes that a sustainable and financially viable enterprise could be established on each of the three holdings; returning sufficient surplus to meet depreciation and costs of living. Whilst the margins may appear less than conventional agriculture, the cost of living will be lower, and the ethos tangible.

7.2.3 The High Court decision Petter and Harris v Secretary of State for DETR (1999) which allows for an LPA to take a novel approach when applying policy: *"an unexpected but genuine application … did not require a rigid application of criteria designed for commercial agriculture but a practical adaption of those criteria to secure the underlying purposes of the policy."*

7.2.4 For the reasons set out above, the Appellant contends that the proposed development has been planned on a sound financial basis and that the proposal would be sustainable in economic terms.

7.3 Potential impact upon the Ashdown Forest

7.3.1 Upon submission of the application, the ELC were informed (see appendix [J]) that a moratorium had been placed on new development across the district that would be likely to generate additional trips – that could result in harm to the integrity of the designated Ashdown Forest SAC and the protected species therein by virtue of nitrogen emissions from vehicle exhausts. This was reinforced through subsequent correspondence dated 8th March 2017 (see appendix [K]) and most recently in an update dated 13th October 2017 (see appendix [F]). The failure to determine the appealed application is both (i) unreasonable and disproportionate having regard to the nature of what is proposed here and (ii) inconsistent with the approach adopted by neighbouring authorities who are either screening for Appropriate Assessment on

an application by application basis or confident that emissions to air will have a negligible impact. Whilst it is recognised that Wealden District Council are continuing to undertake further modelling work there is, as yet, no end date.

7.3.2 Information demonstrating that the proposal would not in isolation have any material impact upon the Ashdown Forest was submitted with the original planning application in the form of a document titled 'Effect of the proposed scheme on the Ashdown Forest SAC'. The Appellant acknowledges that the assessment of potential cumulative impacts is a complex field and the construct of the Habitats Regulations requires that a precautionary approach be adopted. However, there is also a need for proportionality. The proposal for three homes tied to three small-holdings ranging from 1.21-3.45ha in size with communal facilities and governed by a management plan for a temporary period of five years is, in the Appellants opinion, unlikely to give rise to significant vehicle trips. Not only does the established arable use generate trips (as set out in 'Effect of the proposed scheme on the Ashdown Forest SAC'), but the land could readily be used for alternative forms of agricultural use, such as pig rearing or as a commercial market garden without further recourse to planning. Thus it is disappointing that the LPA has not has due regard to the specific circumstances of the proposed development.

7.3.3 The Lewes District Local Plan was subject to a legal challenge[7], on the basis that the advice from Natural England was flawed. In summary: *'The potential air quality impacts on the Ashdown Forest SAC arise from additional nitrogen deposition resulting from increased traffic emissions as a consequence of new development. Natural England had advised that the Design Manual for Roads and Bridges (DMRB) could be used to assess air quality impacts applying the 1000 Annual Average Daily Traffic (AADT) methodology. It was advised that if the development proposals in a Plan by itself were calculated to be below 1000 AADT, then the air pollution impacts could be considered not significant and no further work would be needed.*

[7] Wealden District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 351 (Admin) (20 March 2017): http://www.bailii.org/ew/cases/EWHC/Admin/2017/351.html.

The judge had to consider if development could be screened out for Habitats Regulations purposes if the development did not cause an increase of more than 1000 AADT on roads within and surrounding Ashdown Forest where the assessment looked at the effects of the development by itself (alone). However, the judge found that the advice provided by Natural England was erroneous and that an assessment of air quality impact should include other development proposals thus considering the in combination effect of nitrogen deposition from increased traffic.

The judgment suggests that planning applications will require a consideration of the potential in combination air quality impacts arising from the proposed development, however, the judge gave no ruling as to the practical effects of the judgment. The parameters for any assessment of traffic impact are now unclear beyond a general presumption that any development that is likely to lead to air quality impacts on the Ashdown Forest SAC in the form of additional traffic will need to be considered through a Habitats Regulations Assessment.

At present it is uncertain what form further advice from Natural England will take and when this will be completed, however, the judge supported the use of thresholds as a means of identifying which development can be eliminated from further consideration because of de minimis impacts. The Judge also did not necessarily hold the 1000 AADT threshold to be unlawful, rather that when assessing if the effects of a proposed development will exceed the 1000 AADT threshold, the in combination effects of other plans and projects also need to be included. It should also be noted that while the Wealden decision does not necessarily hold that the thresholds set out in the DMRB or elsewhere are inherently unlawful, it does raise questions as to whether in the spirit of the decision they remain defensible, even in combination, particularly without justification'.[8]

[8] Extract from a Briefing Note prepared by Mid-Sussex District Council dated August 2017 – see appendix [L].

7.3.4 It is noteworthy that Lewes District Council concluded *'With regard to the Ashdown Forest, the HRA found that the Core Strategy would not have a significant negative effect in relation to air pollution resulting from additional traffic generated by new development within the district. …'*.[9] Parts of Lewes District lie 4.5km from Uckfield via the A26. Thus, in relative terms the Appeal Site is 11km further away. The Council commissioned further research following the legal challenge. The HRA Addendum was published by Aecom in September 2017[10]. It took account of cumulative impacts from committed development (i.e. that envisaged within the respect local plans) – including Wealden. It concludes: *'… … no adverse effect upon the integrity of Ashdown Forest SAC is expected to result from development provided by the South Downs Local Plan and Lewes Joint Core Strategy, even in combination with other plans and projects. This is due to a combination of a) an expected net improvement in air quality over the Local Plan period and b) the fact that, whether or not that improvement occurs to the extent forecast, the contribution of the South Downs Local Plan and Lewes Joint Core Strategy to changes in roadside air quality is demonstrably ecologically negligible due to the very small magnitude. In the words of Mr. Justice Jay in his judgement regarding the Joint Core Strategy Judicial Review when discussing when a de minimis conclusion would be appropriate: '…if it is known that specific impacts are very low indeed, or are likely to be such, these can properly be ignored…'[9]. This therefore supports the original conclusion of the HRA of the Lewes JCS'.*

7.3.5 Lewes District Council continues to determine planning applications in accordance with the adopted Development Plan – viewing this as HRA compliant.[11]

7.3.6 The emerging Mid Sussex District Plan 2014-2013 has been subject to Examination and main modifications published for consultation in September 2017. The modifications include additional text relating to the Ashdown Forest. *'The Habitats Regulations require that the competent authority (Mid Sussex District Council) assess the effects of land use plans on European sites to determine whether there will be likely significant*

[9] Paragraph 7.99 of the Lewes District Local Plan Part 1 adopted May 2016
[10] Lewes HRA Addendum September 2017 – see appendix [M].
[11] Telephone conversation with Tondra, Policy Team on 07/11/17.

effects (LSEs) on European sites as a result of the plan's implementation (either on its own or 'in combination' with other plans or projects). The European site of interest is Ashdown Forest, which is located in neighbouring Wealden district.

This plan has assessed the effects of its allocations together with Neighbourhood Plan allocations and an allowance for windfall sites to the period 2023/24, based on 876dpa. At the time of adoption there is insufficient available information about the nature and location of development being proposed to meet the step in trajectory to 1,090dpa.

The Site Allocations DPD will aim to identify the nature, scale and location of development to meet the full plan requirement (inclusive of the uplift to 1,090dpa from 2024/25 onwards). As part of the preparation of the Site Allocations DPD, the Council will need to undertake further Habitats Regulations Assessment of identified housing sites for the rest of the plan period.

While the Council reasonably anticipates that the uplift in housing growth to 1,090dpa will be possible without causing further harm to the integrity of the Ashdown Forest SAC, the level of future growth will depend on the identification of further allocations that do not cause further harm to the integrity of the SAC.

The subsequent review of the plan, to be submitted in 2023, will also be subject to HRA.'

7.3.7 Tandridge District is located just 5km to the north of the Ashdown Forest. The Tandridge Core Strategy was adopted in 2008. It makes no reference to the Ashdown Forest. Tandridge District Council continue to determine planning applications for new development.

7.3.8 With the exception of Wealden District Council, none of the other local planning authorities surrounding the Ashdown Forest have placed a moratorium on new development that could have a propensity to generate additional trips. All of the these authorities are approving new development in far closer proximity to the Ashdown Forest than the Proposed Development which lies some 23km to the south (as the

crow flies) and c.29km by road. With no clear timescale ascribed to the resolution of the moratorium, the pragmatic positions adopted by neighbouring local planning authorities, the low carbon objectives of the ELC and specific evidence demonstrating that the operation of the three homes linked to small holdings (5 years in the first instance) at Arlington would would not have a likely significant effect on the conservation objectives of the Ashdown Forest, the Appellant feels that it has no option other than to Appeal.

8.0 SUGGESTED PLANNING CONDITIONS

8.1 Suggested conditions are set out in appendix [N] of this statement.

9.0 PLANNING OBLIGATIONS

9.1 A draft Unilateral Undertaking was submitted as appendix 3 of the Planning Supporting Statement accompanying the original planning application. A completed and signed Unilateral Undertaking to secure the actions set out in the Management Plan will be submitted in due course.

9.2 It is a matter of common ground that the proposed development would not be liable for CIL.

10 CONCLUSION

10.1 This appeal statement has been prepared on behalf of the Ecological Land Co-operative. On behalf of the Appellant, Chapman Lily Planning has lodged an appeal against Wealden District Council's non-determination of planning application ref: WD/2017/0340/F). The application sought permission for the *'Siting of three temporary agricultural workers' dwellings for a period of 5 years together with an agricultural barn with PV array and alterations to existing highway access to provide three affordable smallholdings to new entrants to ecological agriculture'* on a field to

the south of Copyhold Cottages, formerly part of Wilbees Farm, Arlington, Hailsham, BN26 6RU.

10.2 The Proposed Development is, as the Case Officer put it, 'unusual and complex'. It is a positive response to the difficulties faced by potential new entrants to ecological farming. The proposed three small holdings and associated accommodation are innovative in purpose, management and legal construct. The operation of the proposed small holdings would adhere to a set of principles enshrined in a management plan.

10.3 The proposed development is arguably the embodiment of what the LPA term 'smart growth' - sustainable development delivering social, economic and environmental benefits. Unsurprisingly the Development Plan does not explicitly cater for this type of development; albeit the Appellant believes that the proposal does accords with the spirit of Core Strategy Spatial Objectives 6, 8, 9 and 13, the saved policies DC2, DC3 and EN27 of the Local Plan, and the draft policies RAS2, RAS6 and RAS9 set out in the emerging Local Plan. It also enjoys the weight of paragraphs 14 and 55 of the NPPF.

10.4 The Appellant entered into pre-application discussions with the LPA in good faith and Chapman Lily Planning has endeavoured to enter into a positive dialogue with the LPA during the consideration of the application to no avail. As such the Appellant feels that they have little option but to exercise their right of appeal against the LPA's failure to determine the planning application. An air of judgement has necessarily been exercised in identifying potential key issues.

10.5 It is evident that the novel proposition does not sit comfortably with the traditional means of judging functional need, firm intention and ability and financial viability. Thus, as indicated on the completed appeal form, the Appellant would respectfully request that this appeal be dealt with under the Inquiry procedure so that such matters can be fully explored and tested.

10.4 The Appellant respectfully requests that the Appeal be allowed, subject to a Unilateral Undertaking and the conditions put forward in appendix [ ].

APPENDIX [A]:

Photographs of the site and surrounding area



View from gateway to the solar park looking north towards the SUDs feature and the application. site



View from south west corner of the site (adjacent to existing field access off Chilver Bridge Road) looking north – west across the wider holding.



View from north west corner of the wider holding looking west along post and wire boundary fence.



View from wider holding looking towards footpath.



View from Chilver Bridge Road looking west towards established field access.



View from Chilver Bridge Road looking north (in the direction of Arlington).



View from Chilver Bridge Road on entering Arlington .



Signage for the footpath network.



View of Arlington Village Hall located c.350m north of the Appeal Site.



View of gateway to Arlington Church located c.400m north of the Appeal Site.



View of public house located c.400m north of the Appeal Site.



View of signage for the Weald Way located c.400m north of the Appeal Site.



Signage for national cycle route 2 passing directly by the Appeal Site.



Signage of the Cuckoo Trail to the south of the site.



View of Berwick Station.



View of train timetable.

APPENDIX [B]

For: Planning Committee South
Date: 13 November 2014

WD/2014/1838/MEA - LAND AT WILBEES FARM, THE STREET, ARLINGTON.

Summary of Proposal

Major Application with Environmental Assessment application for:-
CONSTRUCTION OF A SOLAR PARK TO INCLUDE THE INSTALLATION OF SOLAR PANELS TO GENERATE ELECTRICITY WITH TRANSFORMER HOUSINGS, SECURITY FENCING AND CAMERAS AND OTHER ASSOCIATED WORKS.

Received date: 5 September 2014
8/13 week date: 5 December 2014
Parish: Arlington
Ward: Hellingly
Grid Ref: 554339 106829

Recommendation

Full planning permission BE GRANTED, subject to the following conditions:-

1. STD4A - Full Planning Permission

2. The date when electricity from the development is first exported to the local electricity grid network, hereafter known as the first export date, shall be notified in writing to the Local Planning Authority within 28 days after its occurrence. This permission shall expire no later than 25 years from the first export date. Within 12 months of the expiration of the permission, all elements of the development to a depth of at least one metre below ground level shall be removed and the land restored, in accordance with the decommissioning method statement required by Condition 4.

   REASON: In the interests of the visual amenities of the area having regard to saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan 1998 and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

3. If any solar panel (or panels) hereby permitted fail(s) to produce electricity for supply to the local electricity grid network for a continuous period of 12 months, then details of a scheme to repair or remove the panel(s) shall be submitted to the Local Planning Authority for its written approval within 3 months of the end of that 12 month period. If repairs to panels are required, the details shall include a programme of remedial works. If removal of the panels is required, the panels shall be removed within 12 months of the details being approved and the details shall include a method statement and timetable for the dismantling and removal of the panels and of the associated above ground works and foundations to a depth of at least one metre below ground; and a method statement, traffic management plan, and a timetable for any necessary restoration works following their removal. The scheme shall be implemented in accordance with the approved details.

   REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local

Plan 1998 and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

4. No later than 12 months before the expiry of this permission, details of a decommissioning method statement shall be submitted to the Local Planning Authority, for its written approval, to include management of timing of the works, a traffic management plan and reinstatement of the land. Decommissioning of the development shall be carried out in accordance with the approved details.

   REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan 1998 and paragraphs 56-57, 109 and 112 of the National Planning Policy Framework 2012.

5. Construction works to provide the solar farm hereby permitted must only commence and be carried out within the summer months between May and August in any year.

   REASON: In order to ensure minimal disturbance to the species using Arlington Reservoir Site of Scientific Special Interest, having regard to Policy WCS12 of the adopted Wealden Core Strategy Local Plan (2013), and paragraphs 109 and 118 of the National Planning Policy Framework 2012.

6. Construction of the development hereby permitted shall only take place on the site between the hours of 08:00 - 18:00 on Monday to Saturday inclusive. No such construction work shall take place on any Sunday, Bank or Public Holidays. Outside these hours, works at the site shall be limited to emergency works and dust suppression. Emergency works shall include works to make safe solar arrays that are under construction. The Local Planning Authority shall be informed in writing of any emergency works within one working day of their occurrence.

   REASON: In the interests of the established residential amenities of the occupiers of properties surrounding the site having regard to saved Policy EN27 of the adopted Wealden Local Plan 1998, WCS14 of the adopted Wealden Core Strategy Local Plan 2013 and paragraphs 17 and 98 of the National Planning Policy Framework 2012.

7. Notwithstanding Chapter 7 of the Environmental Statement, no development shall commence, including any site clearance, until a Construction Traffic Management Scheme has been submitted to and approved by the Local Planning Authority in consultation with the Highway Authority. This shall include:-

   a) The timetable for works on site;
   b) The routeing of vehicles to and from the site;
   c) The size of vehicles;
   d) Arrangements for escorting abnormal loads;
   e) Banksmen and temporary advance warning signage utilised to warn other road users of the larger vehicles - particularly on the C39 on the approach to the crossroads with the C340.

f) Advance signs either side of the bridge on the C340 (the Chilver Bridge Road) to warn drivers to use the central portion of the arch of the bridge
g) Any temporary removal and replacement of highway infrastructure and street furniture;
h) Any road closures;
i) Expected levels and timings of development traffic;
j) Measures to control traffic, in and around the site, including temporary parking areas and vehicle turning areas;
k) Measures to ensure that delivery vehicles and construction traffic will not park on the public highway (including Moorshill Lane) for loading, unloading or waiting for site entry.
l) Measures to ensure contractors vehicular trips are minimised such as travel plan and/or minibuses provided.
m) Vehicle wheel washing facilities within the site to prevent contamination, soiling and damage to the highway.

REASON: In the interests of highway safety and for the benefit and convenience of the public at large, having regard to Saved Policy TR3 of the adopted Wealden Local Plan (1998), and paragraphs 32 and 35 of the National Planning Policy Framework 2012.

8. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The CMS shall include details of:

(i) Works to construct the temporary hardening and surfacing of the site during construction;
(ii) The deposition, grading and finishing (in relation to local landform and habitat) of soil and other natural materials not removed from the site during the construction works;
(iii) Pollution prevention measures to be adopted during the construction phase to ensure that suitable bunding is used around fuel tanks and that excavation/construction works do not harm local sewerage, groundwater supplies, surface water quality or the quality of subsoil;
(iv) Construction mitigation and post construction reinstatement measures;
(v) The siting and design of the construction compound and of any concrete batching plant;
(vi) Measures to control noise, dust and mud arising from the development, complying with guidance found in BS 5228 `Noise Vibration and Control on Construction and Open Sites`;
(vii) Measures to clean and maintain site entrances, and the adjacent public highway;
(viii) Temporary site illumination;
(ix) Arrangements for the disposal of waste and surplus materials;
(x) Temporary site compound including any structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
(xi) Wheel washing facilities;
(xii) Emergency procedures and pollution response plans;
(xiii) A site environmental management plan with measures to be taken during the construction period to protect wildlife and habitats; and

(xiv) The timing and phasing of the above elements.

The CMS shall be implemented in accordance with the approved details, for the duration of the construction works, unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of protecting existing ecological and hydrological features in and surrounding the site, and in the interests of highway safety and residential amenity having regard to Saved Policies EN15, EN27 and TR3 of the adopted Wealden Local Plan (1998), SPO1, WCS12 and WCS14 of the adopted Wealden Core Strategy Local Plan 2013 and paragraphs 17, 35, 109 and 118 of the National Planning Policy Framework 2012.

9. No development shall commence until details of the layout and the specification for the construction of the temporary access (and its re-instatement to existing condition) from the south-west point of the site to Chilver Bridge Road, with details including gradients and levels, have been submitted to and approved in writing by the Local Planning Authority. The development within the rest of the site shall not commence until the construction of the access has been completed in accordance with the approved details and specification set out on Form HT407 which is attached to and forms part of this permission. Within three months of the completion of the construction of the development, the access shall be de-constructed back to its original condition in accordance with the approved details.

REASON: To enable the construction phase and ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway whilst ensuring the ancient right of way will be restored, having regard to Saved Policy TR3 of the adopted Wealden Local Plan (1998), and paragraph 35 of the National Planning Policy Framework 2012.

10. No development hereby permitted shall commence until a scheme of landscape proposals have been submitted to and approved in writing by the Local Planning Authority, which shall include full plans and specifications for all hard and soft landscape works and indications of all existing trees and hedgerows on the land, including those to be retained together with measures for their protection in the course of the development. All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first export date of electricity (Condition 2 refers), and any trees, shrubs, hedges or plants which within the period of consent set out in Condition 2 die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

REASON: To protect visual amenity and the character of the area and to secure the landscape visual enhancements advanced as part of the application package, having regard to Saved Policies EN14 and EN27 of the adopted Wealden Local Plan (1998). coupled with the requirements of paragraphs 17 and 109 of the National Planning Policy Framework 2012 and the Wealden Design Guide, Chapter 2; Chapter 3.

11. a) No development shall commence until the developer has secured the implementation of a programme of archaeological work (including archaeological evaluation), in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority.

    b) The development hereby permitted shall not be brought into use until the archaeological site investigation and post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part a) of this condition, and confirmed in writing by the Local Planning Authority in consultation with the County Planning Authority.

    REASON: To ensure that the archaeological and historical interest of the site is safeguarded and recorded, having regard to Spatial Objective SPO2 and Policy WCS14 of the adopted Wealden Core Strategy Local Plan (2013), and paragraphs 129, 131 and 132 of the National Planning Policy Framework 2012.

12. Before any works hereby permitted are begun, details of the foundations, piling configuration, drainage and services, including a detailed design and method statement for the preservation in situ of significant archaeological remains, shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out in accordance with the approved details.

    REASON: To enable the preservation or recording of any items of historical or archaeological interest, as the development is likely to disturb known remains of archaeological interest, and having regard to Spatial Objective SPO2 and Policy WCS14 of the adopted Wealden Core Strategy Local Plan (2013), and paragraphs 129, 131 and 132 of the National Planning Policy Framework 2012.

13. No development shall take place until exact and full details of equipment required for connection to the national power grid have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter retained as such.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

14. No development shall commence until details of the colour (tone and finish) of the security fencing approved in the application have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter retained.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 17, 56-57 and 109 of the National Planning Policy Framework 2012.

15. The solar panels hereby approved shall not exceed 2.2 metres above ground level.

    REASON: To ensure the Local Planning Authority can control the development in the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 115 of the National Planning Policy Framework 2012.

16. The control and invertor buildings hereby permitted shall not be erected until details of the design and external materials for the buildings, and for any associated compound or parking area, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and thereafter retained.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 115 of the National Planning Policy Framework 2012.

17. No development hereby approved shall commence until details of the CCTV cameras to be installed around the site have been submitted to and approved in writing. The details shall include the height, position and fixing/movement of the cameras. The CCTV cameras shall be installed in accordance with the approved details and thereafter retained and maintained as such.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 115 of the National Planning Policy Framework 2012.

18. No name, sign, symbol or logo shall be displayed on any external surfaces of any solar array, or on any external transformer unit or other equipment buildings, other than that which is required to meet statutory health and safety requirements.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

19. Save for lighting agreed under Condition 8 (point (viii)) - which shall only be operable as emergency light in the event of grid failure - no floodlighting, security lighting or other external means of illumination shall be provided, installed or operated at the site.

    REASON: To preserve the rural and residential amenities of the locality having regard to Saved Policies EN8, EN9, EN27 and EN29 of the adopted Wealden Local Plan (1998), coupled with the requirements of paragraph 125 of the National Planning Policy Framework 2012 and the Wealden Design Guide, Chapter 3, Section 18 and Chapter 8, Section 7.

20. No development shall take place until further details, including a timetable for implementation, of all proposed enhancements for biodiversity as set out in Chapter 5 of the Environmental Statement have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter retained.

    REASON: In the interests of protecting and enhancing ecological features in and surrounding the site having regard to Saved Policy EN15 of the adopted Wealden Local Plan (1998), SPO1, WCS12 and WCS14 of the adopted Wealden Core Strategy Local Plan 2013 and paragraphs 109 and 118 of the National Planning Policy Framework 2012.

21. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no buildings, structures, means of enclosure or other works; inclusive of that Order, shall be erected or undertaken on the site.

    REASON: The impact of the scheme has been very carefully considered and it is appropriate that further control should extend to possible permitted development rights on this senstive site having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 17, 56-57, 109 and Section 12 of the National Planning Policy Framework 2012.

22. The development must incorporate the measures set out within Chapter 6 (Hydrology & Flood Risk) of the Environmental Statement. The mitigation drainage and flood risk measures described in paragraphs 6.6.5 and 6.6.6 and Appendix 6.1 (PFA Consulting Flood Risk Assessment) shall be installed before the construction of the solar panel arrays at the site and thereafter retained and maintained as such for the duration of the development.

    REASON: To prevent the increased risk of localised flooding having regard to Saved Policy CS2 of the adopted Wealden Local Plan (1998), coupled with the requirements of paragraphs 100-104 of the National Planning Policy Framework 2012 and accompanying Technical Guidance, and the Wealden Design Guide, Chapter 4, Sections 8 and 9.

23. Within one month of the export date set out in Condition 2, final details of measures for educational/information boards on the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a timetable of implementation of these features which shall be provided in accordance with the agreed details and be thereafter retained for the duration of the development.

    REASON: To ensure the Local Planning Authority can control the development in the interests of the visual amenities of the area and wider community benefits having regard to Saved Policies EN1, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

24. STN4 - Plans Approval

NOTE 1: The applicant is advised that the highway works requirements associated with this development proposal will need to be secured through a Section 278 Legal Agreement between the applicant and the Highway Authority, East Sussex County Council.

Due to the minor nature of the highway in the vicinity of the site, construction traffic could damage the carriageway/verges. The Highway Authority will require the applicant to reimburse their legitimate expenses in making good any such damage. Prior to the commencement of development the applicant should contact East Sussex Highways on Tel 0345 60 80 193 to arrange a photographic survey and joint inspection of the local highway network. This would be included within the S278 Agreement. The applicant should also be aware that the creation/alteration of the temporary access will require compliance with the Traffic Management Act 2004 and that the contractor will have to book road space with the County Council's Network Co-ordination team (Tel 0345 60 80 193).

NOTE 2: STN10 - Note 'Public Right of Way to Remain Unobstructed'

Reason for Referral

This application is being referred to this Committee as the proposal is a major development within the countryside.

Executive Summary

This application is a re-submission following the refusal of application WD/2014/0436/MEA.

The site comprises fields to the southern end of Wilbees Farm and south of Arlington village. The site covers an area of approximately 15.19 hectares and consists primarily of two agricultural fields: the eastern field is left as grass, and the western field is arable, and includes a small portion of a third field abutting the north boundary of the western field. The land undulates very gently, with the boundary between the two fields being the highest point and the ground sloping down in a northerly direction. The fields are enclosed by mature hedgerows and trees. Access will be gained at the south-west corner of the site from Moorshill Lane close to its junction with The Street where it bends into Chilver Bridge Road.

This scheme omits development of that part of the site which is classified as grade 3a agricultural land and the proposed large scale solar park would cover 9.3 hectares of the site and consist of some 24,706 panels generating 5MW of electricity, along with buildings containing support equipment, security fencing and landscaping. A 25 year temporary consent is sought.

The notable changes are the smaller developable area within the application site and the fencing and hedging to enclose both sides of the footpath through the site being set further apart. The application also provides more information on landscape impacts and an assessment of the sequential approach to site selection for the solar development.

Development of the site is justifiable in the context of the land use and availability of previously developed sites and agricultural land quality. The development will change the landscape of the site and this part of the countryside, but the impacts would be localised. The amendments and the additional information supplied demonstrate that cumulative impacts with other projects approved in the area would not be harmful to the setting of the South Downs National Park. The site itself is not protected by any landscape designation, falling within the wider Low Weald character area covered by Saved Local Plan EN8 which is not a high status countryside designation that could draw support from the NPPF.

The impacts of the site set-up and decommissioning of the site would attract traffic to the local road network and cause some disruption during these periods, but would not be unsafe and would be for a short period of the life of the development.

Overall, the proposal is consistent with national guidance which states that the visual impacts of well-planned and well-screened solar farms can be properly addressed within the landscape if planned sensitively.

1. Statutory Bodies and Residents - Responses

Arlington Parish Council: OBJECTS

Does not approve of the application and raises concerns about the proposal as it is in a proposed conservation area, it is also a green site and there has been opposition to the plan by local residents.

If WDC approve the application the Parish Council feel that the following conditions should be added with an Agreement sought to prevent the further development of the site and confirm the promised benefit to the community:

- During the construction, operation and dismantling of the site, wheel washing equipment shall be used to remove earth from being deposited on the public highway.
- Construction adheres to the periods identified by Natural England.
- External lighting shall be restricted to non-visible sources.
- No noise shall be audible from outside the external hedge lines.
- Buildings above 2 metres should be screened.
- The permission shall be tied to the continuing occupation of the Farm by the existing owner or dependents.
- The structures must be removed no later than the number of years stated in the application or on the sale of the land by the farmer whichever occurs sooner.
- The Agreement shall prohibit the land being sold onto developers as a brown-field site.
- The Agreement shall require the disclosure to Wealden District Council of any of the financial arrangements behind Hive Energy and its parent or subsidiary entities and these shall satisfy the District Auditor as to long-term viability.

- The Agreement shall require the sourcing of materials and their disposal to be from ethical sources and destinations, subject to independent auditing.
- The finances for the removal of the equipment and re-instatement back to agricultural use should be held in an Escrowed account entirely separate from Hive Energy, its parent or subsidiary entities and/or the Landowner.
- The Community Fund lies within the Agreement with the £28,000 placed into Escrow until such time as the site starts supplying electricity to the power network. The Parish Council accept the offer of £28,000 for the Community Fund.
- No vehicles over 7.5 should be allowed to access the site.

Response to Parish Council: The development proposal is accompanied by a Landscape Visual Impact Assessment regarding the impacts on the local and wider area and also includes views from the Arlington Reservoir. Existing boundary vegetation, plus additional planting, will assist in screening the development in local views. The cumulative impacts of this scheme and others in the area would not have substantial harm upon the landscape. The land is generally low quality agricultural land. The proposal omits the grade 3a agricultural land from development. Impacts in relation to archaeology can be appropriately mitigated. The impacts of traffic during the construction and decommissioning periods can be managed and controlled by conditions.

Longman Parish Council: Comments have not been received.

Berwick Parish Council: OBJECTS

Does not support the application for the following reasons:

- The land is currently in use as good quality agricultural land.
- Concern about the negative impact on the Roman road identified on the site.
- Cumulative impact of this application and other solar farms approved and planned in the area.

South Downs National Park Authority: No comments received. (But confirmed no objections on the previous application).

Natural England: Does not object.

The site is in close proximity to Arlington reservoir Site of Special Scientific Interest. Given the nature and scale of this proposal, there is not likely to be an adverse effect on this site as a result of the proposal. A condition is recommended for the construction work to be undertaken in the summer months.

NE expect the Local Planning Authority to assess and consider impacts on local sites (biodiversity and geodiversity); local landscape character; and local or national biodiversity priority habitats and species.

NE's Standing Advice on Protected Species and the decision tree regarding the likelihood of protected species being present at the site is a material consideration in the determination of applications.

This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the NPPF. Additionally, we would draw your attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which states that '*Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*'. Section 40(3) of the same Act also states that '*conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat*'.

Environment Agency: No comments received.

Highway Authority: Does not object to the application, subject to conditions requiring details of access improvements and reinstatement work, and a highway management plan.

The Street/Chilver Bridge Road is subject to a 60 mph national speed restriction but it is acknowledged that the speed of traffic in this vicinity is considerably slower given the alignment of the carriageway at this point.

The existing access is an agricultural field access and has minimal construction and is onto Byway 43a which is also an Ancient Highway known as Moorshill Lane. Improvements to Moorshill Lane are required at the junction with the C340 to cater for large vehicles.

The applicant originally stated that all vehicles to the site would be 10 metres in length or less, but it would seem that some vehicles would be 16.5 metres in length; vehicle tracking for these larger vehicles is considered acceptable.

Upon completion of the construction phase the access route between the field access and Chilver Bridge Road should be re instated to its former/current state, to help prevent fly tipping and/or parking in this area to preserve the ancient highway.

A conditions survey of Chilver Bridge Road and Moorshill Lane would need to be undertaken by the applicant/developer both prior and post construction. Any damage found would need to be rectified at the applicant/developers cost.

The existing railway bridge on Chilver Bridge Road has no height restriction in the central 3 metre width of the bridge arch, but the height reduces to the outer edges and there is the chance that lorries could hit the bridge. The developer/contractors vehicle drivers will need to be informed to use the central portion of the arch and adequate advance temporary signage provided either

side of the bridge. This point will therefore need to be included in the Construction Traffic Management Plan.

County Archaeologist: Does not object to the development proposals and recommends conditions to secure a programme of archaeological works:

The proposed development is situated within an Archaeological Notification Area defining the site of a significant Roman roadside settlement, a large proportion of which was destroyed during the construction of the adjacent Arlington Reservoir and pumping station.

This north-west corner of the site was investigated as part of an excavation project between 2004 and 2008, with evidence being found of a well preserved Roman road and a series of ditched compounds alongside it. The Roman road, which links the Roman fortress at Pevensey to a Roman town at Barcombe, was identified in the north-east corner of the site, surviving in good condition.

The applicant has commissioned a geophysical survey of the entire site, which has clarified the remains already recorded, but also identified a number of other possible archaeological features, one of which has been provisionally interpreted as a palaeo-channel. The applicant has understood the importance of the main settlement area in the north-west corner of the site and has changed the ground fastening design from piles to concrete bases. Confirmation will be needed that there will be absolutely no digging in this area either as part of the construction phase or at any future management/repair stage.

The initial survey indicates that much of the remainder of the site is of less archaeological significance. However, intrusive investigation will confirm this and if necessary, require either design changes or further intrusive excavation and recording.

Taking into account the likely nature of development impacts and the potential for some flexibility in terms of layout and construction methods, it would be reasonable to mitigate impacts to any below ground archaeological remains by a combination of preservation in situ by design changes and archaeological recording of remains that would be impacted.

Public Footpaths Officer: NO OBJECTION
The route of public footpath Arlington 41A passes through the application site. Road used as public path Arlington 43A abuts the southern boundary of the application site.

It would appear that these public rights of way will not be obstructed as a result of the development. Conditions are recommended requiring public rights of way to be unobstructed during and after construction and waymarking retained.

National Air Traffic Services: NO OBJECTION
The proposed development has been examined from a technical safeguarding aspect and does not conflict with our safeguarding criteria. Accordingly, NATS has no safeguarding objection to the proposal.

Deanland Airfield: No comments.

ESCC Strategic Planning: No comments.

Campaign for the Protection of Rural England: OBJECT
The cumulative impact of this proposal, in combination with the other nearby sites already approved, will have a harmful impact on the Low Weald countryside in this sensitive location close to the South Downs National Park. The high viewpoints provided by The Downs means that local screening cannot work with an installation of this size. The water surface of the nearby reservoir is clearly visible from The Downs, yet it is at ground level, not raised on any South facing structure, and the many trees around it do not screen it from that view, although of course they do screen it from close points. The exposure of this site to high-level viewpoints, plus those other sites nearby that are already approved, will mean that this site cannot be suitable.

The proposal would bring a large industrial installation into this rural landscape contrary to the Core Strategy. We remain of the opinion that no case for siting this proposed electricity generation installation in this position has been made. We support the Government view that the growth of solar generation should be associated with developments on buildings, not by the construction of alien structures on viable farmland that provides a better contribution to the UK economy in agricultural produce, rather than being used for limited daytime electricity generation.

Other third party responses (including local residents):
Twenty four representations have been received. Twenty-two raising objection to the application proposal, and two in support.

The objection comments are summarised:-

- Other solar parks are planned within a short distance - huge visual impact from South Downs National Park.
- The cumulative impact of the solar parks is understated in the visual impact assessment.
- The development will be an invasive blot on the local countryside.
- Arlington is a quaint village and it will be blighted; the environment around it will be ruined and does not warrant a solar park.
- The significant distance from the grid would cause disruption to the village.
- The fencing will impact upon two footpaths.
- The land is good grade agricultural land and is actively farmed.
- Arlington Reservoir is nearby and attracts native and migrating birds, along with other wildlife.
- The site is surrounded by significant hedgerows, trees and woodland which provide habitat for species which hunt over the ground of the application site.
- The proposed site covers a Roman Road and archaeological remains would be adversely affected by development.
- Concern about the construction traffic and site staff traffic over a 3 month period on the narrow C340 road.

- Solar panels should be on industrial roofs.
- The energy Minister Greg Barker has himself stated "Solar has a bright future in the UK, but not in any place and not at any price. I want solar targeted on industrial roofs, homes and brownfield sites, not our beautiful countryside".

2. Other Relevant Responses/Issues

None Received.

Pre-Application Matters
As a follow up to the refusal decision, Officer advice was that any revised development proposals should provide justification for development on un-developed, agricultural land; and that consideration would be given to the layout of development and landscaping for screening the site and views of the site locally and wider landscape.

3. Relevant Planning History

Application No.	Description	Decision and Date
WD/2012/6507/SO	Request for a screening opinion to determine the requirement for an environmental impact assessment for proposed solar park.	Environmental Impact Assessment required 24 December 2012
WD/2014/0436/MEA	Construction of a solar park to include the installation of solar panels to generate electricity with transformer housings, security fencing and cameras and other associated works.	Refused 2 June 2014

There have been other applications relating to the complex of agricultural buildings at Wilbees Farm some 450 metres to the north.

4. Details of Case

The Application Site
The site is comprised mainly of two fields to the southern end of Wilbees Farm and south of Arlington village. The fields are on the eastern side of 'The Street" with Moorshill Lane (a track which is an adopted highway) abutting the southern boundary. The Arlington Treatment Works lie on the opposite side of The Street, with Arlington Reservoir beyond.

The application site covers an area of approximately 15.19 hectares and the fields are in agricultural use: the eastern field is left as grass, and the western field is arable. The application site includes a small portion of a third field abutting the north boundary of the western field.

The land undulates very gently, with the highest point being at the southern boundary of the site where the two main fields are divided. The ground slopes down in a northerly direction. The boundaries of the fields are enclosed by mature hedgerows and trees.

Access will be gained at the south-west corner of the site from Moorshill Lane close to its junction with The Street where it bends into Chilver Bridge Road.

Opposite the field access to the site is an access which serves Endlewick Cottages and Endlewick Farm.

The Development Proposals

This submission is a revision of the previous refused scheme (WD/2014/0436/MEA). This proposal omits development of that part of the site which is classified as grade 3a agricultural land with the proposed large scale solar park covering 9.3 hectares of the site and consisting of some 24,706 panels generating electricity, along with buildings containing support equipment, security fencing and landscaping. A 25 year temporary consent is sought.

The photovoltaic panels would be laid out in arrays running east to west across the application site. The maximum height of the arrays will respond to the topography of the landscape and will be capped at 2.2 metres above ground level. The solar panels will be installed at a gradient of 22 degrees from the horizontal and facing south.

The arrays will be connected to inverter equipment located within the site, which in turn will be connected to the local electricity grid via a sub-station. There is no grid connection shown within the application, which it is anticipated will be to the north (beyond the site) and via an underground cable. These connection works would be carried out by UK Power Networks and so do not form part of the planning application.

The scheme includes six inverter buildings (8m x 3m x 2.9m high), a sub-station building (5.5m x 4.9m x 3.7m high) and a control room (5.9m 2.95m x 3.7m high). The site would be enclosed with security/deer proof fencing 2 metres high, with 43 CCTV cameras installed.

The layout plan shows a construction compound situated in the south west corner of the site.

Policy Framework

The up-to-date approved 'development plan' for Wealden District Council comprises the following documents:

- The Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan (adopted 19 February 2013).
- The Wealden Local Plan (adopted December 1998) (Saved Policies).
- The East Sussex and Brighton & Hove Waste Local Plan (adopted February 2006) (Saved Policies).
- East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan (adopted February 2013).

The Core Strategy Local Plan (CSLP) is a joint Local Plan with the South Downs National Park Authority (SDNPA). The adoption of the CSLP by the District Council took full legal effect following the adoption of the Plan by the SDNPA on

19 February 2013. (The District Council had previously resolved to adopt the Local Plan on 28 November 2012).

On 28 March 2013 an application was lodged in the High Court under Section 113 of the Planning and Compulsory Purchase Act 2004 challenging the validity of the Core Strategy on the grounds that its adoption was unlawful as it failed to comply with the requirements of Directive 2001/43/EC on the Assessment and Effect of Certain Plans and Programmes on the Environment and the implementing Environmental Assessment of Plans and Programmes Regulations 2004. This was dismissed by Order dated 21 February 2014, and leave to appeal that decision refused on 17 March 2014.

Certain Policies of the Wealden Local Plan (1998) have been 'saved' via Direction of the Secretary of State dated 25 September 2007, under the provisions of Paragraph 1(3), Schedule 8, Planning & Compulsory Purchase Act 2004. Annex 2 of the National Planning Policy Framework confirms that these 'saved' Policies still form part of the development plan. A limited list of 'saved' Policies which are in compliance with the NPPF and Core Strategy Local Plan are still relevant where they supplement Policy guidance.

Under the auspices of 'saved' Policies EN1 (sustainable development) and EN27 (layout and design) of the Wealden Local Plan 1998, the Council has also formally adopted the Wealden Design Guide, November 2008, as a Supplementary Planning Document. These 'saved' Policies and design guide continue have material weight, where they are in compliance with the NPPF and CSLP, (having regard to paragraph 211 of the NPPF).

Relevant Policies

The National Planning Policy Framework (NPPF) came into force on the 27 March 2012 with immediate effect and therefore is a material planning consideration when assessing and determining planning applications. Due regard has been had to any relevant national Policy guidance, in particular paragraphs 7, 11 – 14, 17, 32, 35, 56 – 61, 64, 93 – 99, 100 - 103, 109, 111 - 115, 117 – 119, 125, 126, 128, 129, 131 – 136, 139 and 141 of the NPPF.

Overarching National Policy Statement for Energy (EN-1), 2011.

The National Policy Statement for Renewable Energy Infrastructure EN-3 (July 2011) relates only to nationally significant renewable energy from biomass/waste and wind power and so is not relevant to this application.

National Planning Practice Guidance (March 2014) for renewable and low carbon energy sets out particular considerations for solar proposals.

'UK Solar PV Strategy Part 1: Roadmap to a Brighter Future' published in October 2013, and the second part to the practice guidance published in April 2014: 'UK Solar PV Strategy Part 2: Delivering a Brighter Future.'

Transitional provisions of the NPPF confirm that Policies within the adopted Wealden Local Plan 1998 saved under the Planning and Compulsory Purchase Act 2004 continue to form part of the Local Plan:

- The Vision, Spatial Planning Objectives SPO1, SPO9, SPO13 and Policy WCS14 of the adopted Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan 2013.
- Saved Policies GD2, EN1, EN8, EN14, EN27, TR2, TR13 and CS2 of the adopted Wealden Local Plan (1998).
- Guide Wealden Design Guide 2008 (adopted Supplementary Planning Document), Chapter 2 (Sections 1, 2, 6 and 8); Chapter 3 (Sections 1, 2,, 6, 8, 15, 16, 17 and 19); Chapter 4 (Sections 1, 6, and 12).

Principles of Development
The application site is located outside any defined development boundary and is agricultural land within the Low Weald landscape character area. Part of the site is of archaeological interest. A footpath passes through the eastern field, with a bridleway/ancient highway running alongside the southern boundary of the site, and a bridleway alongside the eastern boundary.

The Arlington Site of Special Scientific Interest is situated to the opposite side of The Street, approximately 20 metres from the western boundary of the application site.

Policy Issues
National Policy & Guidance
Core principles set out in the NPPF include encouraging the use of renewable resources and recognising the intrinsic character and beauty of the countryside. The NPPF also provides that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes, including giving great weight to conserving the landscape and scenic beauty of National Parks, which have the highest status of protection.

These core principles are reflected in Overarching National Policy Statement for Energy (EN-1). Whilst aimed principally at nationally significant energy infrastructure, Para 1.1.2 states that *"this NPS is likely to be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case by case basis."*

The National Planning Practice Guidance (March 2014) for renewable and low carbon energy sets out particular considerations for solar proposals. It too acknowledges the importance of protected landscapes but it is worthy to note the introductory comments at paragraph 1 as follows:

"Increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. Planning has an important role in the delivery of new renewable

and low carbon energy infrastructure in locations where the local environmental impact is acceptable".

Within paragraph 13 of the NPPG dealing with ground mounted solar schemes, Government has indicated a preference for *focussing large scale solar on previously developed land and non-agricultural land, and if a proposal does involve greenfield land, the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; that it allows for continued agricultural use and/or encourages biodiversity improvements around arrays.*

UK Solar PV Strategy Parts 1 and 2 emphasis support for small scale and mid-size projects on houses, commercial and industrial rooftops and also on public buildings. There is support for large scale ground-mounted solar where proposals are appropriately sited, with proper weight given to environmental considerations such as landscape and visual impact, heritage and local amenity, and which provide opportunities for local communities to influence decisions that affect them and gain some form of community benefit.

Ten best practice initiatives of the Solar Trade Association are set out in Part 2 to address the issue of diverting significant amounts of land from agricultural and domestic food production summarised as follows:-

- Focus on non-agricultural land or land which is of lower agricultural quality.
- Sensitive to nationally and locally protected landscapes and nature conservation areas and opportunities to enhance the ecological value of the land.
- Minimise visual impact where possible and maintain appropriate screening throughout the lifetime of the project.
- Engaging with local communities in advance of submitting planning applications.
- Encourage land diversity by continuing agricultural use or incorporating biodiversity.
- Purchasing and employing locally where possible.
- Undertake 'Considerate Construction' and demonstrate 'solar stewardship' of the land for the lifetime of the project.
- Seek the support of the local community and listen to their views and suggestions.
- Use the solar farm as an educational opportunity where appropriate.
- At the end of the project life, return the land to its former use.

Local Policy & Guidance: The Core Strategy Local Plan seeks successful accommodation of growth to meet future needs whilst protecting and enhancing the essential rural character and high quality environment and promoting the countryside as a resource for recreation and tourism. The distribution of development has sought to avoid protected landscapes and the Core Strategy sets out, albeit with regard to housing development, that the views from the South Downs do form a constraint to development.

Saved Policies of the Adopted Wealden Local Plan are more detailed in nature, setting criteria against which development will be considered. Development within the Low Weald will only be permitted if it conserves the low rolling agricultural character of the landscape. In considering any proposal, particular regard will be had to:-

(1) Areas of unspoilt and remote countryside;
(2) The setting of settlements;
(3) Areas on the fringe of adjacent statutorily designated landscapes;
(4) The retention of woods, boundary trees and hedges;
(5) Attractive vernacular buildings and groups of buildings.

The Wealden Design Guide is an adopted Supplementary Planning Document. Chapter 2 describes the character zones and local distinctiveness. Chapter 3 offers extensive guidance on landscape, landscaping and trees. Chapter 4 relates to sustainability. Whilst aimed mainly at buildings, the guidance acknowledges that solar installations can have visual impacts on designated important landscapes.

The Wealden Climate Change Policy and Action Plan outlines how the Council plans to work to further reduce emissions. A target is to develop a Supplementary Planning Document (SPD) on sustainability and climate change, subject to the Local Development Scheme. Related to this, the Wealden Sustainability Strategy provides a framework to ensure sustainability is included in all the Council's strategies, plans, Policies and actions.

Main Issues

Landscape and Visual Impacts: The proposed development is a large scheme that would cover a substantial block of land. Subject to the supplementary planting proposed in the application, the visual impacts of the proposal would be well contained and localised.

There are three public rights of way in the area. The first, running north-south through the eastern field, would be enclosed by planting either side of it. The revised position of fencing, hedge planting and panels either side of this right of way secures a greater space for the right of way than the previous scheme. Instant hedging would be planted to provide the green enclosure to the sides of the right of way. Views from this right of way into the development areas of the site will be from glimpses through the proposed vegetation once matured. There are other rights of way in the vicinity which are similarly enclosed by dense vegetation and hedging.

The second right of way passes along the southern perimeter of the site and sections of this are below the level of the fields. There is a substantial hedgerow and tree line along this boundary and supplementary planting is proposed.

The field to the south of the application site provide an opportunity to view the proposed development due to a rise in ground levels and the spaces between the canopies of the boundary trees.

The third right of way, Arlington 44a, passes alongside the eastern perimeter. The ground is more level at this point and currently some views of the field can be gained through existing boundary vegetation.

An assessment of the views from Arlington Reservoir, which was of concern to Members when considering the previous scheme, is set out in the Landscape Visual Impact Assessment. This demonstrates that the separation distance and intervening vegetation would screen views of the proposed development from the reservoir.

Regarding impacts on the South Downs National Park, Natural England raises no objection. The SDNP confirmed it had no objections previously, and it is not expected that their view would change on this application given the proposal now involves a reduced area of development. There is limited inter-visibility between the application site and other sites at Berwick and Laughton which have planning permission for solar developments. This is demonstrated in photomontages of views from Bopeep Hill and Long Man of Wilmington which highlight the proposed site and other solar developments in the area.

Chapter 9 of the EIA considers glint and glare. It concludes that solar reflections are only likely to be observed by surface-based receptors when in close position to the horizontal and that that effects glint and glare would be negligible at worst. The applicant has provided an updated planting plan with additional planting now proposed to the southern boundary.

Agricultural Assessment: An Agricultural Land Classification has been submitted to inform the application proposals. The survey concludes that the majority of the site has soils limited to Subgrade 3b (moderate) quality and Grade 4 (poor) agricultural land due to soil wetness. The remainder of the application site is Subgrade 3a but this area would be left un-developed.

Archaeology and Cultural Heritage: There are no Listed Buildings adjoining the site, although there are several Grade II Listed Buildings within 2km of the site, including Copy Hold Cottage, Corner House, Chesslands and Woodholme Manor. St Pancras Church, a Grade I Listed Building is located within the nearby village of Arlington. There is also a Scheduled Monument (deserted medieval remains of a settlement) within the village of Arlington next to St Pancras Church. Existing field boundary vegetation screens the site from these historic buildings.

The north-west corner of the site is part of an area of archaeological interest; a smaller section of this area would now be developed under this revised proposal. There is potential for archaeology at the site, and it is proposed that the most sensitive areas be developed with a no-dig method, erecting the panel support structures on concrete pads. The County Archaeologist raises no objection to this method.

Traffic Impact and Access: It is envisaged that the construction period for the proposed development would be 3 months. The access route to the site for construction traffic would be from the A27 along the C39 towards to the junction with Chilver Bridge Road to the south of Berwick village.

The TA acknowledges that there is potential for at least one other solar development to be under construction at approximately the same time, with the cumulative effects occurring on both the C39 and A27 roads. There is potential conflict between the users of the public roads, and on the ancient highway/bridleway immediately adjacent to the site access.

The Local Highway Authority has not objected to the transport impacts of the construction phase, and a construction traffic management plan would provide appropriate controls of delivery vehicles along the local road network, along with setting appropriate arrangements along the un-made highway up to the site access point.

Flood Risk and Drainage: The application site is classified as being within Flood Risk Zone 1, with a low probability of flooding according to the Environment Agency maps. The site contains areas potentially susceptible to surface water flooding due to topography.

The Flood Risk Assessment provides sufficient information in order to demonstrate that the future users of the development would remain safe throughout its lifetime and that the development would not increase flood risk elsewhere. A drainage basin is proposed for the northern portion of the site to accommodate surface water draining to this lower ground to take account of the potential for additional surface flow.

Ecology: There are not considered to be any material adverse impacts on ecology arising from the development. Natural England does not raise objection regarding impacts on the nearby Site of Scientific Interest or nationally protected species, subject to construction being during the summer months.

A confidential badger report has been provided. The construction phase has potential to create disturbance. Mitigation measures can be put in place to protect the species.

Direct impacts on other species due to the proposed development are considered to be low. Additional planting to field boundaries would provide enhancement, and the application also proposes the formation of a meadow in a north section of the site together with beehives to provide other enhancement of local biodiversity on and off the site.

Impact on Neighbours: The nearest neighbouring residential properties are 1 and 2 Endlewick Cottages which are approximately 80 metres to the south of the access to the application site, with Endlewick Farm some 240 metres beyond. Existing vegetation alongside Moorshill Lane provides separation and screening between the application site and these properties to the south.

The next nearest properties are approximately 200 metres to the west at Stapley Farm and Waterworks Cottages. There is a wooded area between these properties and The Street boundary of the site.

The proposed route for construction traffic passes various properties along Chilver Bridge Road, most of which are residential but set back from the

roadside. The construction phase will increase vehicle movements past these properties for a temporary period.

5. Conclusion

This application seeks to address the reason for the refusal of the previous submission. The notable changes are the smaller developable area within the application site and the greater space either side of the footpath passing through the site by fencing and vegetation being set further apart. The application also provides more information on landscape impacts and an assessment of the sequential approach to site selection for the solar development.

The sequential study concludes that the use of agriculture/greenfield land is necessary in the absence of previously developed land of a sufficient size to accommodate large scale solar development. Wealden has undertaken its own exercise this year, contacting owners/occupiers of industrial and other large roof buildings to give advice about installing solar PV panels. Very little interest has been received. The sequential study also concludes there are no potential sites of poorer agricultural quality and less environmental constraints in the District.

The proposal involves the use of agricultural land. The developable area is low grade agricultural land, and the good quality land within the application boundary would not be developed. Land within the developed area would remain available for agricultural use and not adversely affect quality following decommissioning of the development.

This scheme reduces the amount of development on the area of archaeological interest. The potential impacts upon the archaeological assets can be mitigated appropriately and the County Archaeologist has not raised objection. The setting of listed buildings and the scheduled ancient monument would not be harmed because of the separation distances and intervening vegetation providing effective screening.

The development will bring change and an impact on the character of the local area, but this is a temporary development, albeit for a long period, with reversible effects. The Landscape Value Impact Assessment provides a variety of potential views of the site. The additional information in respect of views from Bopeep Hill and Arlington Reservoir demonstrate that there would not be an adverse cumulative impact on the landscape from long distance views, or from vantage points at the Local Nature Reserve and SSSI.

The proposal is consistent with national guidance for large scale solar developments to be well planned and screened to satisfactorily address landscape character and setting.

Mitigation, including biodiversity enhancement, can also be provided to take account of potential impacts on biodiversity.

On the balance of considerations, the significant benefits of renewable energy provision, energy security and reduction in carbon emissions outweigh the

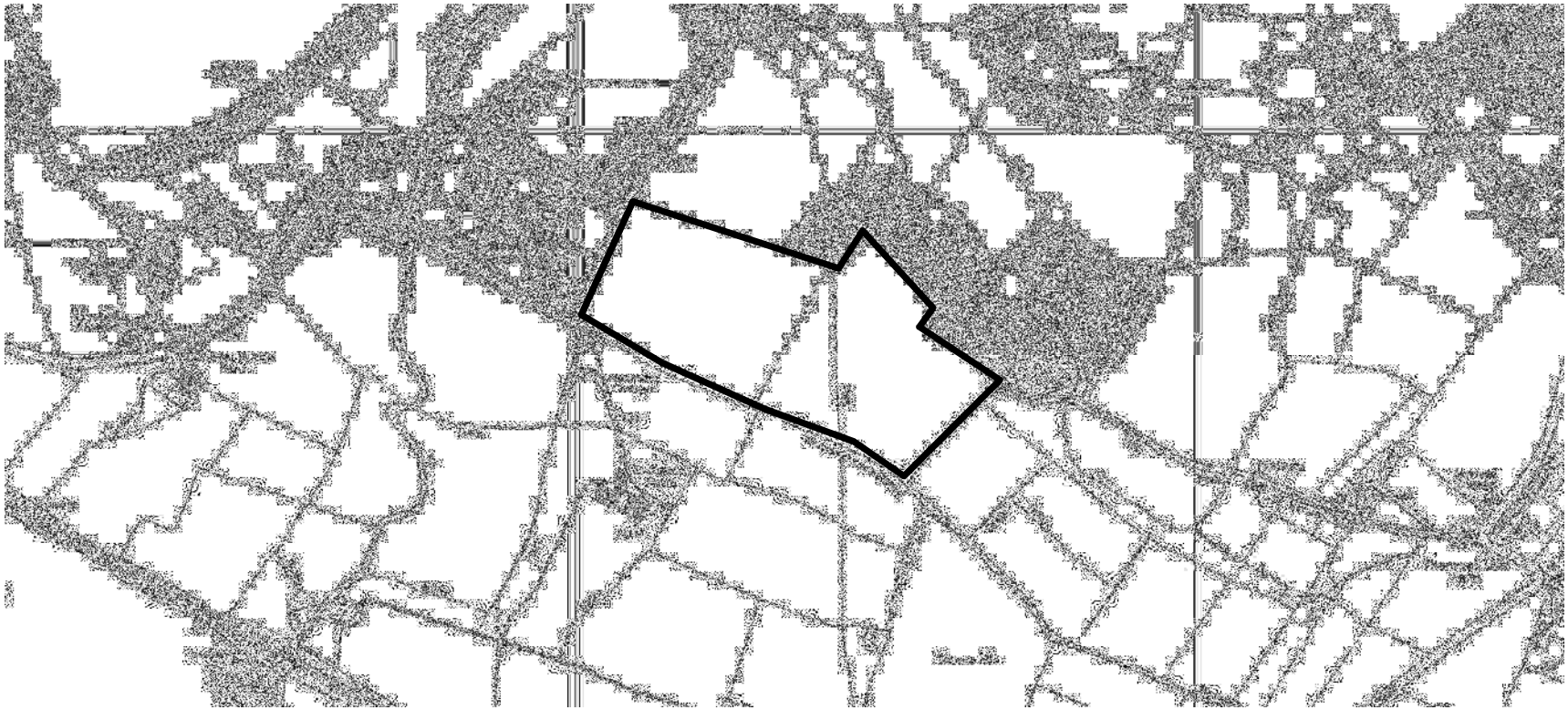
moderately harmful impact on the localised landscape, effects upon residential amenity and short period of disruption during site set up/decommissioning.

Subject to the suggested planning conditions, it is considered that the reasons for refusal of the previous scheme have been fully addressed within this revised proposal, and it is recommended that planning permission be granted.

6. Contact points and references

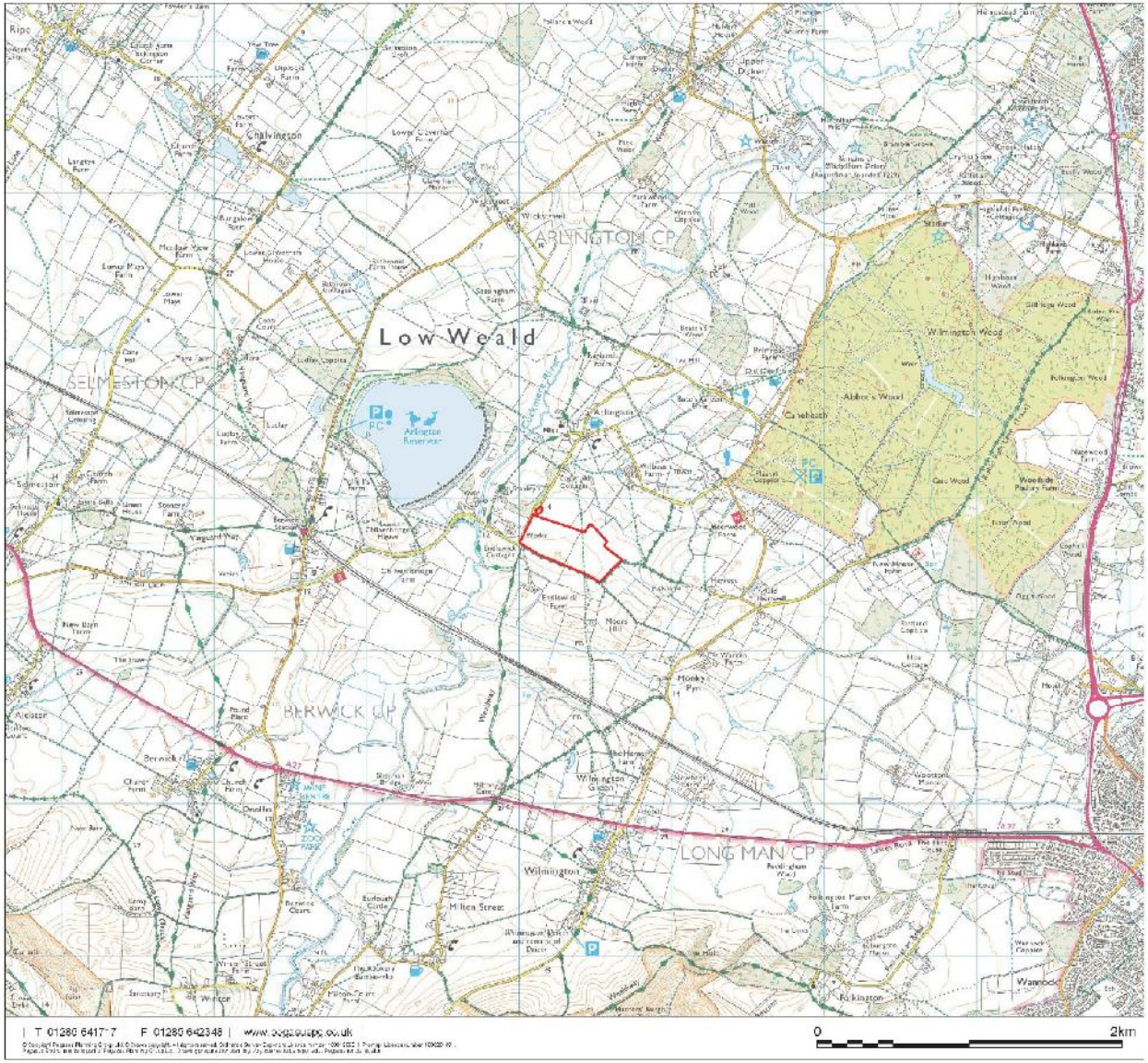
Team Leader (S)	Judith James - Tel: 01892 602475
Case Officer:	Mr A Battams, Planning Officer – Tel: 01892 602487
Ward Members:	Cllr J L Blake & Cllr D G White

For: Planning Committee South
Date: 13 November 2014



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For: Planning Committee South
Date: 13 November 2014



Town and Country Planning Act 1990

Notice of Decision
Application No. **WD/2014/1838/MEA**

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Pegasus House
Querns Business Centre
Whitworth Road
Cirencester
Gloucestershire
GL7 1RT

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DESCRIPTION AND LOCATION OF DEVELOPMENT
CONSTRUCTION OF A SOLAR PARK TO INCLUDE THE INSTALLATION OF SOLAR PANELS TO GENERATE ELECTRICITY WITH TRANSFORMER HOUSINGS, SECURITY FENCING AND CAMERAS AND OTHER ASSOCIATED WORKS.
LAND AT WILBEES FARM, THE STREET, ARLINGTON.

With reference to the proposals set out in the application numbered as above and shown on the plans submitted therewith, Wealden District Council, in pursuance of powers under the Town and Country Planning Act 1990 (as amended), hereby **GRANTS PLANNING PERMISSION** for the said proposals, subject to the conditions stated below imposed for the reasons stated thereunder:-

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date on which this permission is granted. STD4A

   REASON: To meet the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

2. The date when electricity from the development is first exported to the local electricity grid network, hereafter known as the first export date, shall be notified in writing to the Local Planning Authority within 28 days after its occurrence. This permission shall expire no later than 25 years from the first export date. Within 12 months of the expiration of the permission, all elements of the development to a depth of at least one metre below ground level shall be removed and the land restored, in accordance with the decommissioning method statement required by Condition 4.

   REASON: In the interests of the visual amenities of the area having regard to saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan 1998 and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

3. If any solar panel (or panels) hereby permitted fail(s) to produce electricity for supply to the local electricity grid network for a continuous period of 12 months, then details of a scheme to repair or remove the panel(s) shall be submitted to the Local Planning Authority for its written approval within 3 months of the end of that 12 month period. If repairs to panels are required, the details shall include a programme of remedial works. If removal of the panels is required, the panels shall be removed within 12 months of the details being approved and the details shall include a method statement and timetable for the dismantling and removal of the panels and of the associated above ground works and foundations to a depth of at least one metre below ground; and a method statement, traffic management plan, and a timetable for any necessary restoration works following

their removal. The scheme shall be implemented in accordance with the approved details.

REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan 1998 and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

4. No later than 12 months before the expiry of this permission, details of a decommissioning method statement shall be submitted to the Local Planning Authority, for its written approval, to include management of timing of the works, a traffic management plan and reinstatement of the land. Decommissioning of the development shall be carried out in accordance with the approved details.

   REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan 1998 and paragraphs 56-57, 109 and 112 of the National Planning Policy Framework 2012.

5. Construction works to provide the solar farm hereby permitted must only commence and be carried out within the summer months between May and August in any year.

   REASON: In order to ensure minimal disturbance to the species using Arlington Reservoir Site of Scientific Special Interest, having regard to Policy WCS12 of the adopted Wealden Core Strategy Local Plan (2013), and paragraphs 109 and 118 of the National Planning Policy Framework 2012.

6. Construction of the development hereby permitted shall only take place on the site between the hours of 08:00 - 18:00 on Monday to Saturday inclusive. No such construction work shall take place on any Sunday, Bank or Public Holidays. Outside these hours, works at the site shall be limited to emergency works and dust suppression. Emergency works shall include works to make safe solar arrays that are under construction. The Local Planning Authority shall be informed in writing of any emergency works within one working day of their occurrence.

   REASON: In the interests of the established residential amenities of the occupiers of properties surrounding the site having regard to saved Policy EN27 of the adopted Wealden Local Plan 1998, WCS14 of the adopted Wealden Core Strategy Local Plan 2013 and paragraphs 17 and 98 of the National Planning Policy Framework 2012.

7. Notwithstanding Chapter 7 of the Environmental Statement, no development shall commence, including any site clearance, until a Construction Traffic Management Scheme has been submitted to and approved by the Local Planning Authority in consultation with the Highway Authority. This shall include:-

   a) The timetable for works on site;
   b) The routeing of vehicles to and from the site;
   c) The size of vehicles;
   d) Arrangements for escorting abnormal loads;
   e) Banksmen and temporary advance warning signage utilised to warn other road users of the larger vehicles - particularly on the C39 on the approach to the crossroads with the C340.
   f) Advance signs either side of the bridge on the C340 (the Chilver Bridge Road) to warn drivers to use the central portion of the arch of the bridge
   g) Any temporary removal and replacement of highway infrastructure and street furniture;
   h) Any road closures;
   i) Expected levels and timings of development traffic;
   j) Measures to control traffic, in and around the site, including temporary parking areas and vehicle turning areas;

k) Measures to ensure that delivery vehicles and construction traffic will not park on the public highway (including Moorshill Lane) for loading, unloading or waiting for site entry.
l) Measures to ensure contractors vehicular trips are minimised such as travel plan and/or minibuses provided.
m) Vehicle wheel washing facilities within the site to prevent contamination, soiling and damage to the highway.

REASON: In the interests of highway safety and for the benefit and convenience of the public at large, having regard to Saved Policy TR3 of the adopted Wealden Local Plan (1998), and paragraphs 32 and 35 of the National Planning Policy Framework 2012.

8. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The CMS shall include details of:

(i) Works to construct the temporary hardening and surfacing of the site during construction;
(ii) The deposition, grading and finishing (in relation to local landform and habitat) of soil and other natural materials not removed from the site during the construction works;
(iii) Pollution prevention measures to be adopted during the construction phase to ensure that suitable bunding is used around fuel tanks and that excavation/construction works do not harm local sewerage, groundwater supplies, surface water quality or the quality of subsoil;
(iv) Construction mitigation and post construction reinstatement measures;
(v) The siting and design of the construction compound and of any concrete batching plant;
(vi) Measures to control noise, dust and mud arising from the development, complying with guidance found in BS 5228 `Noise Vibration and Control on Construction and Open Sites`;
(vii) Measures to clean and maintain site entrances, and the adjacent public highway;
(viii) Temporary site illumination;
(ix) Arrangements for the disposal of waste and surplus materials;
(x) Temporary site compound including any structures/buildings, fencing, parking and storage provision to be used in connection with the construction of the development;
(xi) Wheel washing facilities;
(xii) Emergency procedures and pollution response plans;
(xiii) A site environmental management plan with measures to be taken during the construction period to protect wildlife and habitats; and
(xiv) The timing and phasing of the above elements.

The CMS shall be implemented in accordance with the approved details, for the duration of the construction works, unless otherwise agreed in writing by the Local Planning Authority.

REASON: In the interests of protecting existing ecological and hydrological features in and surrounding the site, and in the interests of highway safety and residential amenity having regard to Saved Policies EN15, EN27 and TR3 of the adopted Wealden Local Plan (1998), SPO1, WCS12 and WCS14 of the adopted Wealden Core Strategy Local Plan 2013 and paragraphs 17, 35, 109 and 118 of the National Planning Policy Framework 2012.

9. No development shall commence until details of the layout and the specification for the construction of the temporary access (and its re-instatement to existing condition) from the south-west point of the site to Chilver Bridge Road, with details including gradients and levels, have been submitted to and approved in writing by the Local Planning Authority. The development within the rest of the site shall not commence until the construction of the access has been completed in accordance with the approved details and specification set out on Form HT407 which is attached to and forms part of this

permission. Within three months of the completion of the construction of the development, the access shall be de-constructed back to its original condition in accordance with the approved details.

REASON: To enable the construction phase and ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway whilst ensuring the ancient right of way will be restored, having regard to Saved Policy TR3 of the adopted Wealden Local Plan (1998), and paragraph 35 of the National Planning Policy Framework 2012.

10. No development hereby permitted shall commence until a scheme of landscape proposals have been submitted to and approved in writing by the Local Planning Authority, which shall include full plans and specifications for all hard and soft landscape works and indications of all existing trees and hedgerows on the land, including those to be retained together with measures for their protection in the course of the development. All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first export date of electricity (Condition 2 refers), and any trees, shrubs, hedges or plants which within the period of consent set out in Condition 2 die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

    REASON: To protect visual amenity and the character of the area and to secure the landscape visual enhancements advanced as part of the application package, having regard to Saved Policies EN14 and EN27 of the adopted Wealden Local Plan (1998). coupled with the requirements of paragraphs 17 and 109 of the National Planning Policy Framework 2012 and the Wealden Design Guide, Chapter 2; Chapter 3.

11. a) No development shall commence until the developer has secured the implementation of a programme of archaeological work (including archaeological evaluation), in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority.

    b) The development hereby permitted shall not be brought into use until the archaeological site investigation and post investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part a) of this condition, and confirmed in writing by the Local Planning Authority in consultation with the County Planning Authority.

    REASON: To ensure that the archaeological and historical interest of the site is safeguarded and recorded, having regard to Spatial Objective SPO2 and Policy WCS14 of the adopted Wealden Core Strategy Local Plan (2013), and paragraphs 129, 131 and 132 of the National Planning Policy Framework 2012.

12. Before any works hereby permitted are begun, details of the foundations, piling configuration, drainage and services, including a detailed design and method statement for the preservation in situ of significant archaeological remains, shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out in accordance with the approved details.

    REASON: To enable the preservation or recording of any items of historical or archaeological interest, as the development is likely to disturb known remains of archaeological interest, and having regard to Spatial Objective SPO2 and Policy WCS14 of the adopted Wealden Core Strategy Local Plan (2013), and paragraphs 129, 131 and 132 of the National Planning Policy Framework 2012.

13. No development shall take place until exact and full details of equipment required for connection to the national power grid have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter retained as such.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

14. No development shall commence until details of the colour (which shall be green), tone and finish of the security fencing approved in the application have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter retained.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 17, 56-57 and 109 of the National Planning Policy Framework 2012.

15. The solar panels hereby approved shall not exceed 2.2 metres above ground level.

    REASON: To ensure the Local Planning Authority can control the development in the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 115 of the National Planning Policy Framework 2012.

16. The control and invertor buildings hereby permitted shall not be erected until details of the design and external materials for the buildings, and for any associated compound or parking area, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and thereafter retained.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 115 of the National Planning Policy Framework 2012.

17. No development hereby approved shall commence until details of the CCTV cameras to be installed around the site have been submitted to and approved in writing. The details shall include the height, position and fixing/movement of the cameras. The CCTV cameras shall be installed in accordance with the approved details and thereafter retained and maintained as such.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 115 of the National Planning Policy Framework 2012.

18. No name, sign, symbol or logo shall be displayed on any external surfaces of any solar array, or on any external transformer unit or other equipment buildings, other than that which is required to meet statutory health and safety requirements.

    REASON: In the interests of the visual amenities of the area having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

19. Save for lighting agreed under Condition 8 (point (viii)) - which shall only be operable as emergency light in the event of grid failure - no floodlighting, security lighting or other external means of illumination shall be provided, installed or operated at the site.

REASON: To preserve the rural and residential amenities of the locality having regard to Saved Policies EN8, EN9, EN27 and EN29 of the adopted Wealden Local Plan (1998), coupled with the requirements of paragraph 125 of the National Planning Policy Framework 2012 and the Wealden Design Guide, Chapter 3, Section 18 and Chapter 8, Section 7.

20. No development shall take place until further details, including a timetable for implementation, of all proposed enhancements for biodiversity as set out in Chapter 5 of the Environmental Statement have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter retained.

REASON: In the interests of protecting and enhancing ecological features in and surrounding the site having regard to Saved Policy EN15 of the adopted Wealden Local Plan (1998), SPO1, WCS12 and WCS14 of the adopted Wealden Core Strategy Local Plan 2013 and paragraphs 109 and 118 of the National Planning Policy Framework 2012.

21. Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no buildings, structures, means of enclosure or other works; inclusive of that Order, shall be erected or undertaken on the site.

REASON: The impact of the scheme has been very carefully considered and it is appropriate that further control should extend to possible permitted development rights on this sensitive site having regard to Saved Policies EN1, EN8, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 17, 56-57, 109 and Section 12 of the National Planning Policy Framework 2012.

22. The development must incorporate the measures set out within Chapter 6 (Hydrology & Flood Risk) of the Environmental Statement. The mitigation drainage and flood risk measures described in paragraphs 6.6.5 and 6.6.6 and Appendix 6.1 (PFA Consulting Flood Risk Assessment) shall be installed before the construction of the solar panel arrays at the site and thereafter retained and maintained as such for the duration of the development.

REASON: To prevent the increased risk of localised flooding having regard to Saved Policy CS2 of the adopted Wealden Local Plan (1998), coupled with the requirements of paragraphs 100-104 of the National Planning Policy Framework 2012 and accompanying Technical Guidance, and the Wealden Design Guide, Chapter 4, Sections 8 and 9.

23. Within one month of the export date set out in Condition 2, final details of measures for educational/information boards on the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a timetable of implementation of these features which shall be provided in accordance with the agreed details and be thereafter retained for the duration of the development.

REASON: To ensure the Local Planning Authority can control the development in the interests of the visual amenities of the area and wider community benefits having regard to Saved Policies EN1, EN9, EN11 and EN27 of the adopted Wealden Local Plan (1998) and paragraphs 56-57 and 109 of the National Planning Policy Framework 2012.

24. This planning decision relates solely to the information contained within the application form, the following plans and documents:

Ref.	Date Stamped. STN4
Environmental Statement	5 September 2014
Design & Access Statement	5 September 2014
Planning Statement	5 September 2014
Sequential Analysis Study	5 September 2014
Statement of Community Involvement	5 September 2014
H.0352_01-D	5 September 2014
H.0352_04-D	5 September 2014
H.0352_11-A	5 September 2014
H.0352_12-A (1 of 2)	5 September 2014
H.0352_12-A (2 of 2)	5 September 2014
H.0352_13-A	5 September 2014
H.0352_14-A	5 September 2014
H.0352_16-A	5 September 2014
H.0352_17-A	5 September 2014

REASON: For the avoidance of doubt.

NOTE: Should alterations or amendments be required to the approved plans, it will be necessary to apply either under Section 96A of the Town and Country Planning Act 1990 for non-material alterations or Section 73 of the Act for minor material alterations. An application must be made using the standard application forms and you should consult with us, to establish the correct type of application to be made.

NOTE 1: The applicant is advised that the highway works requirements associated with this development proposal will need to be secured through a Section 278 Legal Agreement between the applicant and the Highway Authority, East Sussex County Council.

Due to the minor nature of the highway in the vicinity of the site, construction traffic could damage the carriageway/verges. The Highway Authority will require the applicant to reimburse their legitimate expenses in making good any such damage. Prior to the commencement of development the applicant should contact East Sussex Highways on Tel 0345 60 80 193 to arrange a photographic survey and joint inspection of the local highway network. This would be included within the S278 Agreement. The applicant should also be aware that the creation/alteration of the temporary access will require compliance with the Traffic Management Act 2004 and that the contractor will have to book road space with the County Council's Network Co-ordination team (Tel 0345 60 80 193).

NOTE 2: The existing public right(s) of way across the site must remain undisturbed and unobstructed unless or until legally stopped up or diverted prior to the commencement of any of the development hereby permitted. The alignment of any public right of way should be protected throughout the course of development by being clearly demarcated, signed, surfaced or fenced as may be necessary. STN10

NOTE: Your attention is drawn to the requirements of the Building Act 1984 for the deposit of Plans under the Building Regulations and associated legislation. ACCESS FOR FIRE BRIGADE: Your attention is hereby drawn to the provisions of Section 35 of the East Sussex Act 1981.

DISCHARGE OF CONDITIONS: It is advised that under The Town and Country Planning Act 1990, the Council has up to 8 weeks from the date of an application to discharge any condition(s) and advise the applicant of the Council's decision. This information should be submitted using the 'Approval of Details Reserved by

Condition' Form which can be downloaded from the Council's website. Please note there is also a fee payable for this type of application.

IMPORTANT: See Notes overleaf
DATE OF ISSUE: 14 November 2014

Kelvin Williams
Head of Planning & Environmental Services

Application No. WD/2014/1838/MEA

NOTES

Appeals to the Secretary of State

- If the Applicant is aggrieved by the decision of the Local Planning Authority (LPA) to refuse permission for the proposed development or to grant it subject to conditions, then an appeal may be lodged with The Planning Inspectorate (PINS) under Section 78 of the Town and Country Planning Act 1990.
- Appeals must be made on a form which is obtainable from:
  The Planning Inspectorate, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN
  Tel. No. 0303 444 5000
  www.planningportal.gov.uk/pcs

Appeal Timescales

- Householder planning application or minor commercial application:

  12 weeks from the date on the decision notice

  However, if an enforcement notice has been served for the same or very similar development the time limit is:
  - **28 days** from the date of the LPA decision if the enforcement notice was served before the decision was made yet not longer than 2 years before the application was made.
  - **28 days** from the date the enforcement notice was served if served on or after the date the decision was made (unless this extends the appeal period beyond 12 weeks).

  NB – if the LPA have failed to determine the householder planning application, or for an appeal against the grant of permission subject to conditions, please follow the time limits under "Planning application" below.

- Planning application:

  6 months from the date on the decision notice, or
  6 months from the expiry of the period which the LPA had to determine the application.

  However, if an enforcement notice has been served for the same or very similar development within the previous 2 years, the time limit is:
  - **28 days** from the date of the LPA decision if the enforcement notice was served before the decision was made yet not longer than 2 years before the application was made.
  - **28 days** from the date the enforcement notice was served if served on or after the date the decision was made (unless this extends the appeal period beyond 6 months).

  NB – the LPA determination period is usually 8 weeks (13 weeks for major developments and 28 days for non-material amendment applications). If a longer period has been agreed with the LPA, the time limit runs from that date.

Further information

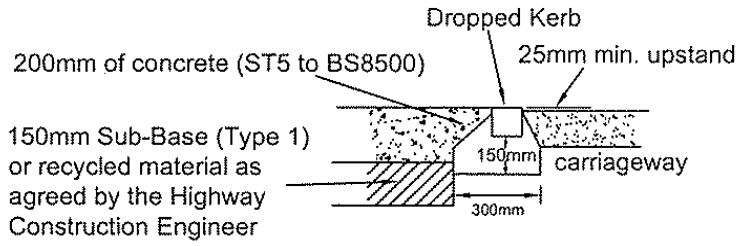
- The Planning Inspectorate has discretionary power to allow a longer period for the giving of a notice of appeal but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice to appeal.
- The Planning Inspectorate is not required to entertain an appeal if it appears that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.
- The Planning Inspectorate does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction issued by the Secretary of State.

Purchase Notices

- If either the LPA or Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that the land has become incapable of reasonably beneficial use in its existing state nor rendered capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances the owner may serve a purchase notice on the District Council. This notice will require the Council to purchase their interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

Layout of Access: - To be agreed

Temporary Access Construction



THE AREA HIGHWAY MANAGER WILL REQUIRE NOTICE OF COMMENCEMENT OF WORKS ON OR ADJACENT TO THE HIGHWAY. SEE NOTE m) OVERLEAF.

Notes to be read in conjunction with attached highway comments and conditions

(a) In urban areas the treatment of the radii shall be accordance with the requirements of the Highway Construction Engineer.

(b) Any existing ditch shall be cleaned out to even fall and piped to a size to accept the maximum flow of water likely to arise (internal diameter 300mm or as agreed with the Highway Construction Engineer).

(c) Where an existing access is to be stopped up the applicant is required to raise the existing dropped kerb and make good the footway/verge and kerb.

(d) Any existing footway shall be made good with similar construction and surfacing.

(e) Where the edge of the carriageway is already defined by Continental Channel, dropped Continental Channel sections (if available) or concrete channel blocks shall be used instead of dropped kerbs and if necessary the transition between the constructions made in in-situ concrete to the satisfaction of the Highway Construction Engineer.

(f) Any gates are to be set back a minimum distance of 5 metres (11 metres for farm or industrial accesses) from the edge of the carriageway and are to open away from the highway.

(g) The applicant's attention is drawn to the necessity to ensure that no surface water is allowed to flow from the development onto the highway and similarly no surface water from the highway should be allowed to flow into the site. The provision (by the applicant) of positive drainage measures may be required to collect any flow of surface water.

(h) Any necessary alterations to the property or services of, any statutory authority or undertaker shall be carried out at the expense of the applicant and under the supervision of such authority or undertaker to their satisfaction.

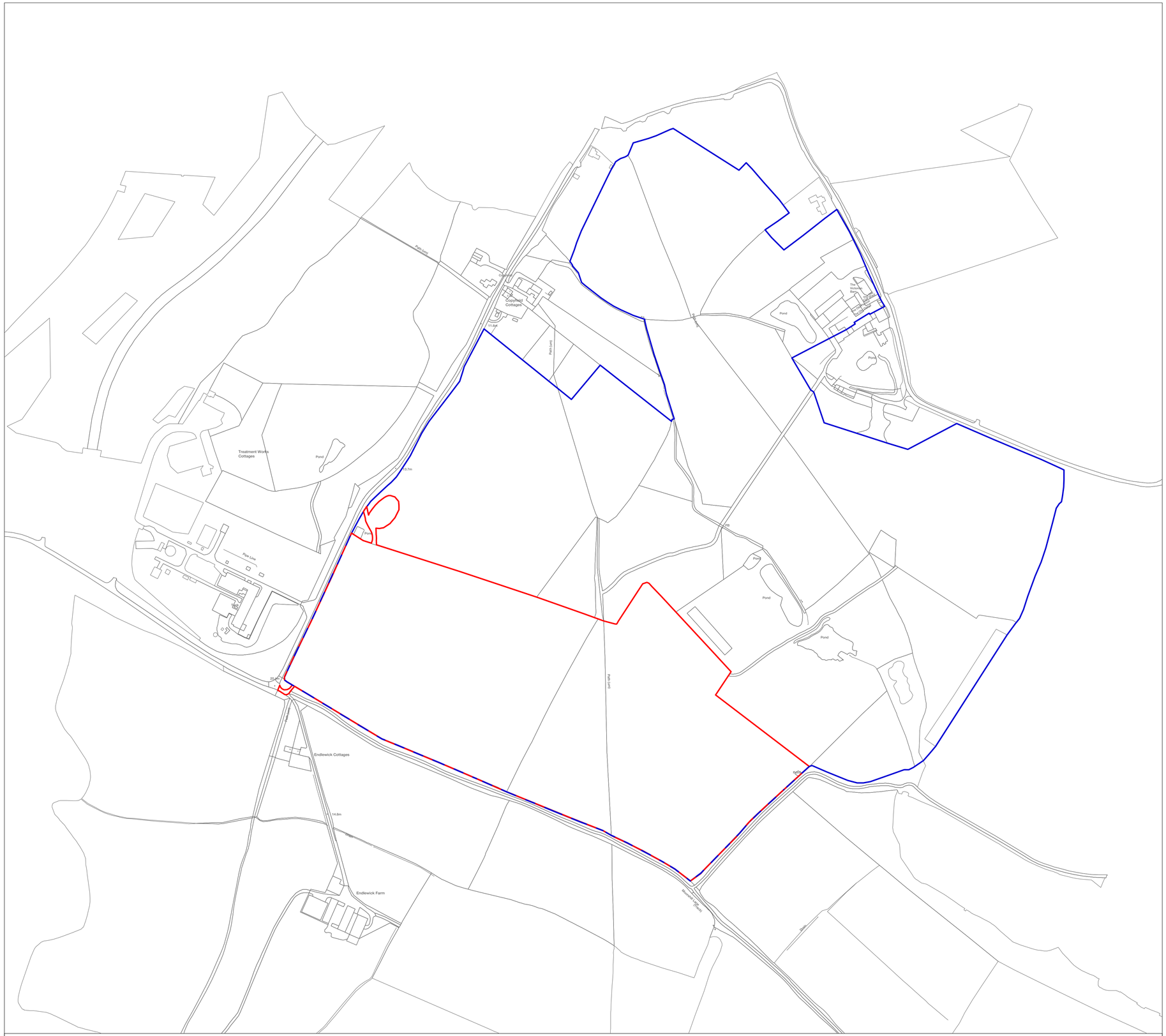
(i) If the requirements outlined in these details and/or notes conflict with the requirements of the Fire Officer then the Fire Officer's requirements shall prevail.

j) Reference to Sub-Base (Type 1) in the access section diagram refers to graded granular sub base complying with Clause 803 Specification for highway works (SHW). (March 1998 updated with amendments including November 2005, May and November 2006 and May 2007) and subsequent amendments.

(k) You must ensure that the contractor has ten million pounds public liability insurance and one of their employees holds a current Supervisors New Roads and Street Works Act Certificate and at least one operative on site should hold an Operators Certificate. A list of contractors with the required certificates is available from the Transport Development Control team Please email us at development.control.transport@eastsussex.gov.uk or call us 01273 335443. (If you decide to use one that is not on the list, you must ensure that copies of the certificates are supplied by the contractor to the Transport Development Control team).

(I) Your attention is drawn to the fact that your contractor will have to book road space under the Traffic Management Act 2004. Please ask them to contact the Network Co-ordination Team on 0845 60 80 193 who will need at least 21 days notice of the commencement of works.

(m) The County Council charges a fee for works on or adjacent to the highway. Please email us at development.control.transport@eastsussex.gov.uk or call us 01273 335443. The Highway Inspectors require at least 15 days notice of your intention to commence works under a PWA in order that the necessary utility service checks may be completed before works commence. Three months notice is required for major schemes.


Public Path
Cowpasture Cottages
11.6m
Pond
Treatment Works Cottages
Pond
Pipe Line
Public Path
Pond
Pond
Pond
Pond
Public Path
Endlewick Cottages
14.8m
Endlewick Farm
Bodiam Road
Public Path
Pond
Pond
Pond
Pond



INSTANT HEDGEROW PLANTING

Code	Species	Root Condition	Age + Times Transpl	Height cm
AC	Acer campestre (10%)	CG	3 x	120-150
CA	Corylus avellana (10%)	CG	3 x	120-150
CM	Crataegus monogyna (50%)	CG	3 x	120-150
EE	Euonymus europaeus (5%)	CG	3 x	120-150
LV	Ligustrum vulgare (10%)	CG	3 x	120-150
VL	Viburnum lantana (5%)	CG	3 x	120-150
VO	Viburnum opulus (10%)	CG	3 x	120-150

NATIVE HEDGE INFILL PLANTING
@ 5 per linear metre in a double staggered row

Code	Species	Root Condition	Age + Times Transpl	Height cm
AC	Acer campestre (10%)	Bagged	1+2	60-80
CA	Corylus avellana (10%)	Bagged	1+2	60-80
CM	Crataegus monogyna (50%)	Bagged	1+2	60-80
EE	Euonymus europaeus (5%)	Bagged	1+2	60-80
LV	Ligustrum vulgare (10%)	Bagged	1+2	60-80
VL	Viburnum lantana (5%)	Bagged	1+2	60-80
VO	Viburnum opulus (10%)	Bagged	1+2	60-80

| T 01285 641717 | F 01285 642348 | www.pegasuspg.co.uk |

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Pegasus Environmental is part of Pegasus Planning Group Ltd. Drawing prepared for planning. Any queries to be reported to Pegasus for clarification

KEY

- Existing Vegetation
- Existing Trees
- Proposed Instant Hedgerow
- Proposed Low Density Shrub & Tree Planting
- Proposed Deer Fence (2m high)
- Solar Strings
- Grassland
- Public Right of Way
- Access Track
- Security Camera
- Inverter
- Switch Gear Cabinet
- DNO Substation
- Container for Site Control (monitoring, safety equipment, storage)
- Sensitive Area for Archaeology (concrete footings to be used in this area)
- Information Board
- Swale
- Drainage Basin

Revisions:

			Date
A	•	First issue	17.02.14
B	•	Planting and sections added	02.05.14
C	•	Panels removed	16.07.14
D	•	Layout amended to ALC	29.07.14

Wilbees Farm, Arlington, East Sussex

Site Layout and Planting Proposals

HIVE ENERGY

Drawn by : JS/AD	Checked by : IH
Date : 29.07.14	H.0352_04-D
1 : 1250 @ A1	

N

Pegasus Environmental

APPENDIX [C]

The Planning Inspectorate

Appeal Decisions

Inquiry held on 29, 30 and 31 January 2013
Site visit made on 31 January 2013

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 18 April 2013

Appeal A Ref: APP/Y1138/A/12/2181808
Land at Greenham Reach, Holcombe Rogus, Devon (NGR 307117/120011)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ecological Land Co-operative against the decision of Mid-Devon District Council.
- The application Ref 12/00045/MFUL, dated 27 December 2011, was refused by notice dated 7 June 2012.
- The development proposed is the siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, greenhouse, W.E.T. waste water treatment system and alterations to the existing highway access and private ways as part of a scheme for new entrants to ecological agriculture.

Appeal B Ref: APP/Y1138/A/12/2181821
Land at Greenham Reach, Holcombe Rogus, Devon (NGR 307117/120011)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ecological Land Co-operative against the decision of Mid-Devon District Council.
- The application Ref 12/00107/MFUL, dated 17 January 2012, was refused by notice dated 7 June 2012.
- The development proposed is the siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, W.E.T. waste water treatment system and alterations to the existing highway access and private ways as part of a scheme for new entrants to ecological agriculture.

Appeal C Ref: APP/Y1138/A/12/2181807
Land at Greenham Reach, Holcombe Rogus, Devon (NGR 307117/120011)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ecological Land Co-operative against the decision of Mid-Devon District Council.
- The application Ref 11/02007/MFUL, dated 5 December 2011, was refused by notice dated 7 June 2012.
- The development proposed is the siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, poultry hatcher/brooder, W.E.T. waste water treatment system and alterations to the existing highway access and private ways as part of a scheme for new entrants to ecological agriculture.

These decisions are issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersede those issued on the 4th April 2013

Summary of decisions

1. All three appeals are allowed, and planning permission is granted in accordance with the conditions scheduled in the appendices attached to this decision letter.

Procedural matters

2. The description of the proposed development given in each of the three planning applications included the creation of a borehole. That element of the proposals was withdrawn during the application process, and the Council determined the applications on the basis that no borehole would be created. My determination of these appeals proceeds on the same basis.

3. At the inquiry the appellant submitted a S.106 Undertaking [Document 15] which has, as subsequently established by submission of Document 18, been duly executed by all necessary parties. I have taken the existence of this legal deed into account in my consideration of the appeals, and discuss its content and implications below.

Background

4. The appellant is a co-operative society founded to support the creation of affordable and sustainable land-based livelihoods in the UK. It purchased the freehold of some 8.85 hectares of land at Greenham Reach with the intention of creating a pathway into ecological farming for new entrants, by selling leasehold agreements to operate smallholdings on the land. It now seeks planning permission for three temporary dwellings, each associated with one of three smallholdings to be established on the site, for a period of five years.

5. Since the land at Greenham Reach has been sub-divided into three separate plots, each to be leased to different occupiers, I can understand why the Council requested three separate planning applications (now the subject of these three linked appeals) detailing the agricultural activities that would be taking place on each. However, the evidence indicates that the development proposal as a whole, which has remained consistent throughout the application and appeal process, does not straightforwardly equate to establishing three conventional independent smallholdings.

6. Rather, the co-operative society would retain ownership of the land and would provide communal facilities for the benefit of all three enterprises. Tenants would be obliged to operate their smallholdings in strict accordance with principles of low-impact living set out in the co-operative's over-arching Management Plan, and could, ultimately, have their tenancies terminated if they failed to do so. The co-operative society would also have the responsibility of monitoring, on an annual basis, the business accounts of the smallholders and (among other things) the impact of the development on landscape quality and biodiversity.

7. In my judgment the ongoing involvement of the co-operative society is an integral component of the development that is here proposed, and forms part of the context in which the individual appeals should be considered.

Main issue

8. The main issue, common to each of these three appeals, is whether there are circumstances that would justify the creation of the proposed new homes in the countryside, having regard to relevant local and national planning policy.

Reasons

The proposed development

9. The area of land in question is currently laid to grass, and used for grazing sheep. It lies some 1.5 miles from the village of Holcombe Rogus, which is the nearest settlement, along an unclassified road. The appellant's proposal is to subdivide this land into Plots A, B and C, for the establishment of 3 separate smallholdings, with some 0.3ha retained for the provision of shared facilities and landscaping. A track would be constructed from the sole vehicular access point on the northwest boundary to the communal barn, and onward to provide access to the three plots. Other communal facilities would include a barn, water storage, a solar PV array, a waste water treatment system and visitor parking. The proposed use of the land would be in keeping with the agricultural character and appearance of the surrounding landscape.

10. The supporting information submitted in respect of Plot A (now the subject of Appeal A) explained that this plot is located on 2.8 ha of relatively flat land. The Business Plan provided by the prospective tenant sets out his intention to develop a profitable business that would benefit the local economy, while also playing a positive role in improving soil fertility, ecological diversity, the drawing down of atmospheric carbon and the aesthetic appearance of the site. The produce would be organic, and its production and transportation as close to fossil-free as practically possible. The plot would be used to grow vegetables and salad crops for a box scheme; a variety of grains; a willow plantation, to produce wood for hand-crafted willow furniture and baskets; a 2 acre agroforestry scheme comprising a fruit and nut orchard under-sown with herbs and perennial vegetables; and a flock of hens and ducks would be kept.

11. Plot B (the subject of Appeal B) extends to about 2.2 ha. The supporting information submitted with the planning application explained that the proposed business activities on this smallholding would be horticultural, revolving in the first few years around the production of quality salad bags, culinary herbs and gourmet salad dressing ingredients, with production of fruit juices and cider vinegar in later years once the proposed orchard was established. Bees and a flock of Maran hens would also be kept. I heard at the inquiry that the prospective tenants who had drawn up this Business Plan were no longer involved, but were happy for it to be adopted by others. The evidence of the appellant was that it has a long list of prospective smallholders, and would have no problem finding a suitably experienced grower to implement these proposals.

12. Plot C (the subject of Appeal C) comprises some 3.6 ha of land, some of it steeply sloping, and part of it adjoining the river. The supporting material prepared by and on behalf of the prospective tenants is that their business would consist of several components, to provide income throughout the year. These would include a market garden; a vegetable and herb nursery; a silvopastoral agroforestry scheme based on a forest-edge ecosystem, with the floodplain meadow grazed by sheep and further up the slope, native woodland trees, top and soft fruit, perennial vegetables and mushroom-bearing logs; poultry for sale as point-of-lay hens; and the processing of surplus produce and purpose-grown and gathered fruit into preserves for year-round sale.

The policy context

13. Paragraph 55 of the government's *National Planning Policy Framework* (NPPF) explains that locating new isolated homes in the countryside should generally be avoided, unless there are "special circumstances". It goes on to list four examples of such special circumstances, which include "the essential need for a rural worker to live permanently at or near their place of work in the countryside".

14. It is worth emphasising here that the guidance set out in the NPPF replaces that formerly contained in the government's Planning Policy Statement (PPS) 7: *Sustainable Development in Rural Areas.* Annex A of PPS 7 advised that where permission was sought for a dwelling on a temporary (rather than a permanent) basis to support a new farming activity, the proposal would need to demonstrate a firm intention and ability to develop the enterprise, provide clear evidence that the enterprise had been planned on a sound financial basis, and pass the "functional need" test: that is, show that it would be essential for the proper functioning of the enterprise for one or more workers to be readily available at most times.

15. The evidence given on behalf of the Council proceeded on the basis that the tests formerly set out in PPS 7 would be helpful in gauging whether an "essential need" for the proposed temporary dwellings exists, and cited in support of that approach the findings of an Inspector in a recent appeal decision (Ref APP/C1625/C/12/2171928 & 2172069). I share that Inspector's view that in some circumstances the methodology set out in Annex A can still be a material consideration, albeit on the basis that it is no longer government policy, but it is crucial to note (as he did) that the terms of paragraph 55 of the NPPF do not preclude the demonstration of "essential need" by evidence that does not seek to, or cannot, show that all of the Annex A tests have been met.

16. Against that background, I note that the Council's emerging "Local Plan Part 3" contains a draft policy dealing with rural workers dwellings (DM/10), which not only seeks to amalgamate the "essential need" test set out in the NPPF with a more restrictive version of the old "functional need" test from PPS 7, but also to re-introduce, for the purposes of assessing whether a temporary dwelling may be permitted, the other superseded PPS 7 tests of "a firm intention to establish a rural enterprise" and "sound financial planning".

17. I understand the appellant's concerns about the extent to which such a policy could be considered "consistent" with the NPPF, since it was open to the government to include the old Annex A tests as part of this new guidance, and it chose not to do so. However, paragraph 1 of the NPPF explains that it is intended to provide a framework within which communities can produce their own plans, and in my view there is nothing to prevent the Council formulating a policy that seeks to "flesh out" the terms of this framework, provided it has sound reasons for so doing. Since the soundness of draft policy DM/10 has yet to be tested at a public examination, and since a number of unresolved objections to its terms persist, I consider that for the purpose of determining the current appeals this emerging policy should be afforded only limited weight.

18. Of more significance, since it forms part of the adopted Development Plan for the area, is Policy COR 18 of the Mid-Devon Core Strategy. The appellant rightly points out that in dealing with dwellings in the countryside, this policy refers to the needs of "agricultural or forestry" workers rather than the more

inclusive term "rural workers" preferred by paragraph 55 of the NPPF, and in that respect I agree that it is inconsistent with the NPPF; aside from that important point, I consider the provision it makes for "housing essential to accommodate [an agricultural or forestry worker]" to be consistent with the relevant part of paragraph 55.

19. The appellant also points out that Policy COR 18 differs from paragraph 55 of the NPPF in that the former could be interpreted as providing an exhaustive list of the circumstances in which development would be permitted in the countryside, whereas the latter could be interpreted as leaving open the possibility that such development may also be justified if other "special circumstances" exist. While it is true that Policy COR 18 makes no specific provision for the existence of any other "special circumstances", it seems to me that this absence does not necessarily render individual policies out-of-date or inconsistent with the NPPF, but rather should be considered as a matter on which the Development Plan as a whole is, as yet, silent.

Essential need

20. The proposed development seeks to use the land's resources in a sustainable manner, aiming to develop ecosystems which have the diversity, stability and resilience of natural systems. Each of the smallholdings proposes to minimise its reliance on imported materials and energy derived from fossil fuels, so as to minimise its carbon footprint, and thus would be more labour-intensive, and require more human intervention, than more conventional, mechanised agricultural enterprises.

21. As a fellow Inspector noted when determining an appeal concerning an enterprise based on principles of permaculture (Ref APP/X1118/A/12/2180401), it is understandable that those pursuing the aim of developing a sustainable livelihood, as an integral part of a low impact lifestyle, would choose to live on-site. I accept that for any such enterprise (indeed, for most conventional agricultural enterprises too) the presence of a resident worker would have obvious benefits in terms of enabling a quicker response time to emergencies and changes in weather conditions than if all workers were living off-site, and would also reduce the need for journeys involved in commuting to and from the site. However, those acknowledged benefits do not in themselves amount to an "essential need" for a worker to live on site.

22. The evidence of the appellant is that while some aspects of the three proposed smallholdings, such as the agroforestry plantations, could be wholly managed during the course of a normal working day there are other aspects which would require "out of hours" attendance, and so generate a need for a permanent on-site presence. I am told that such tasks, common to all three plots, would include morning and early-evening irrigation of crops to minimise evaporation loss; night-time hand-picking of slugs to minimise depredation of crops; shutting up poultry at dusk; and responding to extreme weather conditions, large pests and escaped livestock. I am also told that the wood burners proposed on Plot C to maintain temperatures within polytunnels would need to be re-stoked during cold winter nights, and the off-grid electricity powering heat lamps for chicks would require diligent monitoring: further, judgments about whether or not to use fleece to protect the salad crops proposed on Plots A and B may need to be made late in the evening, if cloud clears unexpectedly.

23. The Council contends that some of these arrangements appear to adopt a "hair shirt" approach to the management of the smallholdings, and points out that other less labour-intensive methods of controlling pests and heating polytunnels could be adopted.

24. However, it is important to have regard to the full extent and context of the proposals for Greenham Reach. Fundamental to the establishment and operation of the smallholdings are the appellant's aims of addressing the need to reduce the negative environmental impacts of conventional farming and globalised food distribution, and the need to facilitate and learn from low-impact development. To that end, they have put in place extensive safeguards to ensure that the proposed smallholdings would be operated in accordance with the principles of low-impact development, while providing opportunities for research into its operation and effect.

25. The prospective tenants were carefully selected by the appellant on the basis of, among other things, their experience of low-impact living and the quality of their business proposals. The leasehold agreements for the smallholdings would require the occupiers to comply with the terms of the co-operative society's overarching Management Plan for Greenham Reach, and the S.106 Undertaking executed by the appellant makes the co-operative society (and any subsequent owner of the land) responsible for ensuring the implementation of that Management Plan.

26. The Management Plan itself is an extensive document, which places a number of obligations and requirements upon the tenants of the smallholdings. Among these are a prohibition on the use of agro-chemicals, and the use of artificial inputs in the form of synthetic pesticides, herbicides or fertilisers; a requirement to manage, on a communal basis, the on-site facilities for rainwater harvesting, biological treatment of grey water and compost toilets; a requirement to generate electricity on-site from a renewable source, and to meet their heating needs through the use of solar energy and/or biomass crops; a requirement that their temporary dwelling must achieve at least a Code 4 rating within the BRE Code for Sustainable Homes; and a restriction on the number of vehicles to be kept at the site and the overall number of vehicle trips to and from the site each year.

27. Further, the Management Plan requires the operators of the smallholdings to comply with, and contribute to, the co-operative society's provisions for the extensive monitoring of all aspects of the proposed development, including an annual assessment of the ecological and biodiversity condition of the site by a qualified professional, reports on soil condition and water erosion, carbon footprint analysis and the provision of annual business accounts for each smallholding.

28. Supporting evidence submitted with the planning applications demonstrates that there is abundant and wide-ranging interest in taking up the research opportunities offered by the proposed development at Greenham Reach. At the inquiry I heard convincing evidence as to the particular value of such research opportunities. While other low-impact development initiatives are in existence, the proposals for Greenham Reach would provide a unique opportunity to undertake baseline surveys and monitoring before the proposed smallholdings were established; importantly, the Management Plan would secure tenants' continuing involvement in monitoring the progress, impact and

success or otherwise of the proposals, forestalling difficulties experienced elsewhere in securing smallholders' cooperation with researchers.

29. The Management Plan, then, is clearly aimed at securing the use of the proposed smallholdings to create and sustain low-impact livelihoods, while facilitating research into the viability of such livelihoods. In this context it is not unreasonable that prospective tenants should adopt and seek to develop, as part of their business proposals, methods of pest-control, crop-care and eco-agriculture that both comply with this ethos and are proportionate to their particular small-scale enterprises. I accept that the labour-intensive nature of such practices, necessary to ensure that a sustainable livelihood could be developed without resort to agro-chemicals and reliance on fossil fuels, would require the worker's presence and involvement to such an extent that the need could only be met by living on-site.

30. Moreover, the requirements and restrictions of the Management Plan, along with others contained in the leasehold agreements and the S.106 Undertaking, would be likely to deter prospective tenants who might simply be seeking a means of obtaining a dwelling in the countryside. Living a low-impact lifestyle and developing a symbiotic relationship with the land involves foregoing some of the normal trappings of modern day life while engaging in extensive, and at times very intensive, physical labour. I consider that the co-operative society's role in assessing applicants, and subsequently assisting and monitoring their progress, would also help to ensure that prospective tenants were genuinely committed to this type of rural enterprise.

31. Taking all of these considerations into account, I am satisfied that the requirements of the proposed smallholdings at Greenham Reach, which are considered here as integral components of the development proposals for the site as a whole, give rise to an essential need for a worker to live at each of those smallholdings. For the avoidance of doubt, this finding applies to Plot B even in the current absence of an identified tenant, since I accept the appellant's undisputed evidence that it has an ample supply of prospective tenants willing and able to implement the Business Plan submitted with the planning application; such tenants would also be bound by the restrictions of the leasehold agreement and Management Plan.

32. I conclude that the proposed development now the subject of these three appeals would comply with Policy COR 18 of the Mid Devon Core Strategy.

33. The Council raised a number of legitimate concerns about some of the financial information and forecasts supplied with the applications, which place in doubt the size, and timing, of some of the predicted profits. While I do not consider the identified extent of the potential reduction in profitability sufficient to undermine the overall viability of any of the proposals, it is fair to note that acknowledged omissions from the projected profit and loss accounts limit the extent to which the proposal could be said to accord with the requirement in emerging Policy DM/10 for "clear evidence of… sound financial planning." In all other respects, I consider the requirements of DM/10 to be met: the five years' work the appellant has put in to researching, consulting on and preparing its applications for this site constitute clear and convincing evidence of its firm intentions.

34. As discussed above, Policy DM/10 is not yet a part of the adopted Development Plan, and there remains some doubt about whether it will, in its current form,

become so. I therefore attach little weight to the limited extent to which the proposed development conflicts with this emerging policy. I attach much greater weight to the material consideration that the proposed development would have substantial benefits in terms of not only its own sustainability credentials, which are considerable and are not disputed by the Council, but also the contribution it could make, through facilitating much-need research, to informing and improving future developments in the field.

Other matters

35. The Council's second reason for refusing the proposals was its concern that they would set a precedent for further dwellings, in association with permaculture and agroforestry proposals, in the countryside. Firstly, it is important to note that development does not proceed by way of precedent; each proposal must be considered on the basis of its own individual merits. Secondly, the particular circumstances of the current proposals, which combine (a) strict requirements for the establishment and maintenance of low-impact livelihoods with (b) unique opportunities for research and (c) the ongoing involvement of a purpose-formed co-operative society, clearly demand a great deal of commitment and investment from those involved and are unlikely to be easily replicated by people merely seeking a dwelling in the countryside. Thirdly, provided that proposals for other dwellings associated with permaculture and agroforestry complied with the relevant policies, it is not clear to me why the Council would consider encouragement for them to be undesirable.

36. Concerns were expressed by some local residents about the impact that additional traffic associated with these proposals would have on the local road network. The highway authority considers that the proposals would be acceptable in highway safety terms, subject to conditions securing the provision of visibility splays at the site entrance and the creation of passing spaces, and I have no reason to doubt that professional assessment. Further, the leasehold agreement for prospective tenants places strict limits on the number of vehicle movements to and from the site, and the need to comply with that limit would inform the operations of the smallholders, for example sharing transport to take produce to markets and local buyers.

Conditions

37. The Council suggested a list of conditions that it considers should be imposed if I were minded to grant planning permission for the proposed development. I have considered these in the light of the advice set out in Circular 11/95 *The Use of Conditions in Planning Permissions.*

38. It is necessary to attach the standard condition requiring development to be carried out in accordance with the submitted plans, which differ for all three proposals. Since the proposals for Plots A and B do not (unlike the proposal for Plot C) include details of the design and dimensions of the proposed dwelling, it is necessary to attach a condition to each of these permissions requiring the Council's approval of these details prior to the construction of those dwellings. Other than these, the suggested conditions are common to all three proposals, and I deal with them together below.

39. Since it is fundamental to the acceptability of the proposals that the dwellings are needed to house workers on the land, it is necessary to attach a condition

restricting their occupation to such workers. As the permission granted is for temporary dwellings to subsist for a period of five years, it is also necessary to attach a condition requiring their removal at the end of this period, and the reinstatement of the land to its former condition.

40. I agree with the Council that if any of the three plots were to be amalgamated with either (or both) of the others, it would be appropriate to require the removal of the temporary dwelling(s) thus rendered excess to requirements, and have attached a condition to that effect. I also agree with the Council that a condition is needed requiring its prior approval of the timetable for constructing the communal facilities and implementing the proposed landscaping is needed, to ensure that these are provided in a timely manner to serve the occupiers of the dwellings. I have also attached the Highway Authority's suggested conditions securing the provision of visibility splays, hardsurfacing at the start of the access track, and the provision of 2 passing bays. Finally, I have attached the Council's suggested condition requiring retention of a riparian buffer, to prevent disturbance to otters.

Conclusions

41. Each of the three proposals accords with the objectives of the adopted Development Plan, and taken together, other material considerations weigh heavily in favour of granting planning permission. I therefore determine that the appeals should be allowed.

Formal decision: Appeal A

42. The appeal is allowed and planning permission is granted for the siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, greenhouse, W.E.T. waste water treatment system and alterations to the existing highway access and private ways as part of a scheme for new entrants to ecological agriculture on land at Greenham Reach, Holcombe Rogus, Devon (NGR 307117/120011) in accordance with the terms of the application, Ref 12/00107/MFUL, dated 27 December 2011, subject to the conditions scheduled at Appendix 1 to this decision letter.

Formal decision: Appeal B

43. The appeal is allowed and planning permission is granted for the siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, W.E.T. waste water treatment system and alterations to the existing highway access and private ways as part of a scheme for new entrants to ecological agriculture on land at Greenham Reach, Holcombe Rogus, Devon (NGR 307117/120011) in accordance with the terms of the application, Ref 12/00107/MFUL, dated 17 January 2012, subject to the conditions scheduled at Appendix 2 to this decision letter.

Formal decision: Appeal C

44. The appeal is allowed and planning permission is granted for the siting of a temporary agricultural worker's dwelling for a period of 5 years together with an agricultural barn with PV array, poultry hatcher/brooder, W.E.T. waste water treatment system and alterations to the existing highway access and private ways as part of a scheme for new entrants to ecological agriculture on land at Greenham Reach, Holcombe Rogus, Devon (NGR 307117/120011) in accordance with the terms of the application, Ref 11/02007/MFUL, dated 5

December 2011, subject to the conditions scheduled at Appendix 3 to this decision letter.

Jessica Graham

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Wadsley, of Counsel	Instructed by the Solicitor to Mid Devon Council
He called:	
Mr P Rowan DipTP MRTPI	Director, Rowan & Edwards Ltd
Mr A Berryman MRICS	Consultant, Acorus Rural Property Services Ltd

FOR THE APPELLANT:

Mr P McLeish, of Counsel	Acting "pro bono"
He called:	
Dr J Wright BA, PgDp, MSc, PhD	Deputy Director, Coventry University Centre for Agroecology and Food Security
Dr L Maxey LLB, MSc, PhD, FRGS	Director, Ecological Land Co-operative Ltd
Ms R Laughton BSc, MSc	Agricultural Consultant
Mr R Hitchings BSc, PGCE	Principal Consultant, Elm Farm Organic Research Centre
Ms S Aldworth Chartered Accountant	Director, Ecological Land Co-operative Ltd
Ms Z Wangler BSc	Managing Director, Ecological Land Co-operative Ltd

INTERESTED PERSONS:

Mr R Wiltshire	Local resident
Ms G Gale	Member of "Sustainable Villages"
Mr C Smaje	Market gardener, writer and researcher
Mr P Bowers	Member of "Sustainable Villages"
Mr C Vernham	Researcher at the University of Bristol, Trustee of the Centre for Sustainable Development
Ms E Thompson	Climate Scientist
Ms J Fernandes	Experienced smallholder
Ms G Westcott	Member of Parish Council
Mr H Chapman	Experienced smallholder
Mr D Washington	Agricultural worker

DOCUMENTS SUBMITTED AT THE INQUIRY

1 List of appearances for the appellant
2 S.106 Unilateral Undertaking, executed by the appellant
3 Signed Statement of Common Ground
4 Copy of Agenda Item 8 of the Planning Committee of 9 May 2012, described as "joint background information" in respect of the three proposals now the subject of these appeals
5 Copy of opening submissions made on behalf of the appellant
6 Copy of opening statement made on behalf of the Council
7 Copy of appeal decision ref: APP/Y1138/A/12/2177825
8 Copy of appeal decision ref: APP/X1118/A/12/2180401
9 Updated version of the Management Plan for the proposed new smallholdings at Greenham Reach
10 Transcript of the judgment in J R Cussons & Son (A Firm) v Secretary of State for Communities and Local Government & Anor [2010] EWHC 2463 (Admin) (15 October 2010)
11 Copy of Plot A "Profit and Loss Account" for years ending 31/10/12, 31/10/14 and 31/10/16
12 Copy of representations made orally to the inquiry by Ms G Westcott
13 List of suggested conditions, agreed between the Council and the appellant
14 List of the plans submitted for each proposal, agreed between the Council and the appellant
15 Updated version of S.106 Unilateral Undertaking, executed by the appellant
16 Copy of closing submissions made on behalf of the Council
17 Copy of closing submissions made on behalf of the appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED, WITH THE PRIOR AGREEMENT OF THE INSPECTOR

18 Letter from Lloyds TSB dated 13 February 2013, confirming that its legal charge over the appeal sites has been released
19 Copy of an e-mail from the Council dated 14 February 2013, confirming that as a consequence of the discharge letter from Lloyds TSB [Document 18 above], it would not require Lloyds TSB to be a party to the appellant's S.106 Undertaking [Document 15 above]

Appendix 1: Schedule of Conditions for Appeal A

1) The development hereby permitted shall be carried out in accordance with the following approved plans: L-01 A (site location plan); L-02 A (site plan and block plan); L-03 (barn elevations and floor plan); L-06 (greenhouse elevations and floor plan); L-09 (landscape plan).

2) Prior to the provision on site of the temporary dwelling hereby permitted details of its dimensions, means of construction, design and materials shall be submitted to and approved in writing by the local planning authority, and development shall be carried out in accordance with the approved details.

3) Prior to the provision on site of the temporary dwelling hereby permitted a timetable shall be submitted to and approved in writing by the local planning setting out the timing of the provision of

   - the communal barn and solar PV array, in accordance with the approved plans;
   - the provision of the landscaping scheme, in accordance with drg. no. L-09;
   - the provision of the W.E.T. waste treatment facilities, in accordance with the approved plans; and
   - the provision of the composting toilets

   and development shall be carried out in accordance with the approved timetable.

4) The occupation of the temporary dwelling hereby permitted shall be limited to persons solely or mainly employed in the agricultural business operated on Plot A or a widow or widower of such a person, together with their spouse or partner and any resident dependants.

5) No other part of the development hereby permitted shall begin until

   - Visibility splays have been laid out and constructed in accordance with details first submitted to and approved in writing by the local planning authority; and
   - For a minimum of its first 6m back from the nearside edge of the carriageway the site access road, including the bellmouth radii, has been hard-surfaced and drained in accordance with details first submitted to and approved in writing by the local planning authority.

   The visibility splays and access road shall thereafter be retained in accordance with the approved details at all times. Any site access gates shall be set back a minimum of 6m from the nearside carriageway edge and shall be hung to open inwards only.

6) Within 12 months of commencement of the development hereby permitted, two passing bays shall be provided on the site ownership frontage with the public highway in accordance with details first submitted to and approved in writing by the local planning authority, and shall thereafter be retained in accordance with those approved details.

7) A riparian buffer of 6m from the river edge, when it is at the top of its typical river range (1.09m) shall be retained at all times to prevent disturbance to otters on the River Tone.

8) When the temporary dwelling hereby permitted ceases to be occupied by persons specified in condition 4 above, or on the date 5 years from the date of this decision letter, whichever is the sooner, the dwelling shall be removed, and the land restored to its former condition, in accordance with a scheme of work which has first been submitted to and approved in writing by the local planning authority.

9) If Plot A (the subject of this permission) should be amalgamated with either Plot B (the subject of Appeal Ref APP/Y1138/A/12/2181821) or Plot C (the subject of Appeal Ref APP/Y1138/A/12/2181807) or both of them, so as to constitute one holding, only one temporary dwelling shall be permitted to remain on the amalgamated site and the other(s) shall be removed from the land within 6 months of the date that the amalgamation of the plots occurred, in accordance with a scheme of work which has first been submitted to and approved in writing by the local planning authority.

Appendix 2: Schedule of Conditions for Appeal B

1) The development hereby permitted shall be carried out in accordance with the following approved plans: L-01 B (site location plan); L-02 B (site plan and block plan); L-03 (barn elevations and floor plan); L-09 (landscape plan).

2) Prior to the provision on site of the temporary dwelling hereby permitted details of its dimensions, means of construction, design and materials shall be submitted to and approved in writing by the local planning authority, and development shall be carried out in accordance with the approved details.

3) Prior to the provision on site of the temporary dwelling hereby permitted a timetable shall be submitted to and approved in writing by the local planning setting out the timing of the provision of

    - the communal barn and solar PV array, in accordance with the approved plans;
    - the provision of the landscaping scheme, in accordance with drg. no. L-09;
    - the provision of the W.E.T. waste treatment facilities, in accordance with the approved plans; and
    - the provision of the composting toilets

    and development shall be carried out in accordance with the approved timetable.

4) The occupation of the temporary dwelling hereby permitted shall be limited to persons solely or mainly employed in the agricultural business operated on Plot B or a widow or widower of such a person, together with their spouse or partner and any resident dependants.

5) No other part of the development hereby permitted shall begin until

    - Visibility splays have been laid out and constructed in accordance with details first submitted to and approved in writing by the local planning authority; and
    - For a minimum of its first 6m back from the nearside edge of the carriageway the site access road, including the bellmouth radii, has been hard-surfaced and drained in accordance with details first submitted to and approved in writing by the local planning authority.

    The visibility splays and access road shall thereafter be retained in accordance with the approved details at all times. Any site access gates shall be set back a minimum of 6m from the nearside carriageway edge and shall be hung to open inwards only.

6) Within 12 months of commencement of the development hereby permitted, two passing bays shall be provided on the site ownership frontage with the public highway in accordance with details first submitted to and approved in writing by the local planning authority, and shall thereafter be retained in accordance with those approved details.

7) A riparian buffer of 6m from the river edge, when it is at the top of its typical river range (1.09m) shall be retained at all times to prevent disturbance to otters on the River Tone.

8) When the temporary dwelling hereby permitted ceases to be occupied by persons specified in condition 4 above, or on the date 5 years from the date of this decision letter, whichever is the sooner, the dwelling shall be removed, and the land restored to its former condition, in accordance with a scheme of work which has first been submitted to and approved in writing by the local planning authority.

9) If Plot B (the subject of this permission) should be amalgamated with either Plot A (the subject of Appeal Ref APP/Y1138/A/12/2181808) or Plot C (the subject of Appeal Ref APP/Y1138/A/12/2181807) or both of them, so as to constitute one holding, only one temporary dwelling shall be permitted to remain on the amalgamated site and the other(s) shall be removed from the land within 6 months of the date that the amalgamation of the plots occurred, in accordance with a scheme of work which has first been submitted to and approved in writing by the local planning authority.

Appendix 3: Schedule of Conditions for Appeal C

1) The development hereby permitted shall be carried out in accordance with the following approved plans: L-01 C (site location plan); L-02 C (site plan and block plan); L-03 (barn elevations and floor plans); L-04 (hatchery elevations and floor plans); L-05 (dwelling elevations and floor plan); L-09 (landscape plan).

2) Prior to the provision on site of the temporary dwelling hereby permitted a timetable shall be submitted to and approved in writing by the local planning setting out the timing of the provision of

   - the communal barn and solar PV array, in accordance with the approved plans;
   - the provision of the landscaping scheme, in accordance with drg. no. L-09;
   - the provision of the W.E.T. waste treatment facilities, in accordance with the approved plans; and
   - the provision of the composting toilets

   and development shall be carried out in accordance with the approved timetable.

3) The occupation of the temporary dwelling hereby permitted shall be limited to persons solely or mainly employed in the agricultural business operated on Plot A or a widow or widower of such a person, together with their spouse or partner and any resident dependants.

4) No other part of the development hereby permitted shall begin until

   - Visibility splays have been laid out and constructed in accordance with details first submitted to and approved in writing by the local planning authority; and
   - For a minimum of its first 6m back from the nearside edge of the carriageway the site access road, including the bellmouth radii, has been hard-surfaced and drained in accordance with details first submitted to and approved in writing by the local planning authority.

   The visibility splays and access road shall thereafter be retained in accordance with the approved details at all times. Any site access gates shall be set back a minimum of 6m from the nearside carriageway edge and shall be hung to open inwards only.

5) Within 12 months of commencement of the development hereby permitted, two passing bays shall be provided on the site ownership frontage with the public highway in accordance with details first submitted to and approved in writing by the local planning authority, and shall thereafter be retained in accordance with those approved details.

6) A riparian buffer of 6m from the river edge, when it is at the top of its typical river range (1.09m) shall be retained at all times to prevent disturbance to otters on the River Tone.

7) When the temporary dwelling hereby permitted ceases to be occupied by persons specified in condition 3 above, or on the date 5 years from the date of this decision letter, whichever is the sooner, the dwelling shall be removed, and the land restored to its former condition, in accordance with a scheme of work which has first been submitted to and approved in writing by the local planning authority.

8) If Plot C (the subject of this permission) should be amalgamated with either Plot A (the subject of Appeal Ref APP/Y1138/A/12/2181808) or Plot B (the subject of Appeal Ref APP/Y1138/A/12/2181821) or both of them, so as to constitute one holding, only one temporary dwelling shall be permitted to remain on the amalgamated site and the other(s) shall be removed from the land within 6 months of the date that the amalgamation of the plots occurred, in accordance with a scheme of work which has first been submitted to and approved in writing by the local planning authority.

APPENDIX [D]



Alison Stevens
Clerk to Arlington Parish Council

By email: arlingtonpc@btconnect.com

6 December 2016

Dear Councillors,

Thank you for engaging with our co-operative on our proposal to create three affordable smallholdings for new entrants to ecological agriculture. We recognise that our scheme and organisation is unusual and that it takes time to review the details of our proposal.

We have a list of matters that you would like us to address. As you will see, on some of these we believe we can agree without further discussion. On most items, there are some further details that we believe are needed and which we've proposed. And on a remaining few items, we feel we can't agree and we've set out our reasons.

With each response, we've set out how we envision our undertakings to be reflected into our plans (e.g. through the S106 Agreement, Management Plan, lease and/or planning conditions) and how it might be monitored. Of note is that the Management Plan would be made binding on:

- ELC by way of the S106 Agreement
- the smallholders by way of the lease.

The Management Plan would set out what would happen if a smallholder(s) is found to be failing to meet their obligations. The S106 would set out what would happen if the ELC is found to be failing our obligations. We anticipate this being the same as it is within the Management Plan and S106 for Greenham Reach. I have attached these documentsfor your reference.

We very much hope that you are satisfied with our response. If not, we'd welcome an opportunity to meet with you; we'd like to find a solution that we all are content with.

Parish Council's Proposal 1
Average of 25 vehicle movements per day in any 30 days.

Our response
We agree. We have a similar provision in our Management Plan for Greenham Reach. Our Greenham Reach site has average daily movements of 12. The peak at Greenham Reach in any one 30-day period since planning was granted has been 649 movements, or 22 vehicle movements per day (17/3/2015 – 18/4/2015).

Mechanism: Site Management Plan for Arlington (referred to hereafter as the Management Plan)

Monitoring: Any reports of a high traffic movements would be investigated by the ELC within 10 working days.

Parish Council's Proposal 2
Parking overnight on each smallholding shall be limited to 2 vehicles per smallholding.

Our response
We agree in principal, however, from time to time, smallholders may have an overnight visitor. Can we therefore suggest that each smallholding be limited to 2 non-agricultural vehicles per smallholding, and each have an allowance for more vehicles on no-more-than 25 days of each calendar year?

Mechanism: Management Plan

We can also add the following requirement on smallholders, *in addition* to the limits suggested above on overnight car parking:

> Only your own functioning vehicles and those of visitors can be parked on the site. The site cannot be used to make vehicle repairs, other than to your own vehicle and any broken-down vehicles are to be removed within 15 working days.

Monitoring: Any reports of a failure to observe these requirements are to be investigated by the ELC within 10 working days.

Parish Council's Proposal 3
Non-functioning mechanical vehicles shall be disposed of within 14 days.

Our response
We agree with the principal, although we would ask that this is 15 working days rather than 14 calendar days.

Mechanism: Management Plan

Monitoring: As above, reports to be investigated within 10 working days.

Parish Council's Proposal 4
No vehicles, machinery or equipment not used for horticultural purposes should be brought to the site for repairs, maintenance or storage.

Our response
We agree in principal. We're concerned that there may be a reasonable exception to this that we can't anticipate. We propose that in the Management Plan we add the following requirements on smallholders:

> Smallholdings are not to be used to store or service vehicles or machinery not used for agricultural purposes.

Monitoring: As above, reports to be investigated within 10 working days.

Parish Council's Proposal 5

There shall be no more than 1 structure for the resident family. [This does not include agricultural structures.]

Our response
We agree. We'd suggest that for a temporary dwelling, a single structure is any structure which is allowable within the definition of caravan in the Caravan Sites Act 1968 (and as amended from time-to-time by Parliament). For clarity, we are expecting smallholders to make use of a compost toilet. We're assuming APC does not consider this to be an additional structure. It would be outside of their temporary dwelling and we anticipate it would be inside any permeant dwelling.

Mechanism: Planning permission

Monitoring: We are only applying for a single temporary dwelling per holding and the local planning authority would enforce should any of our smallholders site more. We don't feel additional measures are needed.

Parish Council's Proposal 6
Any permanent residential structure shall be no more than 140 square metres.

Our response
We agree. However, we're applying for temporary dwellings, so we propose that this requirement is included in conditions and/or the Management Plan proposed alongside any application for a permanent dwelling. We don't feel additional measures are needed until a permanent dwelling is proposed.

Mechanism: n/a

Monitoring: n/a

Parish Council's Proposal 7
Any temporary residential structure shall be no more than 60 square metres.

Our response
We feel this is unduly restrictive: our smallholders will be subject to a number of restrictions, including that they can only have one domestic structure. Our smallholders may also be a family of four or five. We feel that planning policy should guide us on this, which is a caravan can be no bigger than 20 m x 6.8m. However, before temporary structures are brought on site, the ELC will need to approve: the dimensions; precise location and plans for screening.

Mechanism: Management Plan

Monitoring: Our Management Plan will require smallholders to submit details of the dimensions, exact proposed location and planned screening of their temporary dwelling for approval by the ELC before they can move the structure onto the site. ELC staff will compare these details with observations made as part of the site monitoring process.

Parish Council's Proposal 8
On completion of construction of a permanent structure then the replaced temporary structure shall be removed.

Our response
We agree. Smallholders will only have planning permission for one dwelling and would be in breach of their planning consent if they retained the temporary dwelling.

Mechanism: Planning consent

Monitoring: the local planning authority would enforce against us should our smallholders not remove what would effectively be a second dwelling. We don't feel additional measures are needed.

Parish Council's Proposal 9
Seasonal workers shall commute and no accommodation installed for their occupation.

Our response
At Greenham Reach we've provided non-local and international volunteers with work experience and in-turn they have contributed to the smallholdings' development. This has been possible through the use of seasonal worker accommodation. Our strong preference would be to allow the use of one shared structure (e.g. caravan or Shepherds Hut) across the site so that Arlington smallholders could also benefit from this exchange.

Mechanism: Management Plan

Monitoring: Any reports of a failure to observe this requirement are to be investigated by the ELC within 10 working days.

Parish Council's Proposal 10
The shared structure shall be no more than 120 square metres in area and no more than 5m metres in height.

Our response
We agree with the maximum footprint proposed. The height however we wish to be limited to 5.5m. The barn has been designed to provide an eaves height sufficient for agricultural machinery access and a ridge height to allow an adequate roof pitch for drainage and solar panels.

Mechanism: Planning consent

Monitoring: n/a – the barn would only be allowed to be built to the approved plans

Parish Council's Proposal 11
The visual aspect of caravans and light pollution shall be masked to protect the visual perspective and dark sky nature of the site.

Our response
We agree and have suggested the approach below.

Mechanism: Management Plan

The Management Plan would require smallholders to screen their temporary dwelling with materials that are sympathetic with the landscape character. As above, this will need to be set out for the ELC's approval before the dwelling is brought on to site.

The Management Plan will require smallholders to preserve the dark sky through disallowing the use of fixed external lights between 10:00pm and 6:30am.

Monitoring**:** As part of the ELC's ongoing monitoring the visual screens will be inspected. Reports of the use of external lighting will be investigated by the ELC within 10 working days.

Parish Council's Proposal 12
The number of small holdings is reduced from three to two to reduce the impact of the temporary structures and make the Scheme more viable.

Our response
The cost to smallholders of their smallholding is part of their business' ongoing viability: the smallholders will have higher monthly capital and interest repayment if the costs of the land and development are split between two rather than three smallholdings.

From our experience, it is the attitude and aptitude of a smallholder that dictates his or her success, rather than the amount of land that they cultivate. Of note, according to DEFRA, just over 50% of horticultural holdings are under 2.5 acres.

For these reasons, we cannot agree the request to reduce the number of holdings from three to two.

Parish Council's Proposal 13
Generators shall be adequately baffled to prevent excessive noise (no greater than 60 db) at any point beyond the perimeter to the overall site.

Our response
We agree to sound baffling and we would include in the barn a walled area to enclose the generator. We feel we can't agree to ensuring that the noise is no greater than 60 db *at this stage* because we've not been able to conduct sound tests at Greenham Reach to ascertain how practical this is. However, we can agree to procure a quiet generator and prioritise this is our procurement policy.

Mechanism: Management Plan

We will include the requirement on us to ensure that there is a sound insulated area within the barn to minimise noise pollution and that when a generator is procured for the site, staff consider the specified noise level rating.

We will include the requirement on us to investigate reports of noise pollution within 5 working days.

Monitoring: n/a

Parish Council's Proposal 14
No external lighting shall be operated on the land between the hours of 22:00 and 06:30.

Our response
We believe this is covered in Proposal 12

Parish Council's Proposal 15
Smallholders adhere to a whole site Management Plan, as well as an individual plot management plan.

Our response
We agree with a whole site Management Plan and indeed we already have this at Greenham Reach. We agree with individual plot management plans for the first five years, after which point smallholders will need to have established profitable farm businesses. Individual plot plans will be based on smallholders' business plans. Smallholders will be required to provide the ELC with an updated business plan every year for the period of the temporary consent.

Mechanism: We propose to use the same mechanism we are using at Greenham Reach: (whole site) Management Plan made binding on the smallholders by way of their lease, and made binding on the ELC by way of a S106 Agreement.

Monitoring: The ELC will make an annual report available as we do for our Greenham Reach site.

Parish Council's Proposal 16
An annual report and accounts are submitted to the Local Planning Authority (Wealden) on progress against the aims and objectives of the Management Plan.

Our response
We agree to providing annual reports to the LPA; we already do this for Greenham Reach. We agree to submitting the ELC's accounts to the LPA as part of our annual reporting.

Mechanism: The S106 Agreement will require the ELC to submit annual reports against the objectives of the Management Plan. The Management Plan would include a requirement for the ELC to include their most recent independently examined accounts.

Monitoring: Any breach (i.e. failure to submit the annual reports) could result in the ELC having its planning permission revoked by the LPA. The LPA would in effect be responsible for monitoring this measure.

Parish Council's Proposal 17
Smallholders are employed full-time in agriculture on the small holding.

Our response
Yes, we agree. In our Management Plan we require:

> "Either one member (or more) of each of the three households will need to work full-time on the holding or two or more members of each household will need to work part-time on the holding so that together they constitute at least one full-time equivalent worker"

The lease and S106 Agreement also require the occupant to operate a farm business on the holding.

We would propose that we continue to use these measures.

Mechanism: As described above: lease, S106 Agreement and Management Plan.

Monitoring: The smallholders will be required to report to the ELC the number of FTE who are both working on their holding and living in their household.

Parish Council's Proposal 18
Any change to the registration of the ELC with the Financial Conduct Authority (FCA), or the asset lock, shall also be reported to the Local Planning Authority (Wealden) as it constitutes a fundamental change to the development.

Our response
We agree.

Mechanism: This could be included in either the S106 Agreement or Management Plan.

Monitoring: Any breach (i.e. failure to submit this information) could result in the ELC having its planning permission revoked by the LPA. The LPA would in effect be responsible for monitoring this measure.

Parish Council's Proposal 19
Management and disposal of manure from any livestock, human waste and all other waste shall be included in the Management Plan and subject to Environment Agency approval and monitoring.

Our response
Safe and sightly storage of waste is covered in our Management Plan, as is a requirement to ensure land is not contaminated by waste, waste water or manure. We make regular visual inspections. We not aware of the Environment Agency offering any service to approve and monitor our type (and level) of activities.

Mechanism: Management Plan would state:

> "Smallholders are required to properly dispose of and/or manage all types of waste, including compost and manure, to ensure that none becomes a pollutant"
>
> "Smallholders will ensure that compost and manure management on the site minimise field run-off"
>
> "Smallholders will manage their grey water and compost toilets to ensure that waste water does not contaminate water bodies, water courses or groundwater"
>
> "Smallholders will ensure that neither waste nor storage becomes a nuisance, annoyance, or damage to the ELC, to the other occupiers of the site or other property in the neighbourhoods, or the local or other authorities"

Monitoring: The ELC will be required by way of the Management Plan to:

- Test soil annually
- Assess the management of the compost, manure and compost toilets
- Investigate any report of pollution within 3 working days

Parish Council's Proposal 20
Before any sale of the land outside the control of ELC, all non-permanent structures shall be demolished and removed from the site.

Our response
We agree to this for the period of temporary consent and would propose adding this requirement to the S106 Agreement. We propose reviewing this after 5 years simply because, once the smallholdings are established, should the ELC go bust, we may want to include a provision which allows temporary structures to remain as long as the freehold is sold to a charity or other community benefit society.

Mechanism: S106 Agreement

Monitoring: As above, this would need to be monitored by the LPA.

Parish Council's Proposal 21
The Management Plan shall include an exit plan should, at the end of, or before, the 5 year temporary permission, the ELC cease to operate the venture in the approved form.

Our response
We agree and will draft one for your comments.

Mechanism: Management Plan.

Monitoring: As above, this would need to be monitored by the LPA.

APPENDIX [E]

OUR REF: MT/PE/2016/0615/E
ASK FOR: **Mr M Taylor Tel: 01892 602560**
DATE: 12 December 2016
YOUR REF:

Wealden
District Council

Ms Zoe Wangler

Kelvin Williams
Head of Planning and Environmental Services

Dear Ms Wangler

PE/2016/0615/E CHANGE OF USE FOR SITING OF 3 TEMPORARY AGRICULTURAL WORKERS DWELLINGS. THE OLD CALF SHED, THE STREET, ARLINGTON

Thank you for attending the Council offices on the 16th of November. I have set out my advice below.

Site
The site is formed of an area of agricultural land graded as 3a/3b the north east corner of the site is within Flood zones two and three. The site has a vegetation screen to the west along the road. The site has a single vehicle access in the southwest corner of the site. The site is part of the Low Weald Landscape Character Area.

Proposal
The proposal is to subdivide the plot to create 3 small holdings and a communal area. A new access is proposed to the north west. Each small holding would have a residential unit of accommodation. Each rural worker would adhere to the standards set down by the Ecological Land Cooperative who would own the site and would set in place a management plan. Details were provided of a scheme in Devon that has been established for two years now. In relation to this site only a site plan was provided which showed the site layout set out above.

Discussion
The site lies outside any established development boundary and as such Policy GD2 and DC17 would restrict new dwellings on the site unless they meet an exception policy. Saved Policy DC2 allows for Farm Workers dwellings in accordance with para 55 of the NPPF and would be the relevant policy to submit any schemes under.

This in effect requires a functional and financial test to be passed to demonstrate the justification for new permanent dwellings on the holdings. With regard to the functional requirement each plot would need to present a full

breakdown of labour on site day-to-day that would justify an on-site presence all year round.

Turning to the financial test, usually to justify a permanent dwelling a farm operation needs to have been established for 3 years and been profitable (to the extent to sustain the dwelling) for one of those years. Based on the submitted reports from Devon, I was not able to ascertain a case in regard to viability. It is more likely than not that the Council would seek to have any case verified by independent rural estates surveyor. I do understand at this stage you only seek advice on the establishment of temporary consents, so this stage could be addressed at a later stage if a functional requirement can be established for each residential unit.

For information, typically a farmworkers dwelling is assessed as being a maximum of 140m2, if a farm office is incorporated 160m2. However any permanent dwelling would have to be proportionate to the income of the site in order that the mortgage can be managed by a rural worker at the site. In terms of design and appearance, it is my view that any design would have to be acceptable in the rural landscape and have regard to the Low Weald It is usual to secure a non-severance S106 on the new dwelling and the farm/buildings. You could propose a unilateral at the time of submission to expedite this.

Devon site
The appeal statement for the sites at Greenham Reach indicates that the previous planning applications were based on substantial evidence and the marketing specific to that site and the planning inspectorate gave 5 years to allow the project time to be fully tested. The level of detail provided to the local authority and planning inspectorate for the Devon site were key to that case, it would be for an application to be submitted here to be persuasive in its own right, something that is acceptable for East Sussex, on the land you have earmarked.

I have looked through the two monitoring reports provided and I am not able to find an indication of the investments into the business or the profits made by the incumbents. It is noted that the document does show other non-profit successes which are commendable. Given the early stage of the Devon experiment it would appear that it could be too early to show figures or they may not be known. At this stage I have not been able to assess the individual units finances so cannot comment on them. It may be that the full five years of the planning permission are needed before this can provide a useful benchmark for similar schemes elsewhere.

This potential development would be an unusual and complex case. At this stage without site specific details for the proposed site, I am not persuaded that there is a case to be made to establish a site similar to that in Devon at Arlington and I would not invite an application. I have set out above the main policy considerations relevant to Wealden. To help your understanding of the planning policy considerations that would apply to any proposal.

Notwithstanding my advice, if you are minded to submit applications, I would advise that each plot be submitted separately under three planning applications to fully test each applicants (sites) ability to demonstrate a viable case for the functional requirement at the site.

In terms of documents it would be of benefit to undertake a phase 1 habitat survey to ascertain the ecological status of the site. If any protected specs are identified further survey would most likely be required prior to submission of the application.

I would advise that the proposed access is discussed with East Sussex County Council. In terms of a flood risk assessment, as long as none of the proposed developable area is within the flood zones an assessment would not be required.

Caravans or temporary planning permissions are not liable for the Community Infrastructure Levy (CIL).

I trust the above assists, but would advise that this reply is furnished after appropriate enquiries and on a 'without prejudice' basis to the Council's formal determination of any future application submitted. I apologise for the time taken to get back to you.

Yours Sincerely

Matthew Taylor
Senior Planning Officer
Development Management
North Team

APPENDIX [F]

OUR REF: WD/2017/0340/F

ASK FOR: Mr M Taylor Tel: 01892 602560

DATE: 13 October 2017

YOUR REF:

Wealden District Council

Chapman Lily Planning
25 St. Martins Lane
Wareham
Dorset
BH20 4HF

Kelvin Williams
Head of Planning and Environmental Services

Dear Mr Spiller

Re: Application Number: WD/2017/0340/F
FIELD TO THE SOUTH OF COPYHOLD COTTAGES (FORMERLY PART OF WILBEES FARM), ARLINGTON, BN26 6RU
SITING OF THREE TEMPORARY AGRICULTURAL WORKERS' DWELLINGS FOR A PERIOD OF 5 YEARS TOGETHER WITH AN AGRICULTURAL BARN WITH PV ARRAY AND ALTERATIONS TO EXISTING HIGHWAY ACCESS TO PROVIDE THREE AFFORDABLE SMALLHOLDINGS TO NEW ENTRANTS TO ECOLOGICAL AGRICULTURE.

Background

I am writing to you regarding the above application and to update you since issuing my letters in early March and June 2017. You will recall that those letters addressed the effects of the emerging evidence base for the Wealden Local Plan upon determination of current and future applications, including those which had recently been subject to pre application advice.

Both letters can be found on the agent's page of our website for ease of reference.

To recap on the main message within this letter, the Council will continue to assess the impacts of development on the Ashdown Forest Special Area of Conservation (SAC), as set out in our earlier letters, but until the necessary mitigation and / or compensatory measures are in place, developments throughout the District (including those within the existing Core Strategy Local Plan and the emerging Wealden Local Plan that do not have existing planning permissions) can only proceed where they can prove that they will not damage the SAC any further.

In practical terms this means demonstrating that the development of a site will provide no more vehicle emissions than currently along the affected roads in the SAC.

The Council will not be in a position to approve the publication for consultation the Wealden Local Plan (14th March 2017) until the full evidence base is available including the Transport Model, Habitats Regulations Assessment and Ecological update.

Wealden District Council, Vicarage Lane, Hailsham, East Sussex BN27 2AX
T **01323 443322** F **01892 602777**
planning@wealden.gov.uk www.wealden.gov.uk

In the interim, we are aware we are not in a position to determine some live planning applications within the District which have potential to adversely affect the SAC as a result of Air Quality impacts. The Council is mindful of the requirement in the NPPF to negotiate in a positive and proactive manner with developers. It wishes to work in a cooperative manner with agents, and share our information and understanding of these complex issues as they develop.

There is an update on this emerging evidence base also on our website, and appended to the end of this letter for ease of reference.

Current Live Planning Applications

I previously wrote to you to about live planning applications potentially affecting the SAC which had not been determined and which had passed their statutory period for determination. I am seeking your cooperation through written confirmation, either by e-mail or letter, to extend the period of determination for your application until **Friday 19th January 2018**, unless a different extension of time has already been agreed. Following this time, I would hope to be in a position to offer some significant updates upon the implications of the Habitats Regulations for your current application(s).

In the meantime, your case officer will be available to discuss any pertinent issues which might enable the Authority to screen out such air quality impacts, such as offsetting of vehicle trips, travel plans or the identification of sources of air quality credits in the locality of your site. Of course it remains the case there are certain types of new development which can be determined positively against the current background, including reserved matters, and previously developed (brownfield) sites with sufficient vehicle trip credits.

Further Information

There is a large amount of information about this constraint on the Council's website and there will be further updates over the coming days/weeks. In the meantime if you are in any doubt about the impact on your proposed development I would ask you to contact the Council's duty planning service on 01892 602011, Monday - Friday 09.30-12.30.

Yours sincerely

Kelvin Williams

Kelvin Williams
Head of Planning and Environmental Services

Wealden Local Plan Update – 6 September 2017

Following the endorsement of the draft Wealden Local Plan by WDC Full Council on 22 March, officers have been progressing and completing the evidence base in order to propose an updated Plan to Members for the Representations stage of the process.

This has included significant work on:

- The Sustainability Appraisal (SA);
- Habitat Regulations Assessment (HRA)
- Strategic Housing Market Assessment (SHMA) and Objectively Assessed Housing Need (OAHN)
- Infrastructure Delivery Plan
- Strategic Housing and Economic Land Availability Assessment
- Economy Retail and Town Centre Studies
- Transport model
- Ashdown Forest Visitor Study
- Gypsy and Traveller Accommodation Needs Assessment update
- Strategic Flood Risk Assessment
- Area of Outstanding Natural Beauty Housing Need
- Summary of Master Planning and Neighbourhood Planning Work
- Green Infrastructure
- Open Space and Leisure Study
- Site Ecology and Landscape Study
- Burial Ground Requirement Study
- Viability Study

The majority of the Sustainability Appraisal in relation to the draft March 2017 WLP is now complete. All of the policies (and reasonable alternatives to those policies) have been assessed; however, some will require further review. The remaining work includes:

- An SA of the Plan as a whole – this will follow completion of the HRA
- An SA of the Plan in combination with other plans – this includes neighbouring authorities emerging plans and Town and Parish Council Neighbourhood Development Plans

In addition the SA does not reflect proposed changes since March 2017. These will need to be incorporated including planning applications granted and the implications of any significant new planning applications received.

One of the key elements required to complete this stage of the plan process is the HRA and any Appropriate Assessments required for Ashdown Forest SAC. Since March work has been undertaken on reviewing and updating the evidence base and incorporating feedback from a peer review of the evidence by national specialists.

The updated draft report, incorporating air quality and ecology evidence in relation to the Ashdown Forest SAC based on this work, was some 4 weeks late due to delays with the consultants and has only recently been received. This requires review by WDC officers and by Natural England to ensure it is comprehensive and complete before sharing any wider.

In addition draft reports have been received in relation to air quality impacts on the Pevensey Levels SAC and Ramsar Site and the Lewes Downs SAC. These include the in combination effects on these sites following the High Court judgement earlier this year. Again these draft reports will require review by Natural England and additional input from them and possibly other experts, to assess the implications and inform any Appropriate Assessments required.

These reviews by Natural England for all of the protected areas are required before the HRA can be progressed further for air quality. Whilst these are underway we are working with partners to complete other HRA elements that do not relate to air quality. It will be necessary for Natural England to review the draft documents before an indication of the timescales for completing the overall WLP HRA, and therefore moving to the next stage of the Plan, can be given.

In the meantime work is being progressed to assess potential mitigation and compensatory measures for the Ashdown Forest as part of the HRA requirement.

As a result of the issues highlighted above the timetable for the next stage of the Plan has been delayed. An updated timetable will be provided once the input from Natural England outlined above has been received.

It is recognised that the delay to the HRA and the consequent delay to the overall Plan is not ideal. However, the need to have a comprehensive and complete evidence base including a robust HRA and overall plan is paramount. Failure to have this in place before proceeding with the plan will be counter productive and ultimately lead to a longer process with less predictable outcomes.

The Council are continuing to update landowners, agents, developers and builders on a regular basis through the Agents Panel, Developers East Sussex, the House Builders Federation and the newly formed Ashdown Forest Forum. In addition Town and Parishes and neighbouring Councils are being kept informed through the Parish Planning Panel and the Ashdown Forest Officer Group.

Ongoing regular updates will continue to be provided as further information becomes available.

Nigel Hannam
Director Planning Policy and Economic Development 6 September 2017

APPENDIX [G]

Information Governance Officer
Wealden District Council

By email: informationgovernance@wealden.gov.uk

Copied: Kelvin Williams, Head of Planning, WDC
Trevor Scott, Director of Governance, WDC

04/05/2017

Dear Information Governance Officer,

PRIVATE AND CONFIDENTIAL

Regrettably, we at the Ecological Land Co-operative (ELC) feel that we must lodge a complaint regarding:

a. The actions of two members of staff in the Planning Department including the officer allocated to determine our planning application;
b. Regular failings on the part of the Department to respond to our enquiries over a period of nine months; and
c. The lack of availability of the evidence base supporting Wealden District Council's (WDC) new position on developments with regard to the Ashdown Forest, and lack of guidance on this matter for applicants.

One of our requests is that a different officer determines our application. Our planning application is to be determined on the 27/05 and so we respectfully request that this complaint is dealt with expeditiously. We did raise our concerns in good time: an email was sent to Kelvin Williams on 13/04, a message left for Mr Williams on 19/04 and again on 27/04 and there has been no response.

Attached as appendices to this letter and for your reference are:

- A log of calls, emails, meetings, and letters;
- The transcript from the telephone message left by Matthew Taylor, also available as a digital file; and
- Correspondence sent and received to/from WDC referred to herein.

A Complaint against Judith James and Matthew Taylor

At every stage, without having read our planning application documents, and starting before WDC adopted its new position regarding the Ashdown Forest, both Matthew Taylor and the then Team Leader Judith James have said that they would be recommending refusal of our planning application. The strength of their conviction on this point is reflected in the fact that they respectively: recommended we cancel our pre-application meeting; and withdraw our application during validation. We've at every stage sought to address their problems with our proposal, but on 7 of 8 occasions, discussions have been refused and / or Mr Taylor and Ms James have failed to respond to messages and correspondence (Appendix 1).

The ELC is a community benefit society and not-for-profit addressing the crisis for new entrants to farming; we provide affordable and regulated new starter smallholdings. Our work is widely supported, ranging from the UN Special Rapporteur of the Right to Food, the All Party Parliamentary Group on Agroecology, CPRE (national) to the Tenants Farmer Association, Action in Rural Sussex, local farmers and notable individuals including Jonathon Porritt CBE and Patrick Holden CBE. More significantly from a planning perspective, we've already established one cluster of three affordable holdings. We had and continue to have a positive experience with Mid Devon District Council's (MDDC) planning department who recommended our application for approval. This wasn't supported by their planning committee, but the Planning Inspectorate decided in our favour at the subsequent public inquiry at a cost to MDDC of £18,076 for the agricultural consultant and barrister alone – with equivalent resources being required of ELC.

Returning to Mr Taylor and Ms James:

- We approached WDC for a pre-application meeting on 5/8/16. Some 14 weeks later, at 14:37 in the afternoon before the day of the meeting - and at his own admission - without reviewing any of our documentation, Mr Taylor called advising us in a message to cancel the meeting as he said "I don't think it's a goer at all" (transcript at Appendix 2) and offered to refund the fee.
- We persuaded Mr Taylor to proceed with the meeting. In the subsequent pre-application advice letter (Appendix 3) Mr Taylor said he "would not invite an application" on the grounds that "this potential development would be an unusual and complex case". Being different and complex does not constitute harm to the public interest which the officer is required to protect, and there is no planning policy to support his outright position.
- Mr Taylor went on to state that our Devon site "operated at a loss". This was incorrect and Mr Taylor subsequently amended his letter (Appendix 4)[1].

[1] The financial information reported in our annual monitoring reports refers, as stated in the reports, to the ELC's (landlord) income and expenditure associated with the site. As stated in the Monitoring Report (page 23, Appendix 2, WD/2017/0340/F), "below are the costs to the Ecological Land Co-operative associated with Greenham Reach … this is not a set of accounts or finances for the individual smallholding businesses at Greenham Reach".

However, his second letter was also incorrect. Mr Taylor stated that he couldn't find information on the viability of our Devon site and assumed that it was because it's "too early to show figures or they may not be known". We replied to Mr Taylor (Appendix 5) asking to supply him with the figures. He declined to respond. Of note is that we subsequently contacted Mr Williams offering a presentation by small-scale producers on the viability of small-scale horticulture and again there was no response from the Department.

- Following submission of our application and prior to validation, Ms James called to say that our application "would be refused". In her opinion, there was no way that we could prove that our proposal wouldn't adversely impact the Ashdown Forest. She confirmed in a subsequent email (Appendices 6 and 7):

  > "whilst you may be able to demonstrate that the occupiers of the site will not increase such movements, this is not possible for delivery and service vehicles etc which wider routes will inevitably involve using roads which lead to the Forest".

  She stated in her call that even a single additional traffic journey would be grounds for refusal. We asked Ms James whether we could discuss the details of our proposal to ascertain whether or not we would in fact be generating additional traffic. Ms James refused, explaining that "I'm retiring". We later learned from a conversation with the duty officer Stacey Robins that it is possible for applicants to evidence their impact on the Ashdown Forest and indeed such evidence was accepted in the recently decided application (WD/2016/1718/MAO), a development of 10 houses, recommended for approval by the officer. As we've set out in our planning documentation, our development will not create any additional traffic through the Ashdown Forest, and in any event, the traffic generated by our proposal is *de minimus.*

- On the 27/04 we called WDC and Mr Robins kindly offered to ask Mr Taylor if he considered our evidence on the potential impact of our proposal on the Ashdown Forest sufficient. We've had no reply. Mr Taylor's view is important in light of Ms James' position in combination with the fact that our application is due to be determined on 27/05.

B Failings on the part of the Planning Department to Respond to Enquiries

We have had responses to just 2 of our 14 emails to the Department and 1 of 3 telephone messages left, dated from 30 August 2016 to 13 April 2017 (Appendix 1). This includes:

- An email to our planning officer to correct an incorrect assumption on his part regarding the viability of our Devon site (Appendix 5);
- An email to the Head of the Department setting our concerns regarding Matthew Taylor (Appendix 8); and
- An invitation to provide a presentation on the viability of small-scale horticulture (Appendix 9).

C Lack of availability of Evidence Base supporting WDC's Position on the Ashdown Forest

WDC have said that they will refuse all proposals which cannot evidence that they will not adversely impact the Ashdown Forest. We have with our application set out our projected impact on the Ashdown Forest which is that there will be no additional traffic and that in any event the traffic generated by the proposal will be *de minimus*. Our statement has had to be prepared in the absence of the evidence base upon which WDC is relying. Further, WDC has provided no guidance to applicants on the type of evidence required. As above, our planning officer has also not responded to a request to address the specific question as to whether our evidence as submitted will suffice.

* * *

Taking the above events together, we hope you can appreciate our concerns that we will receive a 'fair hearing' when our application is finally considered. We ask:

- To have a different officer allocated to administer our application;
- For the new officer to tell us what concerns they have, if any, and allow us the reasonable opportunity to address these concerns. We've provided extensive documentation and it may be simply a matter of guiding our officer through this information.

Thank you for your time and assistance.

Yours sincerely,

Zoe Wangler for the Ecological Land Co-operative
Attachments (below)

Appendix 1: Log of calls, emails, meetings and letters

Date	
05/08/2016	Call to book a pre-application meeting; first available meeting 16/11/2016
30/08/2016	Email sent to planning@wealden.gov.uk with question regarding FDA1 and CIL forms. Acknowledgement from Roger Bates received but no reply received from the officer allocated, Mrs M Smith.
15/09/2016	Email sent to planning@wealden.gov.uk inviting staff to a public meeting regarding our proposal. Acknowledgement from Roger Bates received but no reply from the officer allocated, Mrs J James.
08/11/2016	Email sent to planning@wealden.gov.uk with the items requested to support the pre-application meeting scheduled for 16/11/2016 with M Taylor. Acknowledgement from Roger Bates received, but no reply from the officer allocated, Mrs M Smith. When M Taylor calls to recommend cancelling the meeting he says he had not had sight of this email and its attachments.
15/11/2016	The afternoon before the pre-application meeting M Taylor leaves a voice mail recommending that the meeting is cancelled, offering to refund our fee. Full transcript Appendix 2 below.
15/11/2016	M Taylor in a telephone conversation with ELC staff agrees to attend the meeting and admits to not having read the supporting documentation including the appeal decision from ELC's existing Devon site, sent on 08/11/2016.
16/11/2016	Pre-application meeting held in the WDC's foyer.
17/11/2016	Documentation referred to during the pre-application meeting sent to M Taylor. No reply.
02/12/2016	Pre-application letter received from M Taylor. ELC reply 05/12/2016.
05/12/2016	M Taylor emailed asking for error in letter to be corrected.
12/12/2016	M Taylor emailed second time asking for error in letter to be corrected. Reply received 12/12/2016.
12/12/2016	M Taylor emails second draft pre-application meeting letter. ELC replies 12/12/2016.
12/12/2016	M Taylor emailed asking for second error to be corrected and asking permission to supply M Taylor with additional information. No reply.
18/01/2017	Meeting with K Williams and S King. K Williams is to give his view within a week.

19/01/2017	Email sent to K Williams with documents requested during the previous day's meeting. No reply.
23/01/2017	Email sent to K Williams with contact details of planning officer dealing with our Devon site, Alison Fish. No reply. Last time we spoke with Mrs Fish, she had not been contacted by any staff from WDC.
30/01/2017	Email sent to K Williams asking for his views following meeting of 18/01/2017. K Williams calls the following week.
c. 08/02/2017	K Williams calls to give his view that the department wouldn't support the application and that this was because of concerns regarding viability of small-scale horticulture.
13/02/2017	Email sent to K Williams informing him of the submission of our application. No response.
07/03/2017	J James calls informing us that our application will be refused and offering to refund our application fee. When asked if she'd be willing to learn about our proposal she refuses stating that "I'm not interested, I'm retiring".
07/03/2017	Email sent to J James asking her to confirm her position regarding our application. Replied received (below).
07/03/2017	Email received from J James confirming her position regarding our application.
07/03/2017	Email sent to J James with clarification. No reply.
20/03/2017	Email sent to K Williams offering a presentation by small-scale producers on small-scale farm viability. No reply.
13/04/2017	Email sent to K Williams with concerns about receiving a 'fair hearing' by M Taylor. No reply.
19/04/2017	Telephone message left for K Williams seeking response to email of 13/04/2017. No reply.
27/04/2017	Telephone call with S Robins discussing concerns. S Robins offers to talk with M Taylor about the Ashdown Forest issue and ask M Taylor to call us. No reply from M Taylor.

Appendix 2

Transcript of telephone message

Received on 07984564674 (Zoe Wangler, Ecological Land Co-operative)

Date: 15/11/2017 Time: 14:37

“Hello Ms Wangler, my name is Matt Taylor, I’m a planning officer with Wealden Council. I have the pre-application meeting with you tomorrow morning.

I’ve looked through it and unfortunately and I don’t think it’s a goer at all, um, so I was wondering if you wanted to cancel the meeting and have your money back. Because if we meet we’ll have to charge you as obviously, your time gets involved. To my mind there’s no way – for the plot sizes there – there’s going to be no essential need for a rural worker which is what is need for those properties in line with the NPPF.

It’s – for want of a better phrase – it’s a non-starter, and so I wanted to give you the opportunity to cancel. Perhaps you can phone 01892602010, that’s the technical team by tomorrow. If I hear I won’t charge you. Thank you very much. Bye bye.”

Appendix 3: Pre-Application Letter First Draft

OUR REF: MT/PE/2016/0615/E
ASK FOR: **Mr M Taylor Tel: 01892 602560**
DATE: 02 December 2016
YOUR REF:

Wealden
District Council

Ms Zoe Wangler

Kelvin Williams
Head of Planning and Environmental Services

Dear Ms Wangler

PE/2016/0615/E CHANGE OF USE FOR SITING OF 3 TEMPORARY AGRICULTURAL WORKERS DWELLINGS. THE OLD CALF SHED, THE STREET, ARLINGTON

Thank you for attending the Council offices on the 16th of November. I have set out my advice below.

Site
The site is formed of an area of agricultural land graded as 3a/3b the north east corner of the site is within Flood zones two and three. The site has a vegetation screen to the west along the road. The site has a single vehicle access in the southwest corner of the site. The site is part of the Low Weald Landscape Character Area.

Proposal
The proposal is to subdivide the plot to create 3 small holdings and a communal area. A new access is proposed to the north west. Each small holding would have a residential unit of accommodation. Each rural worker would adhere to the standards set down by the Ecological Land Cooperative who would own the site and would set in place a management plan. Details were provided of a scheme in Devon that has been established for two years now. In relation to this site only a site plan was provided which showed the site layout set out above.

Discussion
The site lies outside any established development boundary and as such Policy GD2 and DC17 would restrict new dwellings on the site unless they meet an exception policy. Saved Policy DC2 allows for Farm Workers dwellings in accordance with para 55 of the NPPF and would be the relevant policy to submit any schemes under.

This in effect requires a functional and financial test to be passed to demonstrate the justification for new permanent dwellings on the holdings. With regard to the functional requirement each plot would need to present a full

breakdown of labour on site day-to-day that would justify an on-site presence all year round.

Turning to the financial test, usually to justify a permanent dwelling a farm operation needs to have been established for 3 years and been profitable (to the extent to sustain the dwelling) for one of those years. Based on the submitted reports from Devon, I was not able to ascertain a case in regard to viability. It is more likely than not that the Council would seek to have any case verified by independent rural estates surveyor. I do understand at this stage you only seek advice on the establishment of temporary consents, so this stage could be addressed at a later stage if a functional requirement can be established for each residential unit.

For information, typically a farmworkers dwelling is assessed as being a maximum of 140m2, if a farm office is incorporated 160m2. However any permanent dwelling would have to be proportionate to the income of the site in order that the mortgage can be managed by a rural worker at the site. In terms of design and appearance, it is my view that any design would have to be acceptable in the rural landscape and have regard to the Low Weald It is usual to secure a non-severance S106 on the new dwelling and the farm/buildings. You could propose a unilateral at the time of submission to expedite this.

Devon site
The appeal statement for the sites at Greenham Reach indicates that the previous planning applications were based on substantial evidence and the marketing specific to that site and the planning inspectorate gave 5 years to allow the project time to be fully tested. The level of detail provided to the local authority and planning inspectorate for the Devon site were key to that case, it would be for an application to be submitted here to be persuasive in its own right, something that is acceptable for East Sussex, on the land you have earmarked.

I have looked through the two monitoring reports provided and I am not able to find an indication of the investments into the business or the profits out. The final page of the year two report shows that overall the site operated at a loss of £18,707 for the tax year 2015. It is noted that the document does show other non-profit successes which are commendable. Given the early stage of the Devon experiment it would appear that it could be too early to show profit. It may be that the full five years of the planning permission are needed before this can provide a useful benchmark for similar schemes elsewhere.

This potential development would be an unusual and complex case. At this stage without site specific details for the proposed site, I am not persuaded that there is a case to be made to establish a site similar to that in Devon at Arlington and I would not invite an application. I have set out above the main policy considerations relevant to Wealden. To help your understanding of the planning policy considerations that would apply to any proposal.

Notwithstanding my advice, if you are minded to submit applications, I would advise that each plot be submitted separately under three planning applications to fully test each applicants (sites) ability to demonstrate a viable case for the functional requirement at the site.

In terms of documents it would be of benefit to undertake a phase 1 habitat survey to ascertain the ecological status of the site. If any protected specs are identified further survey would most likely be required prior to submission of the application.

I would advise that the proposed access is discussed with East Sussex County Council. In terms of a flood risk assessment, as long as none of the proposed developable area is within the flood zones an assessment would not be required.

Caravans or temporary planning permissions are not liable for the Community Infrastructure Levy (CIL).

I trust the above assists, but would advise that this reply is furnished after appropriate enquiries and on a 'without prejudice' basis to the Council's formal determination of any future application submitted. I apologise for the time taken to get back to you.

Yours Sincerely

Matthew Taylor
Senior Planning Officer
Development Management
North Team

Appendix 4: Pre-Application Letter Second Draft

OUR REF: MT/PE/2016/0615/E
ASK FOR: **Mr M Taylor Tel: 01892 602560**
DATE: 12 December 2016
YOUR REF:

Wealden
District Council

Ms Zoe Wangler

Kelvin Williams
Head of Planning and Environmental Services

Dear Ms Wangler

PE/2016/0615/E CHANGE OF USE FOR SITING OF 3 TEMPORARY AGRICULTURAL WORKERS DWELLINGS. THE OLD CALF SHED, THE STREET, ARLINGTON

Thank you for attending the Council offices on the 16th of November. I have set out my advice below.

Site
The site is formed of an area of agricultural land graded as 3a/3b the north east corner of the site is within Flood zones two and three. The site has a vegetation screen to the west along the road. The site has a single vehicle access in the southwest corner of the site. The site is part of the Low Weald Landscape Character Area.

Proposal
The proposal is to subdivide the plot to create 3 small holdings and a communal area. A new access is proposed to the north west. Each small holding would have a residential unit of accommodation. Each rural worker would adhere to the standards set down by the Ecological Land Cooperative who would own the site and would set in place a management plan. Details were provided of a scheme in Devon that has been established for two years now. In relation to this site only a site plan was provided which showed the site layout set out above.

Discussion
The site lies outside any established development boundary and as such Policy GD2 and DC17 would restrict new dwellings on the site unless they meet an exception policy. Saved Policy DC2 allows for Farm Workers dwellings in accordance with para 55 of the NPPF and would be the relevant policy to submit any schemes under.

This in effect requires a functional and financial test to be passed to demonstrate the justification for new permanent dwellings on the holdings. With regard to the functional requirement each plot would need to present a full

breakdown of labour on site day-to-day that would justify an on-site presence all year round.

Turning to the financial test, usually to justify a permanent dwelling a farm operation needs to have been established for 3 years and been profitable (to the extent to sustain the dwelling) for one of those years. Based on the submitted reports from Devon, I was not able to ascertain a case in regard to viability. It is more likely than not that the Council would seek to have any case verified by independent rural estates surveyor. I do understand at this stage you only seek advice on the establishment of temporary consents, so this stage could be addressed at a later stage if a functional requirement can be established for each residential unit.

For information, typically a farmworkers dwelling is assessed as being a maximum of 140m2, if a farm office is incorporated 160m2. However any permanent dwelling would have to be proportionate to the income of the site in order that the mortgage can be managed by a rural worker at the site. In terms of design and appearance, it is my view that any design would have to be acceptable in the rural landscape and have regard to the Low Weald It is usual to secure a non-severance S106 on the new dwelling and the farm/buildings. You could propose a unilateral at the time of submission to expedite this.

Devon site

The appeal statement for the sites at Greenham Reach indicates that the previous planning applications were based on substantial evidence and the marketing specific to that site and the planning inspectorate gave 5 years to allow the project time to be fully tested. The level of detail provided to the local authority and planning inspectorate for the Devon site were key to that case, it would be for an application to be submitted here to be persuasive in its own right, something that is acceptable for East Sussex, on the land you have earmarked.

I have looked through the two monitoring reports provided and I am not able to find an indication of the investments into the business or the profits made by the incumbents. It is noted that the document does show other non-profit successes which are commendable. Given the early stage of the Devon experiment it would appear that it could be too early to show figures or they may not be known. At this stage I have not been able to assess the individual units finances so cannot comment on them. It may be that the full five years of the planning permission are needed before this can provide a useful benchmark for similar schemes elsewhere.

This potential development would be an unusual and complex case. At this stage without site specific details for the proposed site, I am not persuaded that there is a case to be made to establish a site similar to that in Devon at Arlington and I would not invite an application. I have set out above the main policy considerations relevant to Wealden. To help your understanding of the planning policy considerations that would apply to any proposal.

Notwithstanding my advice, if you are minded to submit applications, I would advise that each plot be submitted separately under three planning applications to fully test each applicants (sites) ability to demonstrate a viable case for the functional requirement at the site.

In terms of documents it would be of benefit to undertake a phase 1 habitat survey to ascertain the ecological status of the site. If any protected specs are identified further survey would most likely be required prior to submission of the application.

I would advise that the proposed access is discussed with East Sussex County Council. In terms of a flood risk assessment, as long as none of the proposed developable area is within the flood zones an assessment would not be required.

Caravans or temporary planning permissions are not liable for the Community Infrastructure Levy (CIL).

I trust the above assists, but would advise that this reply is furnished after appropriate enquiries and on a 'without prejudice' basis to the Council's formal determination of any future application submitted. I apologise for the time taken to get back to you.

Yours Sincerely

Matthew Taylor
Senior Planning Officer
Development Management
North Team

Appendix 5: Email to Matthew Taylor

pre app letter

Zoe Wangler <zoe@ecologicalland.coop> Mon, Dec 12, 2016 at 10:34 AM
To: Matthew Taylor <Matthew.Taylor@wealden.gov.uk>, David Saunders <david@ecologicalland.coop>

Dear Matthew,

Thank you for updating your letter of advice.

We didn't know that you would need the financial information from our Devon smallholders to be able to fully consider our proposal, and we would be grateful if you could tell us why you didn't ask for the information before finalising your pre-app advice. Your assumptions that 'it is too early" to show figures or 'that they may not be known' is incorrect. The figures are known and we would have welcomed an opportunity to discuss them with you.

We also are at a loss to understand how the fact that a proposal is 'unusual and complex' could be grounds to advise an applicant against applying, particularly in light of: our application to Mid Devon District Council was recommended for approval by the planning officer; and the NPPF states that "development that is sustainable should go ahead". Could you explain to us why by virtue of a proposal being 'unusual and complex' you would discourage an application?

Kind regards,
Zoe

Appendix 6: Email to Judith James

Planning Application WD/2017/0340/F

Zoe Wangler <zoe@ecologicalland.coop> Tue, Mar 7, 2017 at 2:21 PM
To: judith.james@wealden.gov.uk
Cc: sharon.collins@wealden.gov.uk, David Saunders <david@ecologicalland.coop>

Dear Ms James,

Thank you again for finding the time to speak with me today.

Application Validation: Details of Three Proposed Temporary Dwellings
Your colleague Ms Collins asked us last month for full details of the three proposed temporary dwellings, including elevations. She informed me that validation could not be completed until these were provided. I subsequently spoke with her about the nature of our proposal: that we are a community society, providing opportunities for new entrants to farming, and that we have thus far allowed the new entrants to choose their temporary dwelling once they are selected, to suit their budget and family's needs. I let her know that we were allowed to take this approach by Mid Devon District Council. Ms Collins in turn referred me to you to discuss the matter further.

In our call today I understand that you accepted the proposal that in the first instance I amend the Design and Access Statement to give an indication of the temporary dwellings in terms of their size, materials and location, but that further specifics, including elevations *would not be needed*. We discussed me using photos from our existing site in Devon to provide an indication of visual impact. I'd be grateful if you could please let me know if this is not correct.

Impact of the Emerging Local Plan
During today's call you let me know that in your opinion our planning application will without doubt be refused in light of the Emerging Local Plan policy AF1: "*development ... will only be permitted if it can be concluded that the proposals will not adversely affect the conservation interests of Ashdown Forest*". I understand that you believe our application is likely to adversely affect the Forest because our proposed smallholders, their visitors and/or deliveries may travel in a petrol/diesel vehicle through or near the Forest and that the emissions from these potential journeys would increase nitrogen deposition. I understand that the issue is not emissions in Arlington and its surrounds, but emissions within the Forest and its surrounds. Again, I'd be grateful if you could please let me know if this is not correct. You recommended that we withdraw our application and offered to refund our application fee.

Thank you.

Yours sincerely,
Zoe Wangler
Director

Appendix 7: Email from Judith James

Planning Application WD/2017/0340/F

Judith James <Judith.James@wealden.gov.uk> Tue, Mar 7, 2017 at 2:38 PM
To: Zoe Wangler <zoe@ecologicalland.coop>
Cc: Sharon Collins <Sharon.Collins@wealden.gov.uk>, David Saunders <david@ecologicalland.coop>, Marian Smith <Marian.Smith@wealden.gov.uk>

Dear Ms Wangler

I confirm that the details you indicated you could submit regarding the proposed dwellings with an amended D & A Statement will be sufficient to validate the application in this instance, given the particular circumstances of your scheme. If approved we would then condition the submission of final details. I have discussed and agreed this with Marian Smith our Technical Team Manager.

Regarding the Ashdown Forest issue, it is potential traffic movements within the Forest which is causing the adverse impact upon the habitat of the protected areas; but our studies have confirmed that the traffic using those roads is generated from the whole of the Wealden District and wider, and so traffic going to and from the Arlington area will be contributing to this. The Council is required to take a precautionary approach when undertaking assessments of proposals under the Habitats Regulations, and so as it cannot be proven that traffic movements district wide will not adversely impact upon the Forest, we have to take the stance that they will at the current time. As advised, whilst you may be able to demonstrate that the occupiers of the site will not increase such movements, this is not possible for delivery and service vehicles etc which wider routes will inevitably involve using roads which lead to the Forest.

There will be further information relating to the newly published Draft Proposed Submission of the Wealden Local Plan published last Friday and the implications for planning applications on our web site in the coming weeks.

Lastly it will be possible to withdraw the application and receive a refund of the fee prior to its registration, but you indicated that you wish to continue with this and will be forwarding the additional information required to Miss Collins shortly and I have returned the file to her for this purpose.

Mrs James

Judith James

South Team Leader

Appendix 8: Email to Kelvin Williams regarding concerns of a fair hearing

Application WD/2017/0340/F

Zoe Wangler <zoe@ecologicalland.coop> Thu, Apr 13, 2017 at 1:56 PM
To: Kelvin Williams <Kelvin.Williams@wealden.gov.uk>
Cc: Oli Rodker <oli@ecologicalland.coop>, David Saunders <david@ecologicalland.coop>

Dear Mr Williams,

I am sure that you would agree that it is important that an applicant has trust in the planning officer assigned to deal with a particular case. Unfortunately, we have to say that we have lost faith in having a 'fair hearing' were Mr Mathew Taylor to continue as the case officer.

We are not expecting to receive any favourable treatment but there is already evidence that there is a danger that the reverse could be the case were Mr Taylor allowed to be involved in the analysis and assessment of the merits:

1. We approached Wealden council for a pre-application meeting on 5/8/16. Some 14 weeks later, the afternoon before the day of the meeting, and without reviewing any of our documentation, Mr Taylor called advising us in a voice message to cancel the meeting as he said our proposal was 'a non-starter'. His voicemail is attached.

2. In the first draft of his pre-application advice letter, also attached, Mr Taylor stated that the smallholders at our pilot project in Devon were making a loss as evidenced by our monitoring report. As highlighted to Mr Taylor, the income and expenditure figures in the monitoring report are not those of our smallholders but, as stated in the report, those of the Ecological Land Co-op, the freeholder and site manager.

3. Mr Taylor stated in the second draft of his pre-application advice letter that that the accounts for our Devon smallholders were not available as 'it is too early' or 'that they may not be known'. Neither of these statements are correct. Mr Taylor at no point asked us for the accounts and did not reply to our offer to produce them.

4. *Most significantly,* as you've seen, Mr Taylor advised us against an application on the basis that the proposal was 'unusual and complex' and that our pilot project in Devon hadn't yet proven itself. Neither of these are supported by planning policy or law, and are indeed contrary to the guidance in the NPPF.

We understand that managing the workload of a busy planning office cannot be easy, particularly in these times of public sector funding cuts. However, there could be resource implications whenever an application does not appear to be being dealt with in a fair manner that we believe to be the right of both us and the public as well as the Council itself.

Finally, I would like to again offer your department a presentation on small ecological farms by existing growers and farmers with particular attention on viability, a concern you and Mr Taylor have expressed.

Thank you.

Yours sincerely,
Zoe Wangler

Appendix 9: Email to Kelvin Williams offering Department Presentation on Smallholding Viability

Presentation on Smallholding Viability

Zoe Wangler <zoe@ecologicalland.coop> Mon, Feb 20, 2017 at 4:26 PM
To: Kelvin Williams <Kelvin.Williams@wealden.gov.uk>, David Saunders <david@ecologicalland.coop>

Dear Kelvin,

We'd be very grateful if you would consider allowing us the opportunity to make a presentation on the subject of small (ecological) farm business finances.

As part of our recent planning application to Wealden DC we submitted *Small is Successful*, a report we produced in 2011 to support our Devon applications. It looks at the businesses of 8 small-scale ecological farms (under 10 acres). Since producing *Small is Successful*, we've accumulated more knowledge of smallholding business finances, and become aware of many other types of small ecological farm businesses. We're proposing that the presentation would include a researcher, and case studies direct from two or three smallholders operating said businesses on their holdings.

We have found that as such businesses are rare, more often then not the planning officer and/or their advisor isn't familiar with them.
We feel that for our application to be duly considered, the decision maker (or their advisor) needs a good understanding of the economics of small ecological farm businesses, and to be familiar with the context within which they operate.

I hope this is okay to ask.

Thank you.

Kind regards,
Zoe

APPENDIX [H]

RURAL PLANNING LIMITED

18 Old Wardsdown, Flimwell, Wadhurst, East Sussex TN5 7NN
Tel and Fax 01580 878080
rlh@ruralplan.co.uk

The Planning Department
Wealden District Council
Council Offices
Pine Grove
Crowborough
East Sussex TN6 1DH
FAO Mr M Taylor

Your ref: WD/2017/0340/F
Our ref: RLH/AA/WE/17/01
Date: 11 April 2017

Dear Mr Taylor

Field to the south of Copyhold Cottage, The Street, Arlington

I refer to your request for a "desktop" assessment of the planning application submitted by Mrs Zoe Wangler on behalf of the Ecological Land Co-operative (ELC). The application is framed as follows: "Siting of three temporary agricultural workers' dwellings for a period of 5 years together with an agricultural barn with PV array and alterations to existing highway access to provide three affordable smallholdings to new entrants to ecological agriculture".

Background

I understand the ELC's main aim is to seek to address what it describes as *"the lack of affordable sites for ecological land based livelihoods in England"*.

Its stated rationale is that *"Sustainable rural livelihoods – such as small-scale ecological food production – protect the environment and reduce greenhouse gas emissions by reducing fossil fuel use. Such businesses help build a vibrant, living countryside in which people flourish alongside our cherished landscapes and natural biodiversity, and have a important role to play in ensuring food and energy security. They also provide employment, access to local food and crafts, and educational opportunities for urban visitors, helping to maintain rural skills and to improve ecological literacy. Our mission is to increase access to land for such livelihoods"*.

The Co-operative's approach to this perceived need is stated as follows: *"Our solution and core business is the creation of small clusters of three or more affordable residential smallholdings. As well as land, we provide smallholders with permission to build their own sustainable home, and with utilities and road access. Our model allows us to keep costs low, both through buying larger sites at a lower price per acre, and through distributing the cost of infrastructure, planning applications and subsequent site monitoring across a number of smallholdings"……"The model allows the smallholders to work and learn together and to provide mutual support. Our co-operative retains the freehold on each smallholding in order to protect it for agricultural and ecological use, and as affordable in perpetuity"*.

The Co-operative also links its approach to the formation of what are perceived to be "Low Impact Developments"(LIDs), a concept which, I understand, is broadly defined as development which "through its low negative environmental impact either enhances or does not significantly diminish environmental quality". Ecological footprint analysis (EFA) is advocated as a means of showing what contribution the smallholders' move onto a site makes to environmental sustainability.

The ELC have only started three such smallholdings to date, at a 9 ha site, " Greenham Reach", in Devon. Permissions were granted on appeal on 18/04/2013. Each site has a 5 year consent for a temporary dwelling (provided by individual occupiers) and there is a shared barn with PV array, a waste water system and access. One of the appeals also included a greenhouse, and another appeal also included a poultry hatcher/brooder. The three occupiers have each bought long (150 year) leaseholds from the ELC; one outright, two on rent-to buy arrangements over 25 years.

Relevant Planning Policy relating to new isolated homes in the countryside

Para 55 of the NPPF states that *"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as*: [inter alia] *the essential need for a rural worker to live permanently at or near their place of work in the countryside;*

Under saved Local Plan policy DC2 (redolent of the former Annex A of PPS7, which was replaced by the NPPF), proposals for temporary rural workers' accommodation should be judged according to whether there is i) a clearly established **functional need** (for on-site residence), whether there is ii) **clear evidence of a firm intention and ability** to develop the enterprise concerned, and whether iii) it has been **planned on a sound financial basis**.

The latter policy appears broadly consistent with the approach taken by various Planning Inspectors, in my experience, to the effect that whilst no longer official government policy, the former Annex A of PPS7 can still a be useful tool in determining "essential need" in the context of Para 55 of the NPPF.

The weight attributable to Local Plan policy DC2, in the context of the NPPF, was considered in the attached appeal **APP/C1435/A/12/2167770, Birchett Wood, Eridge**. The Inspector held:

"8.Policy GD2 of the Wealden Local Plan 1998 (LP) states that outside the development boundaries, development will be resisted unless it is in accordance with specific policies in the plan; LP Policy DC17 contains similar provisions in respect of housing. Of those specific local plan policies I consider LP Policy DC2 to be directly relevant to the appeal proposal. This says that new permanent dwellings will be permitted for those in agriculture or forestry, or exceptionally in another enterprise where a countryside location is necessary, subject to certain criteria. These criteria include that there is a clearly established functional need and that the enterprise is currently financially sound and has a clear prospect of remaining so.

9. Although the local plan dates from 1998, in terms of the policies referred to above it seems to me that there is a high degree of consistency with the NPPF. Consequently, in having regard to Paragraph 215 of the NPPF the age of the policies should not, to any significant degree, weigh against them. Whilst a 'financial test' of the kind referred to in LP Policy DC2 no longer explicitly features in the NPPF I see no reason to discount it as a potentially useful tool when seeking to establish whether or not a permanent dwelling can be justified".

Whilst the above case was looking at DC2 in the context of a proposal for <u>permanent</u> accommodation, there is nothing to suggest its approach to temporary accommodation is not equally appropriate, where the accommodation is aimed at establishing a viable farm or smallholding business.

This is supported in another attached appeal decision, **APP/A2470/A/14/2218340, Hazel Hill Farm, Rutland**, a 1.65 ha permaculture holding, where the local plan policy concerned is very similar to DC2, citing the same three main elements of functional need, intention and ability, and sound financial planning. The Inspector found:

"7. LPDPD Policy SP5 states that new housing development will not be permitted in the countryside except where it can be demonstrated to be essential to the operational needs of agriculture, forestry or an established enterprise requiring a rural worker to live permanently at or near to their place of work in the countryside. Also, criteria against which planning applications for proposed temporary agricultural dwellings are to be assessed are set out at Appendix 1 to LPDPD Policy SP5 (paras. 4 and 12) which include (i) clear evidence of a firm intention and ability to develop the enterprise (ii) a functional need requiring one or more workers to be readily available at most times, and (iii) clear evidence that the proposed enterprise has been planned on a sound financial basis.

8. Paragraph 28 of the Framework[1] sets out a positive approach to sustainable new development in rural areas, and paragraph 55 of the Framework states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. One such circumstance is the essential need for a rural worker to live permanently at or near their place of work in the countryside. In my opinion, the aims and objectives of the Council's planning policies reflect the provisions of the Framework".

In para 5.27 and 5.28 of their Planning Statement the ELC cites a 1999 Appeal Court decision (Petter and Harris v Secretary of State for DETR) in support of an argument that a financial test is not relevant in determining the current application. The ELC quotes this extract from that case: *"the financial viability test is only relevant in the determination of whether the grant of permission, in whatever terms it might be granted would, because of the uncertain future of the agricultural activity, threaten to produce, in the future, a non-conforming residential use that would pass with the land; a use that had lost its agricultural justification".*

This is quite a dated judgement and more recent policy and practice (post NPPF) confirms the general requirement for financial tests, for new rural worker's accommodation, for the reasons outlined above. The Petter case, in any event, did not conflict with that general requirement. The Inspector was held to have overlooked the purpose and objective of the financial test (contained at that time in Annex I of PPG7), in a case relating to exceptional circumstances, where there was no intention to build a new agricultural dwelling, but merely for Mr Petter (who had been resident on the site for some 7 years, and was aged 67) personally to continue in occupation of the existing mobile home for as long as he and his partner occupied it. There was no intention for a non-conforming residential use that would pass with the land, so the Inspector could have considered other options, such as permission subject to another temporary or personal condition. At Arlington, however, there is no established occupation, and the clear intention is to ultimately create three permanent residential smallholdings, whose residential use would pass with the land.

Finally on the broad application of policy, as far as I am aware there is no National or Local Planning policy covering Wealden that specifically supports the provision of temporary accommodation, or permanent self-build homes, to form residential smallholdings as a means to promote ecological/ LID based food production, as advocated by the ELC. I would assume that your policies and related decision making processes continue to follow the tenet that each proposal for an isolated rural worker's caravan or permanent dwelling requires detailed scrutiny and should be assessed on the particular merits and circumstances of that worker's employment or enterprise. That would not, of course, rule out relevant consideration of ecological/LID factors forming part of any particular occupier's business proposal.

ELC proposals at Arlington in more detail

This 7.42 ha site (formerly an arable field) was purchased by the ELC in September 2016. It would be divided into three plots of 3.45 ha, 1.97 ha, and 1.21 ha. Each would be served by a temporary dwelling; these would be grouped on a separate adjoining plot of 0.20 ha. Another plot of 0.29 ha would be covered with a hardstanding and provided with a largely open-fronted timber barn, 22.8m x 4.9m and 5.6m to ridge, for communal use by the plot holders.

There are no specific proposals as yet for the management of each holding, nor accompanying business plan, indeed no particular occupiers have been identified. The ELC argues that " *Only after a consent is granted can we responsibly advertise smallholdings and invite applicants to submit their business plans. By involving prospective smallholders before a consent has been secured we are effectively asking individuals and families to put their lives on hold for an unknown period while we work our way through the planning process with an unknown outcome".*

Instead it is suggested that business plans would have to be submitted to the Council "prior to the temporary accommodation being occupied by the farm worker". (I would observe that such business plans would have to be approved by the Council, rather than simply "submitted", otherwise their inclusion in the Planning conditions would have little purpose).

In fact the ELC's proposed Planning Condition in this regard refers to submission of such plans "prior to provision on site" of the dwellings, rather than prior to their occupation; this makes sense, as it would be individual smallholders, and not the ELC, who would provide their own temporary dwelling, and the Planning Condition also specifies that the Council's approval, prior to provision on site, would be required to the dwellings' size and design.

Therefore any potential smallholder would still face an inevitable period of uncertainty whilst awaiting the outcome of 1) applying to the ELC, 2) having a business plan approved by the Council, and 3) having the details of the dwelling approved, before it could be moved onto the site and occupied. Further uncertainty would subsist over the period of any temporary consent.

Indeed such periods of uncertainty is inevitable in all cases where planning consent is sought for temporary accommodation to support new rural businesses. Given the Planning policy context, there appears to be no logical reason for citing this as a reason for submitting no such business plans in relation to the Arlington site at this stage.

If necessary, in addition to the appeal at Hazel Hill Farm, Rutland (attached to this letter), other recent appeal cases can be cited which support the requirement (inter alia) for submission of a sound business plans to attract a favourable Planning decision for temporary accommodation. In some instances debate may arise over the appropriate level of financial soundness and viability that should be achieved, but I personally know of no comparable case where an application for new accommodation has succeeded, where no existing enterprise exists, without any reference to the proposed occupier's specific business plan.

Indeed the ELC's own approach at Greenham Reach was to submit individual business plans, each as part of a separate planning application, and each supported by lengthy agricultural appraisals. Those appraisals properly included, in each case, discussion of the physical characteristics of the plot, the particular skills and experience of the potential occupier, the particular functional needs that would arise from the various husbandries involved, local marketing prospects, and a detailed analysis of the budgeted financial plans.

Clearly these were elements that were very material to the decision making process both at the application and the appeal stage. No analyses of such factors have been submitted for the Arlington proposals.

In allowing the three appeals at Greenham Reach, the Inspector discounted the Council's second reason for refusing the proposals, namely its concern that they would set a precedent for further dwellings, in association with permaculture and agroforestry proposals, in the countryside. She stated that "*it is important to note that development does not proceed by way of precedent; each proposal must be considered on the basis of its own individual merits*".

Yet the ELC appears to be wanting Greenham Reach to be seen as some form of precedent for approval in principle of three further dwellings at Arlington without any assessment of their individual merits relating to functional needs, intentions and ability, and financial soundness.

The ELC Planning Statement does include sections on Functional Need, Firm Intention and Ability, and Financial Planning, in which they cite typical instances and studies which the ELC consider lend support to these three criteria areas being potentially met. But however achievable these criteria may appear in a generalised way, Planning policy (as explained above) still requires individual practical assessments showing the criteria to be met for each prospective enterprise. As can be noted by various appeal outcomes (including the two cases attached herewith), it will not always be the case that all the necessary criteria, including functional need and financial soundness, will be satisfied by the farming and business plans of a particular smallholder.

As far as the ELC's one existing site is concerned, at Greenham Reach, there are no submitted details that quantify the success or otherwise of each holding by reference to their business accounts, or indeed, as yet, any ecological footprint analysis showing the before/after contribution that the smallholders' move onto the site has made to environmental sustainability.

Conclusions

In summary, the application at Arlington has the nature of a blanket, exploratory proposal. Effectively, it would seem that the ELC are looking for a form of outline planning consent, after which they would seek individual applicants for each holding, and assess their suitability and the their business plans. However, it cannot be assumed at this early stage that suitable leaseholders will necessarily be found who are willing and able to comply with the ELC's financial terms and management conditions, nor, conversely, can it be assumed that the ELC's views on the suitability of individual applicants, and their need to live on site, would necessarily accord with that of the Local Planning Authority, or an appeal Inspector.

Firstly, in the latter regard, it should be borne in mind that the ELC sees the residential element of a smallholding as a crucial component of ecological food production, whereas (as discussed above) there is no specific Planning policy to that effect.

Secondly, the ELC's own current business plan and budgeting assumptions rely on their ability to acquire bare land, obtain residential (and other) planning consents on it and then dispose of leasehold interests in it for added value, whereas the ability to develop and sell such holdings for a profit would not it, of itself, be a sufficient Planning reason for allowing isolated new homes in the countryside.

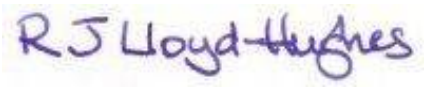
I would suggest, therefore, that as far as the residential element is concerned, the current application is premature, and that to have the potential of meeting the relevant Planning policy criteria applicable to such cases, individual temporary dwelling applications for each plot would need to be submitted and judged as and when potential occupiers are found, whose specific proposals are supported by suitable business plans.

Finally, on the subject of the related development, I would comment that whilst the communal building appears fairly modest, and of a type that may be broadly appropriate for agricultural production on this land, its construction would form part of an overall scheme that currently lacks the usual supportive case, for all the reasons outlined above.

I would also question the requirement for such a large area of hardstanding/parking near the barn (covering the best part of 0.29 ha or 0.71 acres).

I hope this is of assistance but please let me know if you require any further advice in due course.

Yours sincerely



Richard Lloyd-Hughes MRICS
Rural Planning Limited

The Planning Inspectorate

Appeal Decision

Hearing held on 7 June 2012
Site visit made on 7 June 2012

by L Rodgers BEng (Hons) CEng MICE MBA

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

Decision date: 11 July 2012

Appeal Ref: APP/C1435/A/12/2167770
Birchett's Wood, Eridge Road, Eridge, East Sussex TN3 9JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss Sally Burton against the decision of Wealden District Council.
- The application Ref WD/2011/2273/FR, dated 10 October 2011, was refused by notice dated 2 December 2011.
- The development proposed is described as the "resubmission of planning application for the construction of a low impact, sustainable dwelling and related renewable energy system (retrospective)".

Decision

1. The appeal is dismissed.

Procedural matter

2. I saw on my visit that the dwelling and renewable energy system had been constructed.

Main Issues

3. Having regard to the location of the appeal site, outside any settlement boundary and within an Area of Outstanding Natural Beauty, I consider the main issues to be whether or not there are any circumstances justifying an exception to local and national planning policies that generally seek to restrict development in the countryside; the effect of the development on the character and appearance of the area, and; whether or not in all the circumstances the development can be regarded as sustainable.

Reasons

Background

4. Birchett's Wood is in the High Weald AONB, outside any limits to built development. It is situated within 7km of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) and according to the Council also falls within an area designated as Ancient Woodland. However, this latter designation is disputed by the Appellant and given that it is not relied on by the Council and did not form part of its reasons for refusal I see no reason to address it further.

5. Birchett's Wood is around 10 ha in size with a large natural pond towards the centre. The appeal dwelling, a log cabin, has been constructed close to the pond along with the renewable energy system that includes solar panels, a wind turbine and a water wheel. The Appellant coppices the woodland with the products including both firewood and charcoal - the latter being made using two kilns located to the north of the dwelling. Access to the site is from Eridge Road with a single track running through the wood to the dwelling. The nearest residential area is said to be some 800m away to the east.

Justification for the development

6. The recently published National Planning Policy Framework (NPPF) states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. One of the examples given of such special circumstances is the essential need for a rural worker to live permanently at or near their place of work in the countryside.

7. The NPPF is a weighty material consideration; nevertheless, it does not change the statutory status of the development plan as the starting point for decision making. Proposals that conflict with the development plan should be refused permission unless material considerations indicate otherwise.

8. Policy GD2 of the Wealden Local Plan 1998 (LP) states that outside the development boundaries, development will be resisted unless it is in accordance with specific policies in the plan; LP Policy DC17 contains similar provisions in respect of housing. Of those specific local plan policies I consider LP Policy DC2 to be directly relevant to the appeal proposal. This says that new permanent dwellings will be permitted for those in agriculture or forestry, or exceptionally in another enterprise where a countryside location is necessary, subject to certain criteria. These criteria include that there is a clearly established functional need and that the enterprise is currently financially sound and has a clear prospect of remaining so.

9. Although the local plan dates from 1998, in terms of the policies referred to above it seems to me that there is a high degree of consistency with the NPPF. Consequently, in having regard to Paragraph 215 of the NPPF the age of the policies should not, to any significant degree, weigh against them. Whilst a 'financial test' of the kind referred to in LP Policy DC2 no longer explicitly features in the NPPF I see no reason to discount it as a potentially useful tool when seeking to establish whether or not a permanent dwelling can be justified.

10. With respect to the need for the dwelling, the Appellant suggests that the justification for both the dwelling and the sustainable energy system arises from the necessity to support an existing sustainable enterprise which is now in the process of becoming established and is in its third year of operation. The main element of the enterprise is noted as charcoal burning.

11. According to the Appellant the charcoal burning process takes up to 36 hours - including a cooling period. During that time a kiln needs to be closely monitored both to ensure quality of the product and to guard against fire risk and a consequent potential risk to public safety. A key element of this monitoring is to control the amount of oxygen entering the kiln; this is important not only during the burn itself but also during the cooling stage. During this latter stage the kiln is 'sealed' and the risk is that if oxygen enters,

perhaps as a result of rain or animal action, there is a chance of re-ignition leading to both a safety hazard and a loss of charcoal. Although the Council pointed out that there was no public access to the site, the Appellant suggested that trespassers were not uncommon; in any event I heard no substantive evidence disputing the need for close monitoring to ensure the quality and quantity of product. Even so, I am not convinced that this translates into an essential need for a rural worker to live permanently at or near the site.

12. Firstly it is acknowledged by the Appellant that burning usually only takes place during some eight months of the year - when the weather conditions are likely to be more conducive to the process. Secondly, even though burning could no doubt take place at other times of the year, as the Council pointed out at the hearing the revenues derived from the sale of charcoal indicate that the actual number of burns to date has been quite low. This in turn suggests that the burns have been quite sporadic or concentrated into a much shorter period than eight months. In this respect I acknowledge the Appellant's point that the business has been developing but I am also conscious that it is now in its third year of operation. Thirdly, even if a whole year's coppiced material, anticipated at around 60 tonnes, were to be burnt for charcoal the critical burning and cooling operations would still only take up no more than a proportion of the eight month burning period.

13. I accept that in addition to the task of monitoring the burning and the cooling there is a need to prepare and load the kilns for the burn and to sort and bag the charcoal thereafter. However neither of these activities is itself demanding of a worker living permanently on site.

14. Clearly, having a residence on the site is likely to prove more convenient for the Appellant during the times at which charcoal is being produced - particularly during the burning and cooling periods. However, this is not the same as an *essential* need to live *permanently* on the site (my emphases) - especially given the limited number of burns. I note that the Inspector in APP/C1435/C/08/2076232, drawn to my attention by the Appellant in support of her case, found that "Even charcoal burning, which requires a certain amount of close supervision, cannot in itself justify a continuous presence if practised on its current, limited scale." Whilst I am not aware of the quantities of charcoal being produced in that instance the Inspector's findings nevertheless have some congruence with my own.

15. In addition to charcoal burning, the Appellant carries out a number of other operations on the site including growing her own food, keeping chickens and the carrying out of plant husbandry aimed at sustaining the woodland. There is also the production of firewood, compost and other coppiced materials. I have no doubt that these activities are labour intensive and, in conjunction with the production of charcoal, occupy much of the Appellant's time. However, although these activities are said to require the Appellant's continual presence on site, I do not see them, even together, as warranting a permanent residence. Indeed some of the activities, such as the growing of food, arise from the Appellant's presence on site rather than the other way round.

16. I note that the Appellant has recently taken on a work experience student from a local agricultural college with the intention of passing on her knowledge and experience and that she also intends to take further placements and offer small-scale educational courses. Laudable though these activities may be, as is

her overall management and maintenance of the woodland, I again do not see them as necessitating a permanent dwelling on the site.

17. Turning to the matter of financial soundness the Appellant has put forward a range of information suggesting that even in her second year of business she is making enough money to cover her needs. Although the figures are not audited I have no reason to question their veracity. However, it is clear that although the Appellant has invested heavily in the enterprise, no allowance is made in the revenue figures for any financing or depreciation charges. Whilst the Appellant confirmed that she does not have a mortgage, in the absence of any financing or depreciation charges I do not believe that the enterprise can be regarded as being on a financially sound basis – nor do I believe that it has a clear prospect of remaining so. This adds to my other concerns.

18. The Appellant suggests that the operation of a sustainable/subsistence enterprise is somewhat different to a conventional farming operation and consequently the advice and tests in the policy framework may not be appropriate. In this respect the Appellant has pointed to a number of earlier appeal decisions which, it is suggested, support the concept of a holistic approach to sustainable living as providing a functional need for living on site. However, whilst the Inspector in APP/C1435/C/08/2076232 determined that aspects of the project concerned with the use of renewable energy, woodland management and the promotion of sustainable agriculture were, when combined with the merits of pursuing a genuinely holistic and subsistence based rural lifestyle sufficient to justify a departure from local and national policies, permission was still only granted on a temporary basis such that the 'project' could continue.

19. T/APP/X1545/A/98/1013063/P2 also concerned temporary accommodations and, as the Appellant acknowledges, APP/J9497/C/01/1067412 involved a much larger form of development offering a different level of educational provision. In any event, with the exception of APP/C1435/C/08/2076232, the other appeals referred to by the Appellant were in different local authority areas. Each would have been subject to a different policy framework and it is axiomatic that each appeal should be determined on its own merits.

20. I do not doubt that it is the Appellant's intention to live a low impact lifestyle and I accept that it is likely to be more difficult for the Appellant to set up a similar arrangement in a more conventional dwelling. However, despite the significant effort that has gone into creating the facilities on the site there is nothing which is particularly innovative or exceptional in the Appellant's use of renewable energy systems or in growing her own food. Indeed, the use of renewable energy systems, albeit not necessarily of the same form as those adopted by the Appellant, is now becoming more commonplace in the urban environment.

21. Taking account of all these matters it seems to me that the development is driven by the Appellant's lifestyle choice rather than being driven by the demands of an enterprise that requires both a countryside location and a permanently resident rural worker. As I have found that there is no clearly established functional or essential need for a rural worker to live permanently on site and that the enterprise is not currently financially sound with a clear prospect of remaining so, I consider the development to be in conflict with both the NPPF and LP Policy DC2.

Character and appearance

22. NPPF Paragraph 115 notes that great weight should be given to conserving landscape and scenic beauty in AONBs - which have the highest status of protection – and LP Policy EN6 only permits development in the AONB if it conserves or enhances the natural beauty and character of the landscape. Policy C3 of the South East Plan 2009 (SEP) also gives high priority to the conservation and enhancement of natural beauty in the AONBs and notes that planning decisions should have regard to their setting.

23. The log cabin has some affinity with its woodland setting. However, the Appellant's residency has also been accompanied by a number of domestic features such as sheds and a sitting out area as well as a vehicle parking area. Despite the low key appearance of these features they nevertheless conflict with the natural beauty of the area. In addition, some elements of the sustainable energy system, particularly the solar panels, appear especially incongruous in their surroundings.

24. I am conscious that the location of the development means that it is very unlikely to be seen from outside the wood. Even though, at certain times of the year, it may be possible to glimpse the wind turbine above the trees this in itself would constitute no more than a limited intrusion into public views. In my opinion the fact that the development is largely concealed must limit the harm that is caused to the wider AONB.

25. Nevertheless, there is no guarantee that this situation would continue in perpetuity and the lack of public views does not alter the fact that a dwelling would still generate comings and goings that in themselves would be detrimental to the countryside character of the area. Whilst it may be argued here that the Appellant's lifestyle would limit such comings and goings that is an argument that could be repeated too often to the overall detriment of the AONB. Seen as a whole I consider that, despite the lack of public views, there is material harm to the AONB and as such the development fails to conserve the natural character of the landscape contrary to LP Policy EN6.

Whether or not the development can be regarded as sustainable

26. The Appellant aims to live a low impact lifestyle and as far as possible be self sufficient, matters that appear to fit well with the philosophy of encouraging sustainable development. However, the NPPF characterises sustainable development as having three dimensions; economic, social and environmental. In this case it is my view that the limited economic and social benefits of the development are not sufficient to outweigh the environmental harm to the AONB and therefore despite the Appellant's low impact lifestyle, I do not see that the development can be regarded as sustainable.

27. In any event, although a presumption in favour of sustainable development lies at the heart of the NPPF, Paragraph 14 makes it clear that for decision taking, this means (unless material considerations indicate otherwise) approving development proposals that accord with the development plan without delay, and; where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits (when assessed against the NPPF policies as a whole or specific NPPF policies indicate development should be restricted).

28. In this case the development plan is not absent or silent and, despite their age, the relevant local plan policies do not materially conflict with the NPPF and consequently should not be regarded as being out of date. As I have already established that the development does not accord with the development plan, the NPPF's presumption in favour of sustainable development does not apply.

Conditions

29. The Appellant has suggested that any permission could be made personal to her or could, if deemed necessary, be made temporary by the use of appropriate conditions. I have considered all of the suggested conditions in light of Circular 11/95: *The Use of Conditions in Planning Permissions*.

30. Turning first to the matter of a personal permission, Circular 11/95 makes it clear that planning permissions generally run with the land and it is seldom desirable to provide otherwise. The Circular acknowledges that exceptionally permission may be granted for some purpose which would not normally be allowed at the site because there are strong compassionate or other personal grounds for doing so. However, I heard nothing in this case to convince me that a grant of permission would be exceptionally justified on personal grounds. Whilst the Appellant has clearly made a personal choice to adopt a low impact lifestyle that in itself does not constitute appropriate grounds justifying a personal permission. As the Council pointed out, granting permission in these circumstances would give rise to difficulties in resisting subsequent applications on the site if similar considerations were put forward. Consequently, such a permission could not be regarded as personal to the Appellant.

31. With respect to a temporary permission, the Circular makes it clear that temporary permissions are normally only appropriate either where a temporary development is proposed or where a trial run is needed in order to assess the effect of the development on the area. Neither of these considerations applies here. However, the Circular also acknowledges that it may be possible to grant a temporary permission for the provision of a caravan or other temporary accommodation where there is some evidence to support the grant of planning permission for an agricultural or forestry dwelling - but the evidence is inconclusive.

32. The Circular notes that a temporary permission for a caravan or similar may allow time for the prospects of the enterprise to be clarified. However, permission is being sought here for a dwelling with a much greater degree of permanence than something like a caravan. In any event, despite the Appellant acknowledging that the enterprise is already in its third year of operation it has not been demonstrated that there is an essential need for a permanent dwelling nor has it been shown that the enterprise is financially sound. Whilst I was told that it has taken some time to get all of the arrangements in place, including the kilns, the Council pointed out that the Appellant moved onto the site in 2007 when the dwelling was constructed. In all these circumstances I do not see that the grant of a temporary permission, on top of the time that has already been spent on the site, is likely to significantly alter the position – particularly as regards justifying the essential need for a dwelling. I therefore see no good reason to contemplate further whether or not a temporary permission would be appropriate.

33. I have also considered whether any of the other suggested conditions, including those put forward by the Council - such as the withdrawal of certain

permitted development rights and a condition limiting occupation of the dwelling to a rural based worker - would meet the Circular tests and make the development acceptable. However, I have found nothing to overcome my fundamental concerns.

Conclusions

34. From what I saw and heard the Appellant is genuinely seeking to live a low impact, sustainable lifestyle. However, that is largely a matter of personal choice and I see nothing about the activities being undertaken that leads me to conclude that there is an essential need for a permanent dwelling. In the absence of such a need the development is contrary to both local and national policies that seek to avoid isolated dwellings in the countryside. There is nothing in the suggested conditions to alter this position. The development also causes harm to the character and appearance of the AONB - a landscape deserving of the highest level of protection - and in this respect is again contrary to the development plan.

35. The development clearly provides some additional housing accommodation and may also generate some small economic benefits. Overall however, none of the benefits attributable to the development are sufficient to outweigh the development plan conflict nor can the development be seen as sustainable.

36. Although not forming part of its reasons for refusal the Council has, following publication of the Inspector's suggested recommendations in respect of the Council's Core Strategy (CS), made additional submissions during the course of the appeal to the effect that the proposal would be unacceptable as a result of its impact on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). However, as I have already found that there is nothing to outweigh the development plan conflict I see no reason to pursue this matter further.

37. I am aware that the log cabin is said to represent the Appellant's only home and that refusal of permission may lead to a loss of that home. The Human Rights Act 1998, and specifically Article 8 of the Convention, says that everyone has the right to respect for his private and family life and his home and that there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society, amongst other matters, for the protection of the rights and freedoms of others. Whilst loss of her home would be a substantial interference in the Appellant's rights I consider that for the reasons above it is necessary and proportionate for the protection of the rights and freedoms of others. I therefore conclude that the appeal should fail.

Lloyd Rodgers

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr P Rainier MRTPI	Director of Planning, DMH Stallard
Miss S Burton	Appellant
Mr R Wickwar	On behalf of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Robins MRTPI	Assistant Team Leader Development Management North, Wealden District Council

INTERESTED PERSONS:

Mrs M Thirkell	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1 e-mail from Natural England dated 7 June 2012. Submitted by Mr Robins.

The Planning Inspectorate

Appeal Decision

Hearing held on 20 August 2014
Site visit made on 20 August 2014

by Thomas Shields MA DipURP MRTPI

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

Decision date: 8 September 2014

Appeal Ref: APP/A2470/A/14/2218340
Hazel Hill Farm, Wing Road, Morcott, Rutland, LE15 9DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Paul Bird against the decision of Rutland County Council.
- The application Ref 2014/0018/FUL, dated 3 January 2014, was refused by notice dated 4 April 2014.
- The development proposed is described as "stationing of a mobile home on agricultural land, change of use to residential for temporary period of three years".

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Rutland Local Plan Site Allocations and Policies DPD (2013) (LPDPD) has been subject to a formal Examination and is expected to be adopted in 2014. Given these circumstances I attach significant weight to it in reaching my decision.

Main Issue

3. The main issue is whether, having regard to the aims of national and local planning policies that seek to resist new dwellings in the countryside, the enterprise justifies the proposed dwelling.

Reasons

4. The appeal site is approximately 1.65 hectares of agricultural land located off the southern side of Wing Road, approximately 1.5 miles to the west of the village of Morcott in open countryside. The Council have no objection to the proposed dwelling in terms of size or its impact upon the character and appearance of the area. I have no reason to disagree with that view.

Policy framework

5. The appellant referred to Policies CS1, CS2, CS16, CS18, and CS19 of the Rutland Core Strategy Development Plan Document (DPD) (2011) (CS). They set out the Councils over-arching strategic objectives and sustainable development principles for all types of development including transport and accessibility. With particular relevance to this proposal Policy CS16 provides

the strategic approach for the rural economy, including encouraging agricultural and horticultural enterprises.

6. Policy CS4 sets out the Council's strategic approach to the location of development. It strictly limits development in the countryside to that which has an essential need to be located in the countryside. In addition, saved Policy EN26 of the Rutland Local Plan (2001) (LP) sets out an exception to the presumption against development in the countryside, being development which is essential to the efficient operation of agriculture, horticulture or forestry.

7. LPDPD Policy SP5 states that new housing development will not be permitted in the countryside except where it can be demonstrated to be essential to the operational needs of agriculture, forestry or an established enterprise requiring a rural worker to live permanently at or near to their place of work in the countryside. Also, criteria against which planning applications for proposed temporary agricultural dwellings are to be assessed are set out at Appendix 1 to LPDPD Policy SP5 (paras. 4 and 12) which include (i) clear evidence of a firm intention and ability to develop the enterprise (ii) a functional need requiring one or more workers to be readily available at most times, and (iii) clear evidence that the proposed enterprise has been planned on a sound financial basis.

8. Paragraph 28 of the Framework[1] sets out a positive approach to sustainable new development in rural areas, and paragraph 55 of the Framework states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances. One such circumstance is the essential need for a rural worker to live permanently at or near their place of work in the countryside. In my opinion, the aims and objectives of the Council's planning policies reflect the provisions of the Framework.

Intention and ability to develop the enterprise

9. The appellant is mainly self-taught, having developed his skills and knowledge from an employment background of landscape gardening and as a farm worker across Europe. He purchased the field in 2008 for £25,000 and began using it for agriculture. Planning permissions were granted for a barn and poly-tunnel in 2008, an underground vegetable storage clamp in 2010, and a new vehicular access in 2013. A further 4 non-fixed polytunnels have also been added to the site together with a generator, batteries, inverter and electrical equipment, including solar panels on the barn roof. The power system is linked to automated temperature, humidity and irrigation control systems. The appellant estimates he has invested approximately £70,000 in developing the site since 2008. None of this evidence is disputed by the Council.

10. Having regard to the above circumstances and to my observations during my visit to the appeal site, it is clear that the appellant has a commitment and enthusiasm for his permaculture approach to agriculture. Although there have been mixed results in terms of successfully producing crops and profitability over the years, a matter to which I return later, I have no doubt that the appellant has demonstrated a firm intention and ability to develop the enterprise.

[1] National Planning Policy Framework (2012)

Functional need

11. A wide variety of vegetables and fruit have been grown at the site. In addition 1000 fruit trees were grafted in the current year.

12. It was argued by the appellant that there is an essential need for a permanent and full-time presence on site related firstly, to the maintenance of the site and to the power supply and automated crop management systems, secondly, to security from theft, and thirdly in respect of pest control.

13. In respect of maintenance I heard that during high wind conditions there was risk of damage to the fixed poly-tunnel from tearing, and that ground fleeces could be lifted exposing crops to frost. Also, that unexpected failure of the power system (and hence the automated temperature/humidity and irrigation system) could have a severe effect on crops within the poly-tunnels. With regard to security, there have been several thefts of equipment. These risks, it was argued, require a fast response from someone being on site at all times, particularly during the night.

14. However, I am not persuaded that these risks could not be adequately managed without the need for a permanent on-site presence. National and local weather forecasts provide reasonably accurate warning of occasions when high winds are likely to be of a strength that could result in damage. Given that the appellant lives at Uppingham, which is only 12 minutes travelling time from the site by car, I do not consider the relatively occasional risk of such damage to be an unmanageable risk and hence I do not consider this to be an over-riding concern.

15. While I accept that a failure of either or both of the power and the automated temperature and irrigation systems could have a severe impact on the crops, I note that these were installed by the appellant who acknowledged that they are best described as *'low-tech'* systems. However, alternative high specification monitoring systems are readily available which incorporate system failure alarms, and can be accessed and operated remotely by a telephone line or wireless technology.

16. While the appellant doubts the efficacy of such systems, particularly due to the current lack of a telephone line and potentially a poor reception area for wireless communication, it was clear that such an alternative had not been thoroughly investigated. It was also argued that the cost of installing such a system could be prohibitive in addition to the £9,000 cost of installing a telephone line. However, the cost of such an alternative system could be significantly less in the longer term than the cost of providing a temporary dwelling, and subsequently a permanent dwelling. Consequently, I am not convinced that this matter justifies a permanent on-site presence.

17. Although I recognise that the effectiveness of security measures to deter and prevent crime cannot be guaranteed, for similar reasoning as above I consider that the security of the site could be improved by use of the latest technology and monitoring equipment. Moreover, even without any potential improvements to security, I do not consider that the risk of crime is by itself sufficient justification for residential occupation of the site.

18. In respect of pest control the appellant provided evidence in respect of crop damage from rats. It was argued this was a particular problem due to the

appeal site being located close to nearby fields used for game shooting. I have no reason to doubt that such a problem exists and this evidence was not disputed by the Council.

19. However, the appellant explained that he prefers to control rats by shooting with an air rifle, rather than using poison which is generally the more widely used method for controlling rat incursion on farms. In this regard, the appellant acknowledged that his method of pest control had been based on informal advice from internet forums rather than from professional advice. In my view, professional advice based on an inspection of the site and its surroundings would likely offer up a more efficient pest control solution. Consequently, I attach limited weight to this issue in support of the appeal.

20. The appellant also argues that living on site would make the day the day operation and management of the site much easier and would also be more sustainable by reducing car journeys from Uppingham. While I accept that these would be positive benefits, they do not persuade me that there is an essential need to permanently live on site.

21. Overall, I consider that an essential need to permanently live on site related to the proper functioning of the enterprise has not been demonstrated.

Financial viability

22. The appellant's budget and forecasting analysis indicated a net profit of £34,330 at the end of the first year of trading. However, the appellant acknowledged that this did not include additional costs for a mobile home, estimated at £10,000, or the planned purchase of 2 more polytunnels and poultry housing, a mower, and replacement tools, estimated at £6,100.

23. Using the appellant's estimated costs the predicted net profit of £34,330 would reduce by £16,100 to £18,230. Notwithstanding my view that some of the estimated costs appear to be unrealistically low, there was also no inclusion of a capital cost element related to the initial purchase of the land, or the 2 latest polytunnels on the site (£3,000), or recent works to create a secondary access (£3,000), all of which would significantly reduce the net profit even further.

24. The appellant acknowledged that his financial forecast in respect of income from sales was optimistic and based on a best case scenario. I agree with that view. Even a minor reduction in the income forecast from sales, together with an upward revision of costs as indicated above could result in little or no net profits.

25. Overall, I am not convinced on the balance of the evidence before me that the enterprise has been planned on a sound financial basis.

Conclusion

26. On the balance of the evidence before me I have found that a firm intention and ability to develop the enterprise has been demonstrated. However, I have found that an essential functional need to permanently live on site has not been demonstrated, and that the enterprise has not been planned on a sound financial basis. For these reasons, I conclude that the enterprise does not justify the proposed dwelling, which would therefore conflict with the requirements of CS Policy CS4 and LP Policy EN26. It would also conflict with LPDPD Policy SP5 and Appendix 1 and with paragraph 55 of the Framework.

27. For the above reasons, and having regard to all matters raised, my overall conclusion is that the appeal should be dismissed.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Paul Bird	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nick Thrower	Planning Officer, Rutland County Council

DOCUMENTS SUMITTED AT THE HEARING

1. Policies CS1, CS2, CS16, CS18, CS19.
2. Current Sales 2014 update
3. Functional Need update

APPENDIX [I]

The Planning Inspectorate

Appeal Decision

Inquiry held on 16 and 17 February 2017

Site visit made on 17 February 2017

by R W Allen B.Sc (Hons) PGDip MRTPI

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

Decision date: 05 May 2017

Appeal Ref: APP/E2734/W/16/3150954
Land at Orchard Close, Knaresborough, North Yorkshire

- 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 Mr Robin McGinn (Persimmon Homes (Yorkshire) Ltd) against the decision of Harrogate Borough Council.
- The application Ref 14/03849/OUTMAJ, dated 27 August 2014, was refused by notice dated 25 November 2015.
- The development proposed is erection of up to 74 dwellings with associated access and open space.

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 74 dwellings with associated access and open space at Land at Orchard Close, Knaresborough, North Yorkshire in accordance with the terms of the application, Ref 14/03849/OUTMAJ, dated 27 August 2014, subject to the following conditions set out in the Schedule of Conditions at the end of this decision.

Application for Costs

2. An application for costs was made by Robin McGinn (Persimmon Homes (Yorkshire) Ltd) against Harrogate Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council refused the proposed development on the one ground in respect of air quality, and the appeal was originally to be heard by way of a Hearing. However, prior to the event, the Council stated it was no longer defending its position, and withdrew from the appeal. Nevertheless third parties and in particular the Scriven East Residents' Group (SERG) raised lengthy and technical issues on air quality in their written responses. This prompted a similarly extensive rebuttal by the appellant, which he tabled and I accepted at the Hearing. Because of the significant local interests in the case, and the complex and technical matters before me, I determined that an Inquiry was the appropriate forum to hear the appeal and I closed the Hearing shortly afterwards.

4. Notwithstanding the Council's reason for refusal, because ecology concerns had also been raised by third parties, particularly by Mr Barker from the Harrogate Trust for Wildlife Protection, I informed the parties at the Inquiry that I

intended to treat ecology as a main issue. The appellant raised no objection to this, having submitted a proof of evidence on ecology matters and having previously made his intention clear that he intended to call upon its author as a witness.

5. The appeal proposal is in outline form, with all matters reserved for subsequent approval with the exception of access. Any other details shown which would be a reserved matter, such as the layout, I shall treat as being indicative only. An obligation under Section 106 of the Planning Act is before me dated 16 February 2017 which makes provisions for local facilities and infrastructure. I will return to this matter later.

Main Issues

6. The main issues are:

- The effect of the proposed development on air quality at Bond End; and
- The effect of the proposed development on ecology having specific regard to populations of great crested newts, and goosander the Hay-A-Park Site of Special Scientific Interest (SSSI).

Reasons

Policy context

7. The development plan for the area comprises the Harrogate Core Strategy 2009 (Core Strategy) and the Harrogate District Local Plan 2001 (with saved policies 2006) (Local Plan). The main parties agree that the appeal site lies outside of the settlement boundary of Knaresborough as defined by the Core Strategy, and as such is within the open countryside.

8. At the Inquiry, an addendum to the Statement of Common Ground was tabled in which it is now agreed by the Council and the appellant that the Council is unable to demonstrate that it has a five year supply of housing land. I heard no evidence from interested parties which disputed this. Accordingly, paragraphs 49 and 14 of the National Planning Policy Framework (the Framework) are engaged. I return to the requirements of paragraph 14 later.

9. Paragraph 49 of the Framework advises that policies relevant for the supply of housing are out-of–date if the local planning authority cannot demonstrate a five year housing land supply. Core Strategy policy SG1 is the most relevant to the appeal; which directs growth towards a settlement hierarchy. However, Core Strategy policy CS1 also states that Knaresborough (and Harrogate) will have to accommodate most of the borough's housing growth, and critically that greenfield land release will be an inevitable necessity to meet the housing requirement. The policy goes on to state that such greenfield release in Knaresborough, with the potential to accommodate new housing sustainably, will be found within an 'Area of Search' on "*land to the east of the B6165 in the vicinity of Scriven eastwards to the land lying east of Birkham Wood to the south of the town*".

10. No party disputes or disagrees that the appeal site is within this 'Area of Search', and I have no reason to disagree. Accordingly, I find the proposed development would not conflict with Core Strategy policy SG1 irrespective that it is out-of-date. In any event, the Council, in fairness, has never advanced

any concerns over conflict with Core Strategy policy SG1 or indeed any other housing policy. Moreover, it acknowledges that because housing requirement set out in Core Strategy policy SG1, which is 390 dwellings per annum (dpa), falls considerably short of the most up-to-date Strategic Housing Market Assessment of 2016 which indicates objectively assessed need now stands at 577 dpa, greenfield land release is an essential and necessary means to achieve and maintain a healthy housing supply.

11. The Council and appellant agree that saved Local Plan policy C2, which seeks to protect existing landscape character from development, is both inconsistent with the Framework's approach to significantly boosting housing supply, and is out-of-date. I have no reason to disagree and I afford little weight to it in my decision.

Effect on air quality

12. The principle area of dispute between the appellant and interested parties concerns the level of impact of the proposed development on nitrogen dioxide (NO_2) levels at Bond End, and particularly how the baseline data has been used to calculate impact. Bond End is a designated Air Quality Management Area (AQMA), and the appeal site is outside and some distance from it.

13. The appellant's transport assessment (TA) identifies that the majority of vehicular traffic generated by proposed development would flow towards the Chain Lane and A59 intersection. Less would turn towards Hyde Park Road, and less still would turn into Boroughbridge Road in the direction towards Bond End. The appellant states that in fact only six two-way additional traffic movements at both AM and PM peak periods would flow towards the Bond End intersection.

14. I note the significant representations received, notably from SERG, which cast doubt on the adequacy and inaccuracies of these predicted movements. However, no party produced an alternative TA which countered the appellant's evidence, and SERG's own alternative traffic survey, which concentrated on a much smaller area and over a lesser time period, does not in fact substantially differ from that stated in the appellant's TA. I heard little persuasive evidence that the TA had been undertaken in an incorrect or flawed methodological approach to traffic particularly in regard to cumulative assessments; indeed neither the Council nor North Yorkshire County Council (NYCC) raises any objection in this regard. No party disputes that the six two-way additional traffic movements at both AM and PM peak periods, as stated by the appellant, would amount to anything more than a negligible and insignificant level.

15. The appellant states that the negligible increases in traffic would subsequently have the same insignificant effect on NO_2 levels at Bond End. This conclusion is based on the measured increases from the proposed development on the future baseline data of air quality, which comprises the existing baseline data plus known committed developments, which were identified as two recently approved and larger housing developments in Knaresborough at Manse Farm, and Boroughbridge Road. The conclusion of a negligible effect is also reached without assessment of the proposed mitigation measures to be undertaken at Bond End as part of the Manse Farm development, which the appellant states and not disputed by any other party includes junction improvements and the installation of MOVA controllers designed to reduce air quality emissions from standing traffic.

16. SERG draws my attention to an excerpt of a document entitled '*Land-Use Planning & Development Control: Planning for Air Quality*' produced by Environmental Protection UK and the Institute of Air Quality Management (IAQM document), which it tabled at the Inquiry. Paragraph 6.21 of that document states that there may be a case for modelling scenarios where the committed development is excluded from all baseline data, and that cumulative impacts of all committed developments and future development are assessed as a combined impact. This they say, is the correct approach and would give a more accurate indication of impact.

17. However, I draw from this paragraph, and having read the document more broadly, that this alternative form of modelling is applicable only in certain, and perhaps special circumstances. Paragraph 6.20 of the IAQM document identifies that the normal correct approach is to identify firstly the existing baseline, then the future baseline data which includes the committed development, and finally the future baseline including the proposed development; I am satisfied that this approach has been followed by the appellant. Furthermore, paragraph 6.21 of the IAQM document goes on to state, and somewhat repeated in paragraph 6.22 (k) that in most cases, the approach to committed development is to include it within future baselines. Neither SERG nor any other party has sufficiently explained why this alternative method should be applied here. Moreover, no alternative air quality evidence has been advanced by any party to counter the appellant's evidence, or to suggest that the effect of the proposed development, even taken against the existing baseline data, would amount to a significant or moderate level of harm.

18. In any event, paragraph 6.20 of the IAQM document states that it is important that an agreement is reached between the applicant and the local authority as to the proposed assessment methodology. The Council and its experts have raised no concerns with the appellant's methodological approach to air quality, or its findings, and it is not for me to disagree with experts in the field particularly in the absence of sufficient evidence to the contrary. I therefore find no reason to find the appellant's methodological approach and conclusions on harm are flawed or inaccurate.

19. The proposed development would make a financial contribution towards an urban traffic management and control system (UTMC) along the A59 between Bond End and Chain Lane, which I was told involved improving remote communication and the installation of cameras to reduce traffic and improve air quality. This is being promoted by NYCC, and I have no obvious reason to find this initiative would have little and only a short-term effect.

20. I am evidently aware of the legal objectives of the Government under EU law to control air quality and pollution. However, this requirement should not be confused with the intentions of the Framework and the Planning Practice Guidance (the Guidance) in respect of development and relationship to AQMAs. Paragraph 109 of the Framework states that the planning system should contribute to, and enhance the local environment by preventing new development from contributing to unacceptable levels of air pollution. Paragraph 005 of the Guidance (*Ref: 32-005-20140306)* advises that air quality matters are relevant to a planning decision where it would significantly increase traffic by, amongst other things, increasing traffic congestion and significantly changing traffic volumes.

21. The Framework and Guidance do not place a moratorium or embargo on development that may affect AQMAs. Indeed the emphasis is to prevent unacceptable development. I am satisfied on the evidence before me that the proposed development would have only a negligible effect on traffic and air quality on the AQMA at Bond End.

22. I therefore find no conflict from the proposed development with the Framework or the Guidance. I also find no conflict with Core Strategy policy SG4, which states that the environmental impact of development should conform to Core Strategy policies EQ1 and EQ2; neither of which makes any specific reference to air quality matters. It would also accord with Local Plan policy HD20, which requires the general principles for new development make provision for a safe environment. Paragraph 124 of the Framework is, I find, focused on the role of plan making for AQMAs, and thus applies more to the responsibility of the Council. All parties agreed at the Inquiry that the Council's current air quality action plan is out-of-date; it was not tabled in evidence before me; and accordingly it follows that no conflict arises from the decision making element of the paragraph 124.

23. While I understand the deep rooted concerns of residents and interested parties on the air quality of Bond End and Knaresborough as a whole, I garnered that much of the concerns of local people pertained to what they perceive as the Council's inability and inadequacy to put in place an adequate and up-to-date air quality action plan for managing, amongst other things, future development in Knaresborough. This is not a matter before me.

24. I heard at the Inquiry that a second AQMA is proposed to be designated further along the A52 at York Place. But as this has yet to be formally defined, and this is not a matter initially objected to by the Council, I have not considered this matter further in my decision.

Effect on ecology

25. The appeal site lies to the west of the Hay-A-Park SSSI; its boundaries largely surround a waterbody. It is designated because of its population of goosander. The land in which the SSSI is designated is within private ownership, and public footpaths and roads largely avoid penetrating the SSSI although an unauthorised footpath does to some extent circumvent the edges of the waterbody.

26. The appellant identifies relatively low numbers of goosander on the site. The appellant further states that the goosander behavioural pattern is that they rarely take flight; and when disturbed by users of the unauthorised footpath goosander generally travel short distances and fly to other parts of the waterbody. The appellant concludes that the proposed development would not significantly harm goosander population or their habitat including the quality of the water, to which I understand much of surface water drainage of the surrounding area drains in to.

27. The adjacent field to the east of the appeal site contains two ponds which contain populations of great crested newts. However, the survey evidence before me indicates that numbers are low, and that great crested newts are territorial in their behaviour and rarely stray from their waterbody and breeding sites. The appeal site is not on a migration or dispersal route.

28. The appellant concludes that the proposed development would not significantly harm goosander or great crested newt populations. The scheme nevertheless proposed to incorporate mitigation measures on the site such as a dog-walking area within the designated public open space, designed to prevent future occupiers with dogs from walking to the SSSI and alongside the waterbody, notwithstanding that undertaking such walks is trespassing. It also proposes a pond on the on-site public open space to encourage biodiversity; as well as measures during construction to prevent any possibility of newts straying on to the site.

29. I note Mr Barker's assertion that great crested newt populations were, in his experience, considerably larger than that advocated by the appellant. However, he advanced no survey evidence of his own to support his claim or counter the appellant's evidence, and his basis for this assertion relies on conservation work he undertook some 20 to 25 years ago, which I find is too distant in the past to be considered reliable. While I do not doubt that great crested newts may navigate towards domestic drains, I find little evidence before me to suggest that this would be inevitable or likely, and I find no obvious reason why a suitable landscaped boundary, to be approved at reserved matters stage, would act as a suitable deterrent.

30. Neither the Council nor Natural England raises any concerns or objections to the proposed development on the SSSI or on great crested newts, and it is not for me to disagree with these experts in the field particularly in the absence of sufficient evidence to the contrary. I am therefore satisfied that the proposed development would not cause any significant harm ecology and wildlife. The proposed development would accord with requirements of paragraph 118 of the Framework, which compels planning decisions to refuse applications if significant harm results to wildlife, or adverse effects are caused to SSSIs.

Planning Obligations

31. The Council seeks financial contributions of £3,399.00 per two bed or greater dwellings towards education; £481 per bedroom towards off-site open space provision, and £65,000 (increased to reflect any increase in the Retail Price Index) towards the provision of the Knaresborough UTMC along the A59 corridor approaches to Bond End. These are set out in a planning obligation in the form of a unilateral undertaking, dated 16 February 2017.

32. Paragraph 204 of the Framework says requests for planning obligations must meet three tests, which are: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably relate in scale and kind to the development. The Council confirmed at the Inquiry that it was satisfied with the content of the obligation and that its requirements were met; and no other party raised any concerns as to the adequacy of the obligation. In light of the evidence before me, I am satisfied that obligation would be consistent with the tests of Framework and with the provisions contained within the Community Infrastructure Levy Regulations 2010 in respect of pooled contributions.

Conditions

33. I have considered the conditions suggested by the Council against paragraph 206 of the Framework, and made changes necessary to comply with those requirements. These include removal of references to the Highway Authority in

the condition; where I find the conditions are loose and imprecise; where I find the condition can be more succinctly expressed; and where I find conditions can be merged.

34. Conditions requiring the development accord with the masterplan and specifying the numbers of dwellings that can be developed on the appeal site are necessary for the avoidance of doubt. A condition requiring details of affordable housing, and while the appellant does not agree, a condition requiring a details of housing mix are necessary to ensure the proposed development accords with the Framework's approach to provide a wide choice of housing. A number of conditions in respect to details of highway works both on and off-site are necessary in the interests of providing adequate access for the proposed development. A condition requiring a construction management plan is necessary in the interests of highway safety and the living conditions of surrounding occupiers.

35. Conditions in relation to ecological mitigation and control of removal of hedges and shrubs are necessary in the interests of protecting and promoting biodiversity and wildlife. A condition requiring an aboricultural statement is necessary in the interests of protecting trees on the site and its boundaries, and as such a statement will include root protection measures, a separate condition to this effect is not necessary. A surface water drainage condition is necessary to ensure the site is adequately drained. However as foul sewage is controlled under other legislation and the Council has not identified any particular issue in this regard, I find a condition is not necessary. A condition in respect of investigation of land contamination is necessary to ensure the site is not a danger to health and to ensure, if necessary, that it will be adequately mitigated. A condition in respect of electric charging points and submission of a travel plan is necessary in the interests of promoting sustainable travel. An archaeology condition is necessary to ensure protection of heritage assets if found. A condition requiring Secure by Design is necessary in the interests of good and safe design.

36. I have deleted conditions requiring details of arrangements for improved education facilities and open space provision as this is adequately provided for in the planning obligation. As landscaping is a reserved matter, I do not feel a condition in respect of highway tree planting is necessary.

Whether Sustainable Development and Planning Balance

37. Paragraph 6 of the Framework sets out the three dimensions to sustainable development: social; economic and environmental.

38. Paragraph 47 of the Framework requires local planning authorities to significantly boost housing supply. The Council cannot demonstrate a five year housing land supply, and the proposed development would make a significant contribution to the shortfall. It would provide new market dwellings to meet the needs of present and future generations. I especially afford considerable weight to the 40% contribution the proposed development would make towards the Council's affordable housing stock, which I was told by the appellant and not disputed by any party that the Council's shortfall in affordable housing provision in the borough is somewhat sizeable. The proposed development would generate opportunities for local construction employment, and would support accessible local services and facilities. The social and economic

benefits are considerable, and I attach significant weight to them in my decision.

39. Paragraph 17 of the Framework requires new development to actively manage patters of growth and make the fullest possible use of public transport, walking and cycling. The proposed development would be conveniently located on the edge of the settlement edge of Knaresborough. No party disputes or disagrees that the appeal site is closely located to local services and facilities. A frequent bus service operates along Hyde Park Road and Halfpenny Lane as well as on Boroughbridge Road. The town centre is not a considerable distance away from the appeal site and I do not find it insurmountable that future occupiers of the proposed development would walk or cycle to access services and facilities. Notwithstanding the concerns of SERG in respect to the proportion of car to non-car trips from the proposed development, I am satisfied that the appeal site is sustainably located.

40. As I have set out above, I find the proposed development would have negligible environmental harm on air quality at Bond End; or on populations of great crested newts on the adjacent site or goosander within the SSSI. No party has advanced any other environmental concerns from the proposed development, particularly in respect to the effect on the character and appearance of the area, and on the evidence before me I have no reason to find that the proposed development would not assimilate well into its surroundings. I understand that part of the appeal site may be contaminated from a previous use; however the Council and appellant find such matters can be controlled by planning condition, and as I have set out above and I have no reason to disagree.

41. Paragraph 14 of the Framework is engaged because of the absence of a five year housing land supply. Paragraph 14 states that a presumption in favour of sustainable development exists and should be seen as a golden thread running through decision-taking. Where the development plan is absent, silent, or relevant policies for the supply of housing are out-of-date as is the case here, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

42. In applying the tilted balancing exercise required by bullet point 4(1) of paragraph 14 of the Framework, I find that the negligible level of environmental harm I have identified above, would not be capable of significantly and demonstrably outweighing the considerable benefits of the scheme. I find the proposal would amount to sustainable development in accordance with the Framework when taken as a whole, and there is no basis for refusal of the scheme.

Conclusion

43. Having taken all matters into consideration, I conclude that the appeal should be allowed.

R Allen

INSPECTOR

Schedule of 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 before any development takes place 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 three years from the date of this permission.

3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.

4) Details pursuant to condition (1) shall show the layout in broad accordance with drawing number SK11 Revision D 'Illustrative Masterplan' dated 19 August 2015.

5) No more than 74 dwellings shall be constructed pursuant to this permission

6) Details pursuant to condition (1) shall demonstrate a mix of market and affordable housing in accordance with that specified within the 'Harrogate Borough Council Strategic Housing Market Assessment Final Report (September 2015) or any subsequent updates to, or replacement for this document.

7) Other than for any demolition, site investigation and/or remediation works, no development shall take place until full details of the affordable housing has been submitted to the Local Planning Authority for approval in writing. It shall not be less than 40% of the total number of housing units provided, and shall include details of quantum, location, type, tenure, phasing, transfer to an affordable housing provider and occupancy criteria. The development shall be carried out in accordance with the approved details.

8) With the exception of investigative works or the depositing of material on the site, no excavation or other groundworks shall take place until details of the standards to which the roads, kerbs, footways and verges serving the development are to be constructed, to include but not limited to details of levels, drainage, lighting and visibility splays and a programme for completing the works have been submitted to the Local Planning Authority for approval in writing. No dwelling shall be occupied until the development has been constructed in accordance with the approved details.

9) No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level and/or block paved and kerbed and connected to the existing highway network with street lighting installed and in operation. The completion of all road works including any phasing shall be carried out in accordance with the approved details before occupation of the first dwelling.

10) With the exception of investigative works or the depositing of material on the site, no excavation or other groundworks shall take place until details of the realignment of the Hyde Park Road and Boroughbridge Road

junction and alterations to the centre line road marking at the junction of Hyde Park Road/Boroughbridge Road have been submitted to the Local Planning Authority for approval in writing. Development shall not commence until the approved highway works have been subjected to an independent Stage 2 Safety Audit in accordance with HD19/03 - Road Safety Audit or any superseding regulations, and a programme for the completion of the proposed works have been submitted to the Local Planning Authority for approval in writing. The development shall be carried out in accordance with the approved details prior to the occupation of the first dwelling.

11) No dwelling shall be occupied until the related parking facilities have been constructed in accordance with the approved highway engineering drawings required under condition (8). The approved parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

12) Unless otherwise approved in writing by the Local Planning Authority, there shall be no HCVs brought onto the site until a survey recording the conditions of the existing highway has been carried out in a manner that has been first been submitted to the Local Planning Authority for approval in writing.

13) With the exception of investigative works or the depositing of material on the site, no excavation or other groundworks shall take place until a construction management plan, which shall include but not limited to construction access and routes used by HCV construction traffic; traffic management and delivery times; construction activity times; on-site operative parking and materials storage; measures to control dust; and wheel washing facilities have been submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details.

14) No development shall take place until an ecological mitigation and enhancement scheme for the site, including details of the proposed pond, with an on-going management plan, have been submitted to the Local Planning Authority for approval in writing. The scheme shall make provision for great crested newts including the provision of sloping kerbs, bats and breeding birds, and any other species as may be directed by the Local Planning Authority. Thereafter, reserved matters shall be brought forward, and development carried out, in accordance with the approved scheme.

15) No development shall take place until a scheme for the provision, implementation and on-going management of the on-site Hay-A-Park SSSI mitigation measures (as set out in section 7.2 of the SSSI Impact Assessment, Quants Environmental, November 2014) has been submitted to the Local Planning Authority for approval in writing. Thereafter development shall be carried out in accordance with the approved scheme.

16) No ground works or removal of hedges and shrubs shall be undertaken during the main bird nesting season unless a survey by a qualified ecologist immediately prior to the start of works demonstrates that no nesting birds will be adversely affected.

17) No development shall take place until an Arboricultural Impact Assessment and Arboricultural Method Statement, in accordance with British Standard 5837:2012 'Trees in Relation to Construction,' have been submitted to the Local Planning Authority for approval in writing. The development shall be carried in accordance with the approved details.

18) The site shall be developed with separate systems of foul and surface water drainage. No development shall take place until full details of the proposed means of surface water drainage, including management during the construction phases, have been submitted to the Local Planning Authority for approval in writing. The development shall be carried out in accordance with the approved details. There shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works.

19) No development shall commence until an assessment of the risks posed by any contamination, has been submitted to the Local Planning Authority for approval in writing. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to the Local Planning Authority for approval in writing. The site shall be remediated in accordance with the approved measures and a verification report shall be submitted to the Local Planning Authority for approval in writing. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to the Local Planning Authority for approval in writing. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority for approval in writing within 14 days of the completion of remedial works.

20) No development shall take place until details of an electric vehicle infrastructure strategy and implementation plan, to include details of the number, location and maintenance of electric vehicle charging points has been submitted to the Local Planning Authority for approval in writing. Thereafter the development shall be carried out as approved with charging points associated with dwellings installed prior to occupation of that dwelling.

21) No development shall take place until a Travel Plan to encourage the use of alternative modes of transport has been submitted to the Local Planning Authority for approval in writing. The Travel Plan shall be implemented and the development shall thereafter be carried out and operated in accordance with the Travel Plan.

22) No development shall take place until a scheme of archaeological investigation to identify and describe the nature and significance of any surviving archaeological remains within the development site, and any mitigation options for avoiding and minimising damage to, and/or the recording of any archaeological remains has been submitted to the Local Planning Authority for approval in writing. The scheme shall comprise geophysical survey followed by trial trenching where appropriate. The works shall be carried out in accordance with the approved details.

23) No development shall take place until details of how the development has adopted the principles of Secure by Design have been submitted to the Local Planning Authority for approval in writing. The development shall be carried in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Mr Richard Sagar	Instructed by Mr Robin McGinn

He called:

Mr Steven Windass BSc (Hons) MSc (Eng) MCIHT MIHE	Local Transport Projects
Mr Tobias Fisher BSc (Hons) MCIEEM CEnv	Quants Environmental Ltd
Mr Nigel Mann MIOA AIEMA	WYG
Mr Chris Calvert BSc (Hons) MA MRTPI	Pegasus Group

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Siddal	Planning Officer
Mr Steven Pilling	Principal Lawyer

INTERESTED PERSONS:

Dr Lorraine Ferris	Local Resident (SERG)
Mrs Laura McGrogan	Local Resident (SERG)
Mr Malcolm Woodward	Local Resident
Mrs Shan Oakes	Local Resident and Green Party Candidate
Mr John Barker	Harrogate Trust for Wildlife Protection
Councillor Ivor Fox	Ward Member Harrogate Borough Council
Councillor Andrew Willoughby	Knaresborough Town Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Qualifications of Mr Mann
2. Appellant's list of speakers
3. Statement of Common Ground – Addendum dated 16 February 2017
4. Planning Obligation dated 16 February 2017
5. Letter from Dr Therese Coffey MP and The Rt Hon John Hayes CBE MP to Mr Neil Parish MP dated 6 January 2017
6. Excerpt from Local Air Quality Management Technical Guidance entitled 'Box 7.14 – Initial Comparison of Modelled and Monitored Total NO_2 Concentrations
7. Transcript of speech by Mr Barker
8. Transcript of speech by Councillor Fox

9. Excerpt from document entitled Land-Use Planning & Development Control: Planning for Air Quality by the Institute of Air Quality Management – page 25 paragraph 6.26 (submitted by Dr Ferris)
10. Excerpt from proof of evidence of Mr Conal Kearney (oral evidence given by Mr Mann)
11. Transcript of speech by Dr Ferris
12. Transcript of speech by Mrs McGrogan
13. Excerpt from document entitled Land-Use Planning & Development Control: Planning for Air Quality by the Institute of Air Quality Management – pages 21-25 paragraphs 6.13 to 6.26 (submitted by the appellant)
14. Consolidated information on air quality measurements taken from proof of evidence of Mr Conal Kearney (oral evidence given by Mr Mann)

Neutral Citation Number: [2016] EWCA Civ 168

Case No: C1/2015/0583 and C1/2015/0894

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE SUPPERSTONE [2015] EWHC 132 (Admin)
MRS JUSTICE LANG [2015] EWHC 410 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 March 2016

Before:

Lord Justice Jackson
Lord Justice Vos
and
Lord Justice Lindblom

- -

Between:

Suffolk Coastal District Council	**Appellant**
- and -	
Hopkins Homes Limited	**Respondent**
- and -	
Secretary of State for Communities and Local Government	**Interested Party**

Richborough Estates Partnership LLP	**Appellant**
- and -	
Cheshire East Borough Council	**First Respondent**
- and -	
Secretary of State for Communities and Local Government	**Second Respondent**

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- -

Mr Jonathan Clay and Dr Ashley Bowes (instructed by **Sharpe Pritchard**) for the **Appellant**
Mr Christopher Lockhart-Mummery Q.C. (instructed by **DLA Piper**) for the **Respondent**
Mr Hereward Phillpot Q.C. and Mr Richard Honey (instructed by **the Government Legal Department**) for the **Interested Party**

Mr Christopher Young and Mr James Corbet Burcher (instructed by **Gateley Plc**) for the **Appellant**
Mr Anthony Crean Q.C. and Mr John Hunter (instructed by **Sharpe Pritchard**) for the **First Respondent**
Mr Hereward Phillpot Q.C. and Mr Richard Honey (instructed by **the Government Legal Department**) for the **Second Respondent**

Hearing dates: 14 and 15 January 2016

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Judgment Approved by the court for handing down

Lord Justice Lindblom:

Introduction

1. This is the judgment of the court.

2. These two conjoined appeals concern the meaning and effect of government policy in paragraph 49 of the National Planning Policy Framework ("the NPPF"). In particular, they concern the meaning of the requirement in the policy that "[relevant] policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites", and the way in which the policy is to be applied in the making of planning decisions. These questions have been considered several times at first instance without entirely consistent results, but not until now by this court. In both of these cases permission to appeal was granted by Sullivan L.J.. As he acknowledged when granting permission, the wider importance of the issues raised by the appeals is a compelling reason for them to be decided by this court. All counsel who have appeared before us echo that view, and urge us to bring much needed clarity to the meaning of the policy. The benefit of this for local planning authorities, developers and local communities will be obvious.

The two appeals

3. In the first case the appellant is a local planning authority, Suffolk Coastal District Council. In September 2013 the district council refused planning permission for a development of 26 houses on land at Old High Road in Yoxford. The applicant for planning permission was Hopkins Homes Ltd.. Their appeal against the district council's decision was dismissed by an inspector appointed by the Secretary of State for Communities and Local Government, after an inquiry in February and June 2014. The inspector's decision letter is dated 15 July 2014. Hopkins Homes challenged the decision by an application under section 288 of the Town and Country Planning Act 1990. The challenge succeeded before Supperstone J., who on 30 January 2015 quashed the inspector's decision. Supperstone J.'s order is the subject of the district council's appeal before us. At first instance the Secretary of State did not seek to defend the inspector's decision, having conceded that the inspector had misunderstood and misapplied the policy in paragraph 49. Before us counsel for the Secretary of State have made submissions in support of Supperstone J.'s conclusions on the status of the disputed development plan policies in that case, though not on the other matters in dispute between the district council and Hopkins Homes.

4. In the second case the appellant is a developer, Richborough Estates Partnership LLP. In August 2013 it made an application for outline planning permission to Cheshire East Borough Council for a development of up to 170 houses on land north of Moorfields in Willaston. The borough council failed to determine the application within the prescribed period. Richborough Estates appealed to the Secretary of State. Its appeal was heard by an inspector at an inquiry in June 2014. In a decision letter dated 1 August 2014 the inspector allowed the appeal and granted planning permission for up to 146 dwellings. His decision was challenged

by the borough council. That challenge succeeded before Lang J., who quashed the inspector's decision by an order dated 25 February 2015. The appeal against that order was made not by the Secretary of State but by Richborough Estates. By a respondent's notice the borough council invited this court to uphold Lang J.'s order for additional reasons, but at the hearing it abandoned that position. Submissions were made to us on behalf of the Secretary of State supporting the argument put forward for Richborough Estates.

5. In both cases the inspector had to establish whether particular policies of the development plan relevant to the proposal were not to be considered "up-to-date" under the policy in paragraph 49 of the NPPF, and, if so, what the consequences for his decision should be.

The NPPF

6. The NPPF, published on 27 March 2012, contains national planning policy for England.

7. In the "Ministerial foreword" the Minister for Planning declared that "[the] purpose of planning is to help to achieve sustainable development". "Sustainable", he said, "means ensuring that better lives for ourselves don't mean worse lives for future generations", and "Development means growth", one aspect of which is that "[we] must house a rising population, which is living longer and wants to make new choices". He went on to say:

> "Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision. …".

8. The "Ministerial foreword" concludes by stating that "[by] replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning". Some judicial doubt has been expressed about that assertion. As Sullivan L.J. said in *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2015] 1 P. & C.R. 3 (in paragraph 22 of his judgment, with which Tomlinson and Lewison L.JJ. agreed), "[views] may differ as to whether simplicity and clarity have always been achieved, but the policies are certainly shorter". In an earlier case in which this court had to consider the meaning of the policy in paragraph 47 of the NPPF, *City and District Council of St Albans v Hunston Properties Ltd.* [2013] EWCA Civ 1610*,* Sir David Keene had expressed the view (in paragraph 4 of his judgment, with which Maurice Kay and Ryder L.JJ. agreed), that "[unhappily] … the process of simplification has in certain instances led to a diminution in clarity".

9. The Government's commitment to a "plan led" planning system is apparent throughout the NPPF. Paragraph 2 in the "Introduction" acknowledges the statutory presumption in favour of the development plan in section 38(6) of the Planning and Compulsory Purchase Act 2004, and the status of the NPPF as another material consideration:

> "Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The [NPPF] must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions. …".

There are several other references to the "plan-led" system: for example, in paragraph 17, which sets out 12 "core land-use planning principles" that "should underpin both plan-making and decision-taking". The first of these "core" principles is that planning should be "… genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area". It adds that "[plans] should be kept up-to-date …" and "should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency".

10. After the "Introduction" the NPPF is divided into three main parts: "Achieving sustainable development" (paragraphs 6 to 149), "Plan-making" (paragraphs 150 to 185) and "Decision-taking" (paragraphs 186 to 207). There are three annexes: "Annex 1: Implementation", "Annex 2: Glossary" and "Annex 3: Documents replaced by this Framework".

11. Introducing the part of the NPPF devoted to the Government's aim of "Achieving sustainable development", paragraph 6 says that the policies in paragraphs 18 to 219, "taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system". Paragraph 7 identifies "three dimensions to sustainable development: economic, social and environmental". The "social role" is "supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations …". Paragraph 8 says that these three roles are "mutually dependent".

12. Under the heading "The presumption in favour of sustainable development", paragraph 12 acknowledges that the NPPF "does not change the statutory status of the development plan as the starting point for decision making". It says that "[proposed] development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise". It adds that "[it] is highly desirable that local planning authorities should have an up-to-date plan in place". Paragraph 13 confirms that the NPPF "constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications". Paragraph 14 explains how the "presumption in favour of sustainable development" is to be applied:

> "At the heart of [the NPPF] is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
>
> For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole; or
  - specific policies in [the NPPF] indicate development should be restricted. [Here there is a footnote, footnote 9, which states: "For example, those policies relating to sites protected under the Birds and Habitats Directives … and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion."]

For decision-taking this means [Here there is a footnote, footnote 10, which says: "Unless material considerations indicate otherwise"]:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole; or
  - specific policies in [the NPPF] indicate development should be restricted. [Here footnote 9 is repeated.]"

13. We have already mentioned the first "core" principle in paragraph 17, relating to the "plan-led" system (see paragraph 9 above). The third "core" principle in that paragraph is that planning should "proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs". It goes on to say that "[every] effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth".

14. This part of the NPPF contains paragraphs 18 to 149, in 13 sections under the general heading "Delivering sustainable development".

15. Section 6, which contains paragraphs 47 to 55, is entitled "Delivering a wide choice of high quality homes". Paragraph 47 states:

"To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in

> [the NPPF], including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
> - identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% … to ensure choice and competition in the market for land. … ;
> - identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
> - for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
> - set out their own approach to housing density to reflect local circumstances."

There are two footnotes to that paragraph. Footnote 11, which explains the concept of "deliverable sites" in the second bullet point, says that "[to] be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. …". Footnote 12, which explains the concept of "developable sites" in the third bullet point, says that "[to] be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged". Paragraphs 48 and 50 to 55 are all concerned with various aspects of authorities' planning for the development of new housing and affordable housing in their areas. Paragraph 49 states:

> "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

16. Further sections in this part of the NPPF include section 9 – "Protecting Green Belt land" (paragraphs 79 to 92), section 10 – "Meeting the challenge of climate change, flooding and coastal change" (paragraphs 93 to 108), and section 12 – "Conserving and enhancing the historic environment" (paragraphs 126 to 141).

17. In the part of the NPPF dealing with "Plan-making", paragraph 157 enjoins local planning authorities to do several things, including to "plan positively" for the development required in their areas, to "allocate sites to promote development and flexible use of land, bringing forward new land where necessary", and to "identify land where development would be inappropriate, for instance because of its environmental or historic significance". Paragraph 159 says local planning authorities "should have a clear understanding of housing needs in their area", and requires them to prepare a "Strategic Housing Market Assessment to assess their full housing needs …" and a "Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and likely

economic viability of land to meet the identified need for housing over the plan period".

18. In the part entitled "Decision-taking" paragraph 197 says that "[in] assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development".

19. Annex 1 – "Implementation" explains the arrangements for the transition to the new policies in the NPPF. Paragraph 214 says that for 12 months from the day of the NPPF's publication, decision-takers "may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework". Paragraph 215 states:

> "In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in [the NPPF], the greater the weight that may be given)."

What does the policy in paragraph 49 of the NPPF mean?

20. As we have said, the meaning of the policy in paragraph 49 of the NPPF has already been considered several times at first instance, with various results. We have had our attention drawn, in particular, to the decisions of Lang J. in *William Davis Ltd. v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin), Lewis J. in *Cotswold District Council v Secretary of State for Communities and Local Government and others* [2013] EWHC 3719 (Admin), Lewis J. in *South Northamptonshire Council v Secretary of State for Communities and Local Government and Robert Plummer* [2013] EWHC 4377 (Admin), Ouseley J. in *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin), Lindblom J. in *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin), Lindblom J. in *Phides Estates (Overseas) Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin), and Lang J. in *Wenman v Secretary of State for Communities and Local Government* [2015] EWHC 925 (Admin).

21. Each of the advocates appearing in these appeals has drawn from the first instance case law either two or three distinctly different possible interpretations of the policy, which have been referred to in argument as the "narrow", the "wider" or "comprehensive", and the "intermediate" or "compromise". In the "narrow" interpretation, the meaning given to the expression "[relevant] policies for the supply of housing" is limited to policies dealing only with the numbers and distribution of new housing, and excludes any other policies of the development plan dealing generally with the disposition or restriction of new development in the authority's area. The "wider" or "comprehensive" interpretation includes both policies providing positively for the supply of new housing and other policies, to which Ouseley J. referred in *Barwood Land* (in paragraph 47 of his judgment) as "counterpart" policies whose effect is to restrain the supply by restricting housing development in certain parts of the authority's area. In the so-called

"intermediate" or "compromise" interpretation, some restrictive policies will qualify as "[relevant] policies for the supply of housing" but others will not. The latter category is said to comprise, as Ouseley J. described them in *Barwood Land*, "policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development" (paragraph 47).

22. Mr Jonathan Clay, who appeared for the district council in the Hopkins Homes case, and Mr Anthony Crean Q.C., who appeared for the borough council in Richborough Estates' appeal, both contended for the "narrow" – or, as Mr Crean described it in his oral submissions, "purist" – interpretation. Mr Christopher Lockhart-Mummery Q.C. on behalf of Hopkins Homes, Mr Christopher Young for Richborough Estates, and Mr Hereward Phillpot Q.C., who appeared for the Secretary of State in both appeals, all contended for the "wider" construction.

23. It is not our task to reconcile – if we could – the several judgments at first instance in which the meaning of this policy has been considered. Nor is it our task to select one of the interpretations given to the policy in those cases, in preference to the others. What we must do is interpret the policy correctly – regardless of whether the interpretation we find to be right has already emerged in one or more of the cases to which we have referred.

24. The approach the court will take when interpreting planning policy is well settled. As Lord Reed said in *Tesco v Dundee City Council* [2012] UKSC 13 (in paragraph 17 of his judgment, with which the other members of the Supreme Court agreed), a planning authority determining an application for planning permission "must proceed upon a proper understanding of the development plan", and "cannot have regard to the provisions of the plan if it fails to understand them". Lord Reed went on to say (in paragraph 18) that "in principle, in this area of public administration as in others … policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context". He emphasized, however (in paragraph 19), that statements of policy "should not be construed as if they were statutory or contractual provisions". He also said (in the same paragraph) that "many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment", and that "[such] matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse …" (see also the judgment of Lord Hope, at paragraph 35). It has been accepted in this court, and is not in dispute in these appeals, that the same principles apply also to the interpretation of national policy and guidance, including policies in the NPPF (see, for example, the judgment of Richards L.J. in *R. (on the application of Timmins) v Gedling Borough Council* [2015] EWCA Civ 10, at paragraph 24; and the judgment of Sir David Keene in *Hunston*, at paragraph 4).

25. Our interpretation of the policy in paragraph 49 of the NPPF must therefore be faithful to the words of the policy, read in their full context and not in isolation from it.

26. The broad context is provided by the policies of the NPPF read as a whole (see paragraph 30 of Sir David Keene's judgment in *Hunston*). The Government's aim of providing "the supply of housing to meet the needs of present and future generations" in paragraph 7 of the NPPF is reflected generally in the policies for sustainable development, in the policies for plan-making, and in the policies for decision-taking. It is part of the "social role" of the planning system in achieving sustainable development referred to in paragraph 7 of the NPPF. And it sits in the part of the NPPF where the Government has gathered its policies for delivering "sustainable development" (see paragraphs 14 to 16 above).

27. The more specific context is set by the policies for housing development in the paragraphs immediately preceding and following paragraph 49, in the section devoted to the Government's objective of "[delivering] a wide choice of high quality homes" (see paragraph 15 above). These policies are partly directed to plan-making and partly to decision-taking. Underlying them all is the basic imperative of delivery. Where they concern plan-making, their aim, very clearly stated at the beginning of paragraph 47, is to "boost significantly the supply of housing". The first requirement in that paragraph – that an authority must "ensure" that its local plan meets the "full, objectively assessed needs" for housing, "as far as is consistent with the policies set out in [the NPPF]" – involves the making of an objective assessment of need before considering the impact of other policies in the NPPF (see paragraph 25 of Sir David Keene's judgment in *Hunston*). The second requirement is for local planning authorities to "identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements …".

28. As Mr Lockhart-Mummery reminded us, for many years successive governments have relied on the planning system to increase the supply of housing land. At least since the 1970's national planning policy has contained either an objective or a requirement for local planning authorities to identify and maintain a five-year supply of housing land. Between 1988 and 1992 there was a policy presumption in favour of planning permission being granted for housing where no five-year supply existed in the authority's area. The relevant statement of national policy current when the NPPF was published, and then superseded by it, was Planning Policy Statement 3: "Housing" (issued in June 2011), which said, in paragraph 71, that where authorities were unable to demonstrate "an up-to-date five year supply of deliverable sites" they "should consider favourably planning applications for housing …". The advent of the NPPF marked a significant policy shift. In *Solihull Metropolitan Borough Council v Gallagher* [2014] EWCA Civ 1610, Laws L.J. accepted (in paragraph 16 of his judgment) that the new policy for the assessment and meeting of housing need had "indeed effected a radical change". He agreed with the judge in the court below that the larger the need for housing, "the more pressure will or might be applied to [impinge] on other inconsistent policies".

29. The policy in paragraph 49 is not a policy for plan-making; it is a policy directed to the consideration of "[housing] applications". But it is linked to the policy for plan-making in paragraph 47 in a very obvious way, because it is predicated on the requirement for the local planning authority to "demonstrate a five-year supply of deliverable housing sites".

30. Paragraph 49 is also connected to the policy for the application of the "presumption in favour of sustainable development" in paragraph 14 (see paragraph 12 above). The connection lies in the concept of relevant policies of a development plan – "[relevant] policies for the supply of housing" – not being "considered up-to-date" (the expression used in paragraph 49) – or being "out-of-date" (the expression used in paragraph 14). The adjectives "up-to-date" and "out-of-date" do not always have an exactly opposite meaning in ordinary English usage. But in the way they are used in the NPPF we think they do. The concept of relevant policies that are "out-of-date" in paragraph 14 is not limited to policies in a statutory development plan whose period has expired, though it may include such policies. It embraces the concept of "[relevant] policies for the supply of housing" that are not to be considered "up-to-date" under paragraph 49, and it extends to policies in a plan whose period is still running.

31. We turn then to the words of the policy themselves, viewed in the context we have described.

32. The contentious words are "[relevant] policies for the supply of housing". In our view the meaning of those words, construed objectively in their proper context, is "relevant policies affecting the supply of housing". This corresponds to the "wider" interpretation, which was advocated on behalf of the Secretary of State in these appeals. Not only is this a literal interpretation of the policy in paragraph 49; it is, we believe, the only interpretation consistent with the obvious purpose of the policy when read in its context. A "relevant" policy here is simply a policy relevant to the application for planning permission before the decision-maker – relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority's area or because it bears upon the principle of the site in question being developed for housing. The meaning of the phrase "for the supply" is also, we think, quite clear. The word "for" is one of the more versatile prepositions in the English language. It has a large number of common meanings. These include, according to the Oxford Dictionary of English, 2nd edition (revised), "affecting, with regard to, or in respect of". A "supply" is simply a "stock or amount of something supplied or available for use" – again, the relevant definition in the Oxford Dictionary of English. The "supply" with which the policy is concerned, as the policy in paragraph 49 says, is a demonstrable "five-year supply of deliverable housing sites". Interpreting the policy in this way does not strain the natural and ordinary meaning of the words its draftsman has used. It does no violence at all to the language. On the contrary, it is to construe the policy exactly as it is written.

33. Our interpretation of the policy does not confine the concept of "policies for the supply of housing" merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another

by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it – that policies of both kinds make the supply what it is.

34. The "narrow" interpretation of the policy, in which the words "[relevant] policies for the supply of housing" are construed as meaning "[relevant] policies providing for the amount and distribution of new housing development and the allocation of sites for such development", or something like that, is in our view plainly wrong. It is both unrealistic and inconsistent with the context in which the policy takes its place. It ignores the fact that in every development plan there will be policies that complement or support each other. Some will promote development of one type or another in a particular location, or by allocating sites for particular land uses, including the development of housing. Others will reinforce the policies of promotion or the site allocations by restricting development in parts of the plan area, either in a general way – for example, by preventing development in the countryside or outside defined settlement boundaries – or with a more specific planning purpose – such as protecting the character of the landscape or maintaining the separation between settlements.

35. Restrictive policies, whether broadly framed or designed for some more specific purpose, may – we stress "may" – have the effect of constraining the supply of housing land. If they do have that effect, they may – again, we emphasize "may" – act against the Government's policy of boosting significantly the supply of housing land. If a local planning authority is unable to demonstrate the requisite five-year supply of housing land, both the policies of its local plan that identify sites for housing development and policies restrictive of such development are liable to be regarded as not "up-to-date" under paragraph 49 of the NPPF – and "out-of-date" under paragraph 14. Otherwise, government policy for the delivery of housing might be undermined by decisions in which development plan policies that impede a five-year supply of housing land are treated as "up-to-date".

36. We cannot see any logical basis for distinguishing here between restrictive policies of a general nature and those with a more specific purpose. It was this suggested distinction between restrictive policies of one sort and restrictive policies of another that generated the "intermediate" or "compromise" construction of the policy in paragraph 49. Mr Clay and Mr Crean submitted that this construction of the policy finds support in paragraph 47 of Ouseley J.'s judgment in *Barwood Land*. In that paragraph of his judgment Ouseley J. contrasted two kinds of development plan policy: first, "policies for the provision of housing" and "counterpart" restrictive policies that "may be generally applicable to all or most forms of development", and secondly, "policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation", which "could sensibly exist regardless of the distribution and location of housing development". He considered policy EV2 of the South Northamptonshire Local Plan, which says "planning permission will not be granted for development in the open countryside", as a policy of the first kind. He did not, however, refer to the distinction between these two kinds of policy as if it divided policies that truly are "for the supply of housing" from policies that are not.

37. To infer that from what Ouseley J. actually said is, we think, to misunderstand what he meant. In our view he was simply acknowledging the distinction between restrictive policies of a general nature – such as policy EV2 – and restrictive policies whose purpose is more specific. That, of course, is a perfectly valid distinction. It may be relevant to the application of the policy in paragraph 49 of the NPPF, and the weight given to a particular policy of the development plan in the planning balance. It is not, however, a test of whether a particular policy is or is not a policy "for the supply of housing". And we do not believe that Ouseley J. was seeking to suggest that it was. As he went on to say in paragraph 48 of his judgment, "… once the Inspector has properly directed himself as to the scope of paragraph 49 [of the] NPPF … , the question of whether a particular policy falls within its scope, is very much a matter for his planning judgment". That statement is, in our view, correct – and we shall come back to it when we consider how the policy in paragraph 49 is to be applied.

38. We therefore reject the "intermediate" or "compromise" interpretation of paragraph 49. Like the "narrow" interpretation, it fails to recognize that it is the effect of certain policies – whether general or specific – in restricting housing development and preventing an authority from demonstrating a "five-year supply of deliverable housing sites" that brings them within the scope of the policy in paragraph 49.

39. Mr Clay and Mr Crean submitted that footnote 9 in paragraph 14 of the NPPF supports the "narrow" – or at least the "intermediate" or "compromise" – interpretation of paragraph 49. But we cannot see how it does. Footnote 9 explains the concept of specific policies in the NPPF indicating that development should be restricted. The NPPF policies it gives as examples relate to protected birds and habitats, Sites of Special Scientific Interest, the Green Belt, Local Green Space, Areas of Outstanding Natural Beauty, Heritage Coasts, National Parks, the Broads, heritage assets and locations at risk of flooding or coastal erosion (see paragraph 12 above). For all of these interests of acknowledged importance – some of them also subject to statutory protection – the NPPF has specific policies. The purpose of the footnote, we believe, is to underscore the continuing relevance and importance of these NPPF policies where they apply. In the context of decision-taking, such policies will continue to be relevant even "where the development plan is absent, silent or relevant policies are out-of-date". This does not mean that development plan policies that are out-of-date are rendered up-to-date by the continuing relevance of the restrictive policies to which the footnote refers. Both the restrictive policies of the NPPF, where they are relevant to a development control decision, and out-of-date policies in the development plan will continue to command such weight as the decision-maker reasonably finds they should have in the making of the decision. There is nothing illogical or difficult about this, as a matter of principle.

40. Mr Clay also submitted that the "narrow" or at least the "intermediate" construction of paragraph 49 is supported by the policy in paragraph 215 of the NPPF (see paragraph 19 above). Again, we cannot see how that can be so. Paragraph 215 is one of a series of paragraphs in Annex 1 to the NPPF dealing with the implementation of the policies it contains. These are, essentially, transitional provisions. They do not affect the substance of the policies

themselves. Under paragraph 214 there was a period of 12 months from the publication of the NPPF – until 27 March 2013 – within which decision-takers "may" continue to give full weight to policies adopted since 2004 even if they conflicted with the policies in the NPPF. After that, under paragraph 215, "due weight" was to be given to relevant plan policies, "according to their degree of consistency" with the policies in the NPPF. These provisions for the implementation of NPPF policy do not touch the interpretation of such policy, including the policies for the delivery of housing in paragraphs 47 to 55 and the policy explaining the "presumption in favour of sustainable development" in paragraph 14. The suggestion that they do is mistaken.

41. As we have said (in paragraph 23 above), we have not set out to reconcile the several first instance judgments in which the meaning of the policy in paragraph 49 has been considered before. In fact, that would not be possible. We ought to say, however, that those cases in which the court has rejected the "wider" interpretation of the policy have not in our view been correctly decided on that particular point. Of the cases cited to us (see paragraph 20), this may be said of the decision in *William Davis*, where the judge concluded that a policy restricting development in a "Green Wedge" (policy E20 of the North-West Leicestershire Local Plan, adopted in 2002) was not a relevant policy for the supply of housing within paragraph 49, despite the fact that it prevented housing development on the appeal site (see paragraph 47 of the judgment). We should add, however, that the judge did not have the benefit of all the submissions we have heard on this point, or of the later decisions in which it has been considered. In *Wenman* the judge appears to have accepted that two policies of a local plan dealing respectively with the "Environmental Implications of Development" and "Design and Layout" (policies D1 and D4 of the Waverley Borough Local Plan 2002) were not policies for the supply of housing, because they were not "general" restrictions on development and fell within the second kind of restrictive policy referred to by Ouseley J. in paragraph 48 of his judgment in *Barwood Land* (see paragraphs 57 to 59 of the judgment). But that distinction between two kinds of policy restrictive of housing development is not a dividing line between policies that are "for the supply of housing" and those that are not (see paragraphs 36 to 38 above). Again, however, we would add that the judge did not have the advantage of the argument we have heard. It also seems to us that the erroneous interpretation of the policy in paragraph 49 of the NPPF made no difference to the outcome of the proceedings because the two local plan policies in question were not, in fact, restrictive of housing development in either of the two respects identified by Ouseley J. in *Barwood Land*.

How is the policy in paragraph 49 of the NPPF to be applied?

42. The NPPF is a policy document. It ought not to be treated as if it had the force of statute. It does not, and could not, displace the statutory "presumption in favour of the development plan", as Lord Hope described it in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 at 1450B-G). Under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, government policy in the NPPF is a material consideration external to the development plan. Policies in the NPPF, including those relating to the "presumption in favour of sustainable

development", do not modify the statutory framework for the making of decisions on applications for planning permission. They operate within that framework – as the NPPF itself acknowledges, for example, in paragraph 12 (see paragraph 12 above). It is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the *Wednesbury* sense.

43. When determining an application for planning permission for housing development the decision-maker will have to consider, in the usual way, whether or not the proposal accords with the relevant provisions of the development plan. If it does, the question will be whether other material considerations, including relevant policies in the NPPF, indicate that planning permission should not be granted. If the proposal does not accord with the relevant provisions of the plan, it will be necessary to consider whether other material considerations, including relevant policies in the NPPF, nevertheless indicate that planning permission should be granted.

44. The NPPF presents the decision-maker with a simple sequence of steps when dealing with a proposal for housing development. The first step, under the policy in paragraph 49, is to consider whether relevant "policies for the supply of housing" in the development plan are "out-of-date" because "the local planning authority cannot demonstrate a five-year supply of deliverable housing sites". Gauging the housing land supply will entail the use of the appropriate method of assessment, whatever that may be (see, for example, the judgment of Lindblom J. in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), at paragraphs 101 to 135).

45. Whether a particular policy of the plan, properly understood, is a relevant policy "for the supply of housing" in the sense we have described is not a question for the court. It is, as Ouseley J. said in paragraph 48 of his judgment in *Barwood Land*, a question for the decision-maker. Provided the decision-maker acts on the correct understanding of the policy in paragraph 49 of the NPPF, and also on the correct understanding of the development plan policy in question, these being matters for the court, it is for him to judge whether the plan policy is or is not a relevant policy for the supply of housing. That is a matter for his planning judgment, and the court will only intervene on public law grounds. If the decision-maker finds that relevant policies of the plan are "out-of-date", he applies the "presumption in favour of sustainable development" in the way that paragraph 14 of the NPPF requires. Again, he will be exercising his planning judgment, and again, therefore, the court will only review that exercise of judgment on public law grounds.

46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H).

Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.

47. One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.'s judgment in *Crane*, paragraphs 71 and 74 of Lindblom J.'s judgment in *Phides*, and paragraphs 87, 105, 108 and 115 of Holgate J.'s judgment in *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin)).

48. The policies in paragraphs 14, 47 and 49 of the NPPF are not, as we understand them, intended to punish a local planning authority when it fails to demonstrate the requisite five-year supply of housing land. They are, however, clearly meant to be an incentive. As Sir David Keene said in paragraph 31 of his judgment in *Hunston*:

> "… Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers."

Was the policy in paragraph 49 interpreted correctly and applied lawfully in the Hopkins Homes case?

49. The development plan in the Hopkins Homes case comprised the Suffolk Coastal District Local Plan, adopted by the district council in July 2013, and certain "saved" policies of the Suffolk Coastal Local Plan, which was adopted in December 1994. Policy SP19 of the 2013 local plan, the "Settlement Policy", not

only sets the settlement hierarchy but the distribution of housing growth between the different types of centre within the hierarchy and provides for the scale of development appropriate to settlements in each tier of it. In "Key Service Centres", of which Yoxford is one, it indicates that "[modest] estate-scale [housing] development" is appropriate "[within] the defined physical limits" of the settlement. The site on which Hopkins Homes' development was proposed lies outside the defined physical limits boundary of Yoxford as a Key Service Centre. It is within the "Countryside", where the policy says there is to be "[no] development other than in special circumstances". Policy SP27, which relates to "Key Service Centres" and "Local Service Centres", says that housing development will be permitted "within defined physical limits …". Policy SP29 relates to the "Countryside". So far as is relevant here, it states that the council's strategy for new development "outside the physical limits" of settlements including Key Service Centres is that "it will be limited to that which of necessity requires to be located there and accords with other relevant policies within the Core Strategy …".

50. The inspector concluded that "it seems very unlikely that a 5 years supply of housing land can now be demonstrated", noting that, in its closing submissions at the inquiry, the district council had not sought to persuade him that it could be (paragraph 5 of the decision letter). Having referred to the policies in paragraphs 14 and 49 of the NPPF and Lang J.'s decision in *William Davis* (in paragraph 6), he went on to consider which were "relevant policies for the supply of housing". He acknowledged the conclusions of the inspector who had conducted the examination of the local plan (in paragraph 50 of his report) "as identifying that there would be advantages of considering development in the light of other [up-to-date] policies whilst accepting that, until a review was undertaken, relevant policies for the supply of housing may be considered not to be up-to-date" (paragraph 7). In paragraphs 8 and 9 of his decision letter he said:

> "8. … Policy SP19 sets the settlement hierarchy and shows a percentage of the total proposed housing growth which should go to the broad categories of settlements. This policy has a broad scope and does not suggest figures or percentages for individual settlements. In this context, I do not see this policy as not up-to-date.
>
> 9. Policy SP27 of the LP relates specifically to Key and Local Service Centres and seeks to, among other things: reinforce their individual character; permit housing within defined physical limits unless there is a proven local support for development appropriate to the particular community. I do not consider this policy to be a relevant policy for the supply of housing and I consider it to be up-to-date."

And in paragraph 14 he concluded that the proposed development "would be unacceptable in principle, contrary to the provisions of Policies SP27 and SP29 and contrary to one of the core principles of [the NPPF]".

51. Before Supperstone J., as before us, it was submitted for the district council that the inspector properly understood the policy in paragraph 49 of the NPPF, and applied it lawfully. We disagree. The judge was, in our view, right to accept the

submissions of Mr Lockhart-Mummery that the inspector misconstrued the policy in paragraph 49, and that this amounted to a "fundamental misdirection as to [the NPPF]" (paragraphs 33, 38 and 39 of the judgment). In our view it is quite clear on a fair reading of the passages of the decision letter to which we have referred that the inspector adopted the "narrow" interpretation of paragraph 49, and thus also misdirected himself in the application of the policy. As the judge held, these were errors of law fatal to the inspector's decision.

52. Having wrongly construed the policy in paragraph 49, the inspector regarded policies SP19, SP27 and SP29 of the local plan as being "up-to-date", and thus capable of carrying full weight in his decision. As Mr Lockhart-Mummery submitted, and Mr Phillpot on behalf of the Secretary of State accepted, all three of these policies of the local plan are, on a true understanding of the policy in paragraph 49 of the NPPF, "[relevant] policies for the supply of housing". They all affect the supply of housing land in a real way by restraining it. Mr Clay submitted that policy SP27 is not restrictive of development, but "entirely permissive or positive in its effect" (paragraph 68 of his skeleton argument). But that is not so. Read together with policies SP19 and SP29, policy SP27 is, and is clearly intended to be, restrictive of new housing development outside the defined boundaries of Key Service Centres. It is permissive only of housing development within the defined physical limits of the settlements to which it relates. And policy SP29 is generally prohibitive in its effect on development proposed in the "Countryside".

53. We therefore reject Mr Clay's submission that Supperstone J. misdirected himself as to the interpretation of these three policies of the local plan, and, in particular, in accepting that the inspector had erred in failing to treat policy SP29 as a policy "for the supply of housing". All three of these policies, properly construed, are policies by which a material degree of restraint was imposed on both the location and amount of new housing development. All three were obviously relevant to Hopkins Homes' site and proposal. If the inspector had adopted the correct interpretation of the policy in paragraph 49 of the NPPF – which he plainly did not – he could not reasonably have done other than conclude that these policies of the local plan were all "[relevant] policies for the supply of housing", and that, given his conclusion on the absence of a five-year supply of housing land, they were, each of them, "out-of-date". He would then have had to apply the "presumption in favour of the development plan" in accordance with the policy in paragraph 14 of the NPPF, giving these "out-of-date" policies of the plan such weight as he thought they should have in the particular circumstances of this case. That, however, is not what he did.

54. We should add that in our view Mr Clay's argument gains nothing from his reliance on passages in the local plan inspector's report – which is dated 6 June 2013. The local plan inspector concluded, in paragraph 51 of his report, that "[if] the proposal for a review were to be accepted, planning applications for housing would be considered in the context of an up to date suite of local development management policies that are consistent with the Framework, the CS settlement hierarchy and the locational guidance in the strategic policies", and that "[overall], the housing land supply would be improved while still ensuring sustainable outcomes". Those observations, based on the evidence before the local plan

inspector at the examination hearings held in October and November 2012, do not negate the conclusion of the inspector who heard Hopkins Homes' appeal at his inquiry in 2014 that it was very unlikely that the requisite five-year supply of housing land could now be demonstrated. It was in the light of that conclusion, which is not challenged in these proceedings, that the appeal inspector went on to consider whether policies SP19, SP27 and SP29 were up-to-date.

55. We conclude, therefore, that the policy in paragraph 49 of the NPPF was neither interpreted correctly nor applied lawfully by the inspector in the Hopkins Homes case. These errors of law vitiate his decision. And in our view the court could not properly exercise its discretion to withhold a quashing order.

Were there further errors of law in the inspector's decision in the Hopkins Homes case?

56. In view of our conclusion that government policy for housing development was both misinterpreted and misapplied in the decision on Hopkins Homes' appeal, and that the decision must therefore be quashed, we can take the remaining allegations of unlawfulness in this case quite shortly.

57. The second ground in Hopkins Homes' application to the court asserts that the inspector erred in finding, in paragraph 13 of his decision letter, that the appeal site was "outside the physical limits boundary [of Yoxford] as defined in the very recently adopted Local Plan". The contention here was that the boundary had merely been carried over, without review, from the proposals map of the Suffolk Coastal Local Plan First Alteration, adopted by the district council in February 2001. In Appendix D to the 2013 local plan it is stated that the proposals maps will be "superseded by the adoption of subsequent Development Plan Documents". The contrary argument, put forward by Mr Clay, was that the local plan makes clear, in particular through policy SP19, that as a result of the adoption of the district council's core strategy, a number of settlements within the district had had their physical limits boundaries removed. It followed that the inspector was right as a matter of fact when he said that the physical limits boundary of the settlement was "defined" in the recently adopted local plan.

58. The judge's conclusion on this ground, in paragraph 46 of his judgment, was that the inspector had been mistaken in assuming, as he seems to have done, that the physical limits boundary of Yoxford had been established in the 2013 local plan, which it had not. The position as a matter of fact is that the physical limits boundary of Yoxford was defined on the proposals map of the old local plan, and had remained unchanged in the 2013 local plan. This was obviously germane to the status of the relevant plan "policies for the supply of housing". It does not mean, as Mr Clay submitted, that the settlement boundaries in the local plan are now generally to be "disregarded".

59. We accept that this ground merges with that relating to the inspector's interpretation and application of the policy in paragraph 49 of the NPPF. But nevertheless we think Mr Lockhart-Mummery's submissions to the judge, repeated in this court, are correct. The judge was right, in our view, to find that in

this particular respect, as well as more generally in his construction and application of the policy in paragraph 49 of the NPPF, the inspector fell into error.

60. The other additional ground is that the inspector misunderstood and misapplied national policy for the protection of heritage assets in paragraph 135 of the NPPF, failing to identify the "significance" of the historic parkland surrounding the late Georgian house at Grove Park as a heritage asset, and to consider the likely effect of the proposed development on that "significance".

61. Paragraph 129 of the NPPF says that local planning authorities "should identify and assess the particular significance of any heritage asset that may be affected by a proposal …", and "should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal". Paragraph 135 states:

> "The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

"Significance (for heritage policy)" is defined in the "Glossary" in Annex 2 to the NPPF as meaning "[the] value of a heritage asset to this and future generations because of its heritage interest …".

62. The site of Hopkins Homes' proposed development is within an area defined by the district council as "Historic Parkland" in its "Supplementary Planning Guidance 6 – Historic Parks and Gardens" of December 1995. Saved policy AP4 of the 1994 local plan relates to "Parks and Gardens of Historic or Landscape Interest". It says that development will not be granted planning permission if it would have "a materially adverse impact" on the "character, features or immediate setting" of a historic park or garden. Saved policy AP13 relates to designated "Special Landscape Areas", which include "the Parks and Gardens of Historic or Landscape Interest". It says the council "will ensure that no development will take place which would be to the material detriment of, or materially detract from, the special landscape quality" of these areas. The appeal site is in the River Yox Valley Special Landscape Area.

63. In paragraph 10 of his decision letter the inspector found "a degree of conflict" between policy AP4 of the 1994 local plan and government policy in the NPPF "due to the absence of a balancing judgement in Policy AP4", but that the "broad aim" of this policy was consistent with aims of the NPPF and the Planning Practice Guidance, so the weight it should be given was reduced but it was still due "some weight". He took a similar view of policy AP13, noting that the NPPF and the Planning Practice Guidance "recognise the intrinsic quality of the countryside and promote policies for the conservation and enhancement of the natural environment and to this extent, policy AP13 is consistent with those aims". In paragraphs 15 to 21 of his letter he considered "[the] effects of the proposal on the local historic parkland and landscape". He noted that the supplementary

planning guidance says "the essential qualities of the Park remain" (paragraph 15). He observed that "one of the key underlying qualities of parkland, that is openness and freedom from built development remains", and that "… the existence of the trees, the historic association with the house and the entrance at the south east, which has a perimeter wall of very similar design to the north east entrance are matters which qualify as "remnants of that former park"" (paragraph 16). He said the settlement of Yoxford "sits in a position virtually surrounded" by three historic parklands, which provide "a very attractive setting for the village" (paragraph 17). He concluded that in several respects the development would have a "negative" visual impact (paragraph 18), that the negative "landscape effects" would not be compensated for by the proposed new planting (paragraph 19), and that, because it would lie beyond the "strong and definite boundary to the built development of the village" formed by Old High Road, it "would be seen as an ad-hoc expansion across what would otherwise be seen as the village/countryside boundary …" (paragraph 20). In paragraph 21 he said:

> "In respect of these matters, the historic parkland forms a non-designated heritage asset, as defined in [the NPPF] and I conclude that the proposal would have an unacceptable effect on the significance of this asset. In relation to local policies, I find that the proposal would be in conflict with the aims of Policies AP4 and AP13 of the old Local Plan and Policies SP1, SP1A and SP15 of the LP."

64. Before the judge, and again before us, Mr Lockhart-Mummery submitted that the inspector was wrong to conclude that the "broad aim" of policy AP4 was consistent with government policy in paragraph 135 of the NPPF, but that, in any event, the inspector failed to grapple with the question of whether the development really would harm the significance of the historic parkland as a heritage asset, and, if so, how. Those submissions were countered by Mr Clay, who argued that, on a fair reading of the relevant parts of the decision letter, the inspector reduced the weight he gave to policy AP4 in the light of NPPF policy, and reached a clear conclusion on the harm the development would cause not merely to the local landscape but also to the significance of the heritage asset.

65. In paragraph 53 of his judgment, Supperstone J. accepted Mr Lockhart-Mummery's submission that the inspector had failed to undertake the assessment required by paragraph 135 of the NPPF. Again we think he was right. The inspector's error here, as Mr Lockhart-Mummery submitted, was that he failed to identify distinctly what the significance of the historic parkland was as an undesignated "heritage asset", having regard to the definition of "significance" in the NPPF; did not, therefore, equip himself to make the judgment required of him by paragraph 135 of the NPPF; and did not form that judgment. There can be no criticism of his treatment of the impact of the development on the local landscape, of which the historic parkland forms part. What is lacking, however, is a distinct and clearly reasoned assessment of the effect the development would have upon the significance of the parkland as a "heritage asset", and, crucially, the "balanced judgment" called for by paragraph 135, "having regard to the scale of any harm or loss and the significance of the heritage asset". It may well be, we accept, that if the inspector had undertaken the necessary assessment and formed that "balanced judgment", his conclusion in paragraph 21 would have been no different. But we

do not think one can be sure of that. On this ground too, therefore, we uphold the judge's decision.

Was the policy in paragraph 49 interpreted correctly and applied lawfully in the Richborough Estates case?

66. The development plan in the Richborough Estates case comprised the saved policies of the Crewe and Nantwich replacement local plan 2011, adopted in February 2005, with an end date of 2011. The relevant, or potentially relevant, policies of this local plan were policy NE2 – "Open Countryside", policy NE4 – "Green Gaps", and policy RES5 – "Housing in the Open Countryside", all of which restrict the development of new housing in the areas to which they relate.

67. The inspector found that there was not a demonstrable five-year supply of deliverable housing sites (paragraph 24 of his decision letter). He concluded, in the light of that finding, that the weight to be given to development plan policies relevant to the supply of housing was reduced, and that this conclusion applied to policies NE2, NE4 and RES5 in so far as the settlement boundaries referred to or assumed in those three policies reflected out-of-date housing requirements, though he recognized that policy NE4 had a wider purpose in maintaining gaps between settlements, including the gap between Willaston and Rope (paragraph 94).

68. Before Lang J. it was not in dispute that the inspector was entitled to conclude that policies NE2 and RES5 were relevant policies for the supply of housing for the purposes of paragraph 49 of the NPPF, and were properly treated by the inspector as "out-of-date" (paragraphs 35 and 37 of the judgment). The contentious policy was policy NE4, about which the inspector had said, in paragraphs 34 and 35 of his decision letter:

> "34. RLP policy NE.4 (*Green Gaps*) and the proposals map designate a number of areas as green gaps. The policy states that in those gaps, in addition to the provisions of policy NE.2, approval will not be given for new buildings or the change of use of existing buildings or land which would result in erosion of the physical gaps between built-up areas or adversely affect the visual character of the landscape (except where no alternative location is available). I recognise that the policy thus performs 'strategic' functions in maintaining the separation and definition of settlements and in landscape protection, and this remains pertinent.
>
> 35. However, since the inner boundaries of the Green Gaps are also formed by the settlement boundaries, the considerations that apply to policy NE.2 also pertain to this policy in this respect. Significantly, two of the housing sites identified in the emerging [Chester East Local Plan] are in existing designated green gaps around Crewe. Although they are not in this vicinity and different considerations might apply, at this stage it cannot be assumed that the appeal site will remain outside the defined settlement boundary in the Plan when finally adopted. In this respect I consider that policy NE.4 is also not up-to-date in the terms of the NPPF and therefore the weight I give it is reduced."

69. Lang J. accepted the argument put forward by Mr Crean that policy NE4 was a restrictive policy of the second kind identified by Ouseley J. in paragraph 48 of his judgment in *Barwood Land* and not, therefore, a policy for the supply of housing within the meaning of paragraph 49 of the NPPF. The "natural meaning" of the "policies for the supply of housing" was, she said, "policies which make provision for housing" (paragraph 51 of her judgment). She went on to say, however, that she understood and endorsed Ouseley J.'s reasons for giving paragraph 49 "a broader purposive interpretation". But in her view it was "not open to inspectors to disregard the distinction [Ouseley J.] drew between general policies to restrict development and those policies designed to protect specific areas or features, as this goes to the heart of the meaning and purpose of paragraph 49, in the context of the NPPF as a whole and within its proper statutory context" (paragraph 53). She said the effect of the policy in paragraph 49, if construed as the Secretary of State contended, would be to "dis-apply local policies even though they have been adopted by the local planning authority and remain in force …" (paragraph 56). She doubted that the Government had intended the NPPF "to be used to routinely bypass local policies protecting specific local features and landscapes, as that would undermine the statutory scheme" (paragraph 57). If a policy came within the policy in paragraph 49, it was "effectively dis-applied in its entirety" (paragraph 62). The inspector had erred in finding that policy NE4 of the local plan came within the scope of paragraph 49, and had sought "to divide the policy, so as to apply it in part only" (paragraph 63).

70. As will be clear from what we have already said about the interpretation and application of the policy in paragraph 49 of the NPPF, we respectfully disagree with Lang J.'s analysis. In the first place, her interpretation of the policy was not correct. Secondly, the "broader purposive interpretation" adopted by Ouseley J. in his judgment in *Barwood Land*, which Lang J. said she endorsed, does not, in truth, distinguish between one kind of restrictive policy and another. It allows an inspector to form his or her own judgment – as the inspector in this case did – on whether any policy of the development plan, properly construed, is or is not a relevant policy "for the supply of housing". Thirdly, the policy in paragraph 49 does not disapply, or "bypass", an "out-of-date" policy in a statutory development plan. The effect of a relevant policy being found to be "out-of-date" or not "up-to-date" under paragraph 49 is that the presumption in favour of sustainable development is to be applied as paragraph 14 of the NPPF provides. As we have said (in paragraph 46 above), this does not mean that the policy in question is to be disregarded. It must still be given the weight it is due in all the circumstances of the case. In this case, for example, there was nothing wrong in the inspector finding policy NE4 to be one of the relevant policies of the local plan that was "out-of-date" under the policy in paragraph 49 but nevertheless giving it appropriate weight in the planning balance in view of its particular purpose to maintain a "green gap" between Willaston and Rope.

71. The inspector proceeded on a correct understanding of the policy in paragraph 49 of the NPPF and a correct understanding of the relevant development plan policies. He exercised his own judgment – as he had to – when resolving which of those policies were within the scope of paragraph 49, and how much weight he should give them when applying the statutory presumption in favour of the

development plan in section 38(6) of the 2004 Act and the policy "presumption in favour of sustainable development" in the NPPF. He made no error of law. Both his approach and his conclusions are legally sound. His decision should not have been quashed.

Conclusion

72. For the reasons we have given, the district council's appeal in the Hopkins Homes case must be dismissed and Richborough Estates' appeal allowed.

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CROWN OFFICE LIST
(Mr G Bartlett QC)

QBCOF 1998/0725/4

Royal Courts of Justice
Strand, London WC2

Monday, 15th March 1999

Before:

LORD JUSTICE NOURSE
LORD JUSTICE BUXTON and
LORD JUSTICE SEDLEY

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(1) ARTHUR SIDNEY PETTER
(2) MONICA MARY HARRIS

Applicants/Appellants

-v-

(1) SECRETARY OF STATE FOR THE ENVIRONMENT, TRANSPORT AND THE REGIONS
(2) CHICHESTER DISTRICT COUNCIL

Respondents

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Mr J Clay (instructed by Messrs Shuttari Paul & Co, Southall, Middlesex) appeared on behalf of the Appellant Applicants.
Miss N Lieven (instructed by the Treasury Solicitors, London SW1) appeared on behalf of the First Respondent.
The Second Respondent was not represented.

JUDGMENT
(As Approved by the Court)
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A

LORD JUSTICE NOURSE: Lord Justice Buxton will deliver the first judgment.

LORD JUSTICE BUXTON: This is an appeal from a decision of Mr George Bartlett QC, sitting as a deputy judge of the Queen's Bench Division, in a planning matter that was before him on 15th May 1998. The appeal arose under both sections 288 and 289 of the Town and Country Planning Act 1990, but in the event it has proved sensible to deal with the matter as a single application, in circumstances that I shall shortly describe. Mr Bartlett's decision was itself an appeal against a decision of a planning inspector, Mr Rusdale, delivered on 24th October 1997. I think it is fair, both to the learned deputy judge and to the inspector, to say at the outset that the appeal before us may have taken a somewhat different shape and has certainly led to the emphasis of certain different matters from those that were necessarily ventilated before either of them.

The background facts are as follows. The two applicants for planning permission were Mr Petter and Miss Williams. The application concerns a smallholding in an agricultural area in Sussex, which was originally started by Mr Petter in 1981. At that time it was apparently a part-time occupation on his part, he being permanently employed as a farmworker on another farm. In 1988 the holding was extended, by the purchase of some further land, to its present size of 17 acres. There was set out in the evidence, and not challenged, the extensive variety of livestock and other farming activities that Mr Petter engages in on that property. He explained to the inspector that it had been throughout his life his ambition to own and run his own holding, and

he had only lately achieved that with the acquisition of the present holding. Mr Petter, I should say, is a gentleman of fairly advanced years, being now, I think, 67 years of age.

During the time that he has been concerned with the holding, various improvements have taken place by way of building, including the installation of a septic tank and, more particularly, the matter with which the planning appeal was concerned, a mobile home with brick standing has been stationed on the smallholding. Mr Petter eventually went to live there, in circumstances I shall describe, being subsequently joined by Miss Harris.

The history of the building was that planning consent was properly sought in 1988 for the stationing of that mobile home on the property, the reason for it being that Mr Petter wished to live there so that he could more easily supervise the activities on the farm. Planning permission having been originally refused for the mobile home, on appeal such permission was granted in October 1992. The permission was granted with a condition that it should be for three years only, the mobile home to be removed at the end of that term. That temporary permission was all that Mr Petter sought in 1992; that was realistically in accordance with the then planning policy operating with regard to residential structures in agricultural areas.

It is accepted that the area with which we are concerned is one devoted to agriculture, and there is a well recognised national policy strongly discouraging the creation of further residential accommodation in such areas. The only type of residential accommodation that is normally contemplated under the current policy is where the residential accommodation is required for the

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proper operation of a farm or smallholding. That means, in the first instance, that it should demonstrated that the agricultural activity requires the presence on the site 24 hours a day of worker to look after the farm, the animals, and so forth. It has never been in dispute in th case, as I understand it, that Mr Petter's smallholding fulfils that requirement; that is to say, tha it is sufficiently extensive and, in particular, has sufficient requirements by way of looking afte the animals for it to be necessary for there to be somebody present all the time.

The second aspect of the planning policy is, however, this. Those responsible for protecting rural agricultural areas against the incursion of inappropriate and inapposite residential accommodation are understandably concerned that residential accommodation should not be created (that is, have permission given for it) under the purported excuse or reason of agricultural need of the sort that I have just outlined when that need in fact cannot be demonstrated. In order to seek to avoid that, there is a further aspect of the planning policy, which is that the applicant must demonstrate the viability of the agricultural activity in respect of which he says he needs residential accommodation.

It was that aspect of the case that concerned the inspector in the 1992 application. He clearly had in mind the guidance in what was then Annex E to Planning Policy Guidance Notes No. 7, paragraph E.9 of which reads, in part:

> "In cases where a functional test alone is not conclusive, it may be appropriate also to apply a financial test to provide further evidence of the genuineness of stated intentions to engage in farming or forestry or the size of dwelling which the unit can sustain. The purpose of applying such a financial test is not to judge the likely present or future financial viability of the enterprise as such, since this is not a proper concern of the planning system, but to consider the land use

implications for the site, which may include the likelihood of the proposed development being carried into effect and the size of dwelling."

A

It was those considerations that were in the mind of the inspector when in 1992 he imposed the condition that the planning permission should be for three years only. He said this in paragraph

B 13 of his decision letter (p.54 of our bundle):

> "Whether your client's intentions are capable of being maintained over a reasonable period of time however I regard as uncertain in view of recent profits and the size of the holding. I therefore consider that any permission granted should be a temporary one to allow time for such prospects to be clarified. In
>
> C view of the history of the enterprise I consider a period of 3 years would be appropriate at which time both the functional need and viability should be reassessed. You indeed argued the case on the basis that a temporary permission be appropriate with viability to be examined at its expiry. An occupancy condition should also be imposed to prevent abuse of the concession in favour of agricultural dwellings."

D

It is clear from those extracts, both from the policy guidance and from the inspector's report in 1992, that the purpose of looking at the viability or finances of the agricultural enterprise is to

E seek assurance, not only that the agricultural activity is a genuine one (a matter that has never been in doubt in this case), but also that it is not being put forward on an over-optimistic basis. Mr Clay, who has appeared in this case for Mr Petter, agreed that the latter aspect of the matter

F was one of the grounds for this planning policy. It follows from that that, although the viability of the farming operation is not in itself a relevant planning consideration, it is open to the planning authorities (indeed it is, in terms of the guidance, incumbent on them) to look at whether the farming operation can reasonably be expected to continue over the period of time

G to which the planning permission relates.

H

As Miss Lieven, for the Secretary of State, in her very clear submissions reminded us, that has at least two good reasons behind it. The first is that in normal circumstances, absent conditions, a planning permission runs with the land. Therefore, if an unconditional planning permission is granted for a residential building, that will continue even though the present occupiers no longer occupy it. Secondly, if the farming operation turns out to be unviable and the farming ceases, it is in practical terms likely to be extremely difficult to enforce any agricultural occupancy condition, such as is regularly imposed and such as was imposed in this case, when faced with the alternative of putting the resident out of the house and the house remaining vacant, a condition that no planning authority is likely to welcome. It is therefore important that the planning authority should be satisfied that there is some reasonable or firm prospect that the activity for the purposes of which a residential permission has been granted will indeed continue.

That was the background of the 1992 application. I have gone into it in some detail because it is of equal relevance to the matter directly before us. When the 1992 permission was granted, the appellant was living in local authority accommodation in a nearby town. Very unfortunately, at that time his wife was seriously ill and, sadly, she died not long after that planning appeal had been allowed. On the grant of the temporary planning consent for the mobile home, Mr Petter then gave up his council house in order to reside full-time on the site in the mobile home. There is no suggestion that he did that for any reason other than to be able to operate the smallholding in the way that it needed to be operated. Some time after that he was joined there by Miss Harris, who is his cousin, who equally had shortly before lost the parents with whom she had

previously been residing. She now also lives in the mobile home and assists Mr Petter in his work on the smallholding.

When the time came for the 1992 planning permission to expire, Mr Petter applied for what was described on the application as a renewal of the temporary permission. That was refused by the second respondent, the Chichester District Council, in January 1996. In June 1996 they served an enforcement notice under the 1992 planning permission requiring the removal of the mobile home. The appeal before the inspector was in respect of both the enforcement notice and the refusal of further temporary planning permission. As I have said, both matters raised the same issues. That appeal was the subject of a hearing in September 1997 and was dismissed by the inspector, in the decision letter to which I have already referred, on 24th October 1997.

The inspector recognised that the question before him was whether there was sufficient what I will call "agricultural justification", in the terms I have already indicated of the planning policy, for the retention of the mobile home. That was against the background that such residential development infringes the general policy of limiting development in an area such as we are concerned with except for the provision of agricultural workers' dwellings where there is an actual agricultural need for the worker to live on the farm or smallholding.

Both parties agreed that the question of agricultural need should be assessed in the context of the advice and guidance given in Annex I of the then revised version of Planning Policy Guidance Note 7, the earlier edition of which I have already referred to in the context of the 1992 planning

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Both parties agreed that the question of agricultural need should be assessed in the context of the advice and guidance given in Annex I of the then revised version of Planning Policy Guidance Note 7, the earlier edition of which I have already referred to in the context of the 1992 planning

application. It will be convenient to set out first of all what the inspector said, although I will have to return to it. In paragraph 9 the inspector said as follows:

> "You claim that the circumstances of the holding at Little Slifehurst Wood justify a permanent dwelling, never mind a temporary one. However, I consider that your clients' case does not meet at least one of the criteria in paragraph I5 of Annex I for assessing proposals for permanent dwellings, namely, the third criterion relating to the economic viability of the farming enterprise. In this respect, the agricultural unit and activity have been established for more than three years and the profit and loss accounts for the year ending 31 May 1996 indicate a net profit which exceeded the minimum agricultural wage for that year. However, the accounts are for tax purposes only and they do not include any allowance for such items as Council Tax, veterinary treatment or unpaid labour. If such allowances are taken into account, the net profits do not exceed the minimum agricultural wage for any of the last 3 years. Indeed, they do not exceed this level for any of the years since the last appeal decision. In these circumstances, and as the accounts for the year ending 31 May 1997 indicate that the net profits for the last year do not meet the minimum agricultural wage, I am not convinced that the unit is currently financially sound.
>
> 10. The criteria for assessing temporary agricultural dwellings in paragraph I14 of Annex I relate to the provision of new dwellings to support new farming activities. Consequently, the criteria do not strictly relate to the development subject to appeal, which is for the retention of an existing dwelling to support existing agricultural activities."

Those passages are illuminated by reference to Annex I, which the inspector was directly referring to. If we turn to Annex I of PPG7, the guidance starts by referring to the strict controls that are imposed so far as residential development in open countryside is concerned. It then says at I2:

> "There will be some cases, however, in which the demands of the farming or forestry work concerned may make it essential for one or more of the people engaged in this work to live at or very close to the site of their work. Whether this is essential in any particular case will depend on the needs of the farm or forestry enterprise concerned and not on the personal preferences or circumstances of any of the individuals involved."

As I have already said, it is accepted that that criterion is fulfilled in Mr Petter's case. It is important to note that point because the policy guidance makes it very clear that consideration of this requirement must start from looking at the farm or forestry enterprise and its needs and only accepting that this test, colloquially called the "functional test", is fulfilled if the needs of that enterprise make it essential for someone to live on the site. A case where a person decided to live in the country and then sought to add a farm or forestry enterprise to his residential accommodation in order to seek to fulfil this criterion would not qualify.

The guidance then goes on as follows in paragraph I4:

> "In particular, it will be important to establish that stated intentions to engage in farming or forestry are genuine, are reasonably likely to materialise and are capable of being sustained for a reasonable period of time. ..."

So far as permanent agricultural dwellings are concerned, paragraph I5 says:

> "New permanent dwellings should only be allowed to support existing agricultural activities on well-established agricultural units, providing:
>
> (a) there is a clearly established existing functional need ...
>
> (b) the need relates to a full-time worker ...
>
> (c) the unit and the agricultural activity concerned have been established for at least three years, have been profitable for at least one of them, are currently financially sound, and have a clear prospect of remaining so."

Paragraph I10 states that:

"New permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable. A financial test is necessary for this purpose, and to provide evidence of the size of dwelling which the unit can sustain."

Then turning to temporary agricultural dwellings, in paragraph 114 the guidance says:

"If a new dwelling is essential to support a new farming activity, whether on a newly-created agricultural unit or an established one, it should normally for the first three years be provided by a caravan, a wooden structure which can be easily dismantled, or other temporary accommodation. ..."

115 states that:

"... It will be unsatisfactory to grant successive extensions to a temporary permission over a period of more than three years. Local planning authorities should not grant temporary permissions in locations where they would not permit a permanent dwelling."

permissible to apply for temporary dwelling if permanent one is unsuitable

Those advising Mr Petter in 1995 were, as it would appear, conscious that his application was an unusual one, in that it did not easily fit into the structure of policy that I have just outlined with the benefit of the planning guidance note. That was because they were in fact seeking a further temporary permission. Their reason for that was Mr Petter's personal circumstances. It was not Mr Petter's wish to obtain a permission that would endure after his own occupation of the holding had ceased. No doubt those who advised him not only thought it right to make that plain to the planning authorities, but also thought it prudent to do so: because if that could be achieved it would potentially remove one aspect of the very legitimate concerns that a planning authority has that a planning permission, once granted, will enure with the land even after the disappearance of the present occupiers and even after it has passed into other hands

which may not operate it in the way that the applicant has assured them he will do. These difficulties were recognised by the planning consultants that Mr Petter employed to advise him on the 1995 appeal. They placed a lengthy report before the inspector, and both the inspector and the judge cited substantial parts of it.

On the present issue of whether the permission should be permanent or temporary, the consultants argued that the merits of the case would justify the grant of an application for a permanent home but, because of Mr Petter's personal circumstances, they limited their application to temporary grounds. They also said, as a separate point, that there were strongly personal and in effect compassionate reasons for granting the application, quite apart from what were its perceived planning merits. Those passages from their report where that matter was dealt with are set out at pages 4 to 5 of the learned judge's judgment. I do not think I need repeat them here.

The upshot was that the consultants submitted in paragraph 5.6 of their evidence that the wish of the applicants, as they put it, to see the rest of their working lives out on the holding could only be achieved by the renewal of planning consent for the mobile home, albeit on a temporary basis. They added that the local planning authority had nothing to lose from this course of action because in the longer term they would not be accepting any permanent residential development on the site.

The inspector applied the criteria to be found in PPG7, which I have already set out. He found that the functional need for a residential worker had in fact increased since 1992, when it had been found by his predecessor already to exist, and was now well established because of the larger number of stock that were held on the site. He was not, however, able to be satisfied as to the other requirements of the policy guidance. I have already set out what he said in paragraph 9 of his report as to the fact that the economic viability of the enterprise had in his view not been established.

A number of complaints as to those conclusions were raised before the learned judge, who rejected all of them. They can be summarised as follows. First, the inspector did not give sufficient weight to the personal circumstances of Mr Petter and Miss Harris. Most conspicuously, a decision not to grant permission would deprive two elderly applicants of their livelihood and place of residence or, alternatively, did not give sufficient reasons for not giving weight to personal circumstances. Secondly, the inspector assessed the application, which was an application for temporary permission, against the criteria for permanent permission and therefore wrongly applied PPG7. Thirdly, the inspector took what was described as an "objective approach" to the viability of the farming operation and therefore did not give sufficient weight to the fact that the operation was able to continue and foreseeably would continue in the hands of Mr Petter and Miss Harris because of their self-sufficiency, the fact that they lived off the land, did not pay wages, grew their own food, used their own timber for kindling, and matters of that sort. Equally, expenses of some categories, such as council tax, were met by Mr Petter out of his savings or pension, not out of the turnover of the business.

I turn first to the complaint that the application was assessed according to the criteria for permanent permission. In my judgement the inspector is not to be criticised for taking that approach in itself. As I have already indicated, the case was put for Mr Petter on the basis that he was indeed entitled to permanent permission. The inspector cannot be criticised, therefore, for looking at it on that basis. The fact that it was an application in form for temporary permission was merely a recognition by those advising Mr Petter, as far as I can see, that some means had to be found of achieving the objective that Mr Petter sought, which was, in realistic terms, that he should indeed have permanent permission to reside on the smallholding, but that it should be a permission limited to Mr Petter himself and possibly Miss Harris. It should not enure to the benefit of any future owner of the land or to any successor in title to the present owners. But the inspector, in my view, cannot be criticised for approaching the matter in the form that he did.

Secondly, so far as personal circumstances are concerned and the inspector's approach to them, the judge rejected the criticism of the inspector on that ground, and in my judgement he was right to do so. The inspector was clearly well aware of the personal circumstances of Mr Petter and Miss Harris, as the extracts that the judge cited from other parts of the decision letter clearly show. Although personal circumstances may be a factor that can properly be taken into account, it cannot, in my judgement, be erected (as the argument in this case sought to erect it, I have to say) into something of overriding importance in the context of proper and regulated land use planning. Otherwise there would be a danger of planning permission being granted even in cases

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that seriously infringe planning policy and the interests of others solely on the ground that the occupiers had difficulty in finding accommodation elsewhere.

Further, as to the way in which the inspector dealt with that matter, the judge said this at page 11D of the judgment:

> "As to the adequacy of the reasons, Mr Clay argued that the Inspector should have said what the personal consequences of the refusal would have been for the Applicant and should have identified some particular planning harm to be set against them. It is, I think, difficult to see what the Inspector might have said beyond what he did say in paragraphs 14 and 16 on the consequence for these Applicants of the refusal of planning permission; while on planning harm he made clear, in paragraph 13, that there was conflict with the policies contained in the structure and local plans which presumed against residential development in the countryside, particularly those which seek to conserve the distinctive landscape of the north-eastern part of Chichester District. In paragraph 15 he said:
>
> > 'Whilst the mobile home is sited to limit its visual impact on the countryside, its presence materially detracts from the rural aspect of the site.'
>
> In my judgment, there is no substance in any part of Mr Clay's submissions in relation to personal circumstances."

I respectfully agree.

I then turn to the main issue in this appeal, some aspects of which of course have connections with the two matters with which I have already dealt: that is to say, the use made by the inspector of PPG7 and the interpretation that was put upon it. As I have said, this was an unusual case that does not obviously fit into the assumptions that are clearly to be found behind Annex I of PPG7. That annex assumes that a planning authority may be faced with an application in respect of a new dwelling supporting a new farming activity, in which case a

period of three years would be allowed for temporary accommodation to assess the viability of the business. That is the burden of paragraph 114 of Annex I. Here the farming activity had been going on for a substantial time. It was not possible to say in respect of this mobile home that it was a new but temporary installation of that sort. Mr Petter's ambition was that it should stay there in its position permanently.

Secondly, the particular sort of permission that in reality Mr Petter was seeking (that is to say, a permission limited to himself and Miss Harris and not to extend beyond their own occupation and farming activity) does not fit into the assumption behind the other part of Annex I with regard to permanent agricultural dwellings, which assumes that permission is sought for a residence that will continue, as the farm will continue, after the disappearance of the present occupiers. It was therefore, in my judgement, necessary to approach PPG7 with some caution. It was also necessary to bear in mind that PPG7, important though it is, and significant though it was agreed on all sides to be in this case, was at the end of the day only a matter of planning guidance; it is not a statute.

We were shown the recent authority in this court of R v Derbyshire County Council, ex parte Woods [1997] JPL 958, which dealt with how this court should treat cases where there have been interpretations of planning guidance by inspectors. The burden of what the court said is set out in the second paragraph of the headnote to the report, which reads as follows:

> "If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is for the court to determine as a matter of law what the words are capable of meaning. If in all the circumstances the wording of the relevant policy document is properly

capable of more than one meaning, and the planning authority adopts and applies a meaning which it is capable as a matter of law of bearing, then it will not have gone wrong in law. A court will only intervene if the judgment on the meaning was demonstrated to be perverse or otherwise bad in law."

Before reaching that stage, however, it is necessary to stop and ask oneself about the purpo and intention of the particular parts of PPG7 with which we are concerned; in particula (because, rightly, the inspector thought that he had to be concerned with this), the provisions about permanent dwellings and, more particularly, the need set out in paragraph I5(c) for the agricultural activity concerned to have been profitable for at least one of the last three years and to be currently financially sound.

In looking at that criterion, one has to ask why it is there. What is the object of that part of the policy document? Or, as my Lord, Lord Justice Sedley, put it in argument, one has to look at what is the policy behind the policy. As I have already sought to demonstrate, it is clear, both from the predecessor of PPG7 that was before the court in 1992 and also from the current document, that the reason why financial viability and the long-term prospects of the farming operation are taken into account is in order to seek to ensure that the residential development that is going to be permitted on the basis of the agricultural activity will indeed remain as a residential development linked to an agricultural activity; that is to say, as indeed paragraph I5(c) of PPG7 puts it, the agricultural activity concerned has a clear prospect of remaining financially sound and profitable. The simple words of the policy and of the policy document must therefore be interpreted with that overall intention in mind.

As is agreed on all sides, the policy is to stop bogus or over-optimistic applications and to ensure that the relevant agricultural activity is likely to continue. Therefore, in looking at the wording of the policy, it is necessary for the inspector to consider what is the root reason why he is looking at financial viability at all. The inspector viewed the question of the financial soundness of the unit and the agricultural activity under paragraph I5(c) on what was called in the court below an "objective basis": that is to say, was it financially sound as a unit, operated by whomsoever it was run, whether it was run as Mr Petter ran it, as I have described, or whether it was run by a more orthodox farming operation, with hired labour, the sale of produce, and aspects of that sort.

In my judgement, looking simply at the bare words of paragraph I5(c), on the basis of the judgment in the Woods case, that test was open to him in law. Once that test had been adopted, can one fault his finding? Clearly, if one is looking at the financial viability of an operation from an accounting point of view, in abstract terms, the fact that in the years in question there were no bills for veterinary services, the fact that Mr Petter pays the council tax out of his own savings and not from the turnover of the farm, and the fact that neither he nor Miss Harris charge for their labour, are all matters that render their accounts, as an objective account of the viability of the business, open to serious question. Indeed, as the inspector rightly found, it renders them something that cannot be relied on.

But in approaching the matter on the basis of the bare wording of the paragraph, I have to say that the inspector, in my judgement, overlooked the purpose and objective of the policy that he

was applying. As I have already said, the financial viability test is only relevant in the determination of whether the grant of permission, in whatever terms it may be granted, would, because of the uncertain future of the agricultural activity, threaten to produce in the future a non-conforming residential use that would pass with the land - a use that had lost its agricultural justification. In answering that question it is relevant to consider whether this very activity by these applicants is likely to continue over the intended period of the planning permission. To that question the actual operations and intentions of the present occupants and their disavowal of any wish for permission to continue after they cease to occupy is relevant. An application of the bare wording of PPG7, in the way in which the inspector applied it, does not meet that case. In my judgement, therefore, the inspector should have considered the matter from that point of view in order to apply here the underlying policy of preventing non-agricultural residential occupation arising in a case where proposed agricultural occupation fails.

In saying that, I do not want to be thought to be critical of the inspector. The matter was presented to him in a difficult form. It certainly was not presented to him in the way in which I have just sought to formulate it. It was understandable, in the light of the argument presented, that he should have dealt with it in the way he did. But that said, it was still necessary to consider what the real intent of the policy was, and that was not achieved.

If the viability of Mr Petter's operation from that point of view (that is to say, in terms of the way in which it was actually run) had been considered, the inspector should have reviewed whether the operation, in its own terms, had a proper chance of continuing over the period for

which planning permission was sought. If the inspector came to the conclusion that there was a substantial possibility of the operation continuing over the period that Mr Petter wished to operate it, it would then have been incumbent on him to consider whether a continued temporary planning permission would be appropriate in these exceptional circumstances; whether there should be a permission with a condition limited to Mr Petter and Miss Harris; or whether there should be a permission limited to what was foreseeably likely to be the active career of Mr Petter and Miss Harris as farmers (that is to say, to the age, perhaps, of seventy years). Those would all have been matters for the inspector to consider. He cannot be criticised for not considering them because the precondition to their consideration (that is to say, that Mr Petter's operation should, in the context of this policy, be considered in its own terms and not against abstract financial criteria suitable for a normal determination) was not fulfilled.

In saying all of this I am conscious of the danger stressed by Miss Lieven of there being a series of temporary permissions, which may then wrongly tip the scales in planning terms in favour of an eventual permanent permission. But that is not what was before the inspector. In such a case, I would expect a local planning authority to give short shrift to an attempt to achieve a full, permanent, permission by unmeritorious means. In realistic terms, although it was not expressed with the felicity that it might have been, what was before him was an application to permit Mr Petter to continue in residential occupation whilst he was farming the farm. Nor do I think that this approach is excluded merely by the fact that no formal proposal was made to the inspector that he should do other than extend the existing temporary permission. The reality of the matter, as I say, is not that a completely unforeseen condition would be imposed in this case, but rather

that some way would be found, if on planning grounds it was thought right, for that which Mr Petter sought to achieve to be achieved without breach of the policy underlying (I emphasise the word "underlying") the guidance in PPG7.

For my part, therefore, I would on that ground, and that ground only, quash the inspector's determination and remit the matter to the Secretary of State for reconsideration in the light of the observations that I have sought to make. I should emphasise that that is all I think it right to order. Mr Petter, I think it right to say, must not assume that the eventual outcome will necessarily be that which he seeks. I have said that on the facts of this case, in the light of the underlying policy, it is right to look again at Mr Petter's arguments based upon the actual operation of his agricultural activity in the context of the continuation of that activity. It does not, of course, follow that those who look at that will be persuaded, even on the basis of what Mr Petter says, that that activity will in fact sufficiently continue for the period that he seeks. Also there may be other planning difficulties about the solution that he seeks, even if he satisfies the authorities as to the viability of the business, not least in terms of possible objections to there being temporary structures of this sort in agricultural areas for longer than a period of three years.

All that, however, is as to the future. So far as this court is concerned, I would order that the appeal be allowed, the order of the inspector be quashed and the matter be remitted to the Secretary of State for further consideration.

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LORD JUSTICE SEDLEY: As the applicants' own consultants recognised, the applicatio had to be sufficient to justify permanent planning permission or fail, even though the applicants wanted it only for finite purposes. Mr Clay has submitted that the inspector, despite the conscientious approach to the possibility of permanent planning permission in paragraph 9 of the decision letter, applied PPG7 so rigidly as to exclude relevant and critical features of the applicants' particular case without proper regard to the policy's purposes. I agree that this criticism is well founded.

It is not the same point as that decided in the case of R v Derbyshire County Council, ex parte Woods [1997] JPL 958, which turned upon the jurisdiction to determine the meaning of words in a policy. This case has to do with what is material to the purposes and application of the policy itself.

Annex E (now Annex I), for obvious reasons, treats temporary and permanent planning permissions differently. A temporary permission is ordinarily to be tied to a projected agricultural use which, if it is to prove viable, will require a dwelling on the land. After one such period, it will ordinarily be inappropriate to renew a temporary permission and appropriate to decide between cesser of residential use and permanent permission for it. For the latter, the criteria are naturally different, but, as logic would suggest, they look now to the reality, not just the prospect of the agricultural enterprise.

If Annex I were a statute or a statutory instrument, one would be exercised by the differential language used in paragraphs I5(c) (which speaks of profitability) and I10 (which speaks of viability). But this being a policy, as Miss Lieven herself suggests, it can be said without difficulty that profitability is there as an indicator of viability.

I would add that viability itself is there for an identifiable purpose: to ensure that any residential planning permission is both ancillary and proportionate to a true agricultural use. In most cases profitability will be a very good indicator of this. If it is an employee who is to live on the land, no employer is likely to keep him or her there if the land is not yielding a profit. If it is the applicant himself, again viability is likely to mean the production of an economic surplus for him of some kind. So an unprofitable holding is likely to be non-viable and therefore not to afford a proper basis for planning permission for a permanent dwelling of any kind on what is ex hypothesi agricultural land.

But - and this is precisely the value of policy guidance as against statutory prescription - circumstances will vary infinitely and a margin of flexibility may be needed to accommodate them. So here an unexpected but undoubtedly genuine application, by somebody living by what amounts to subsistence farming, requires not a rigid application of criteria designed for commercial agriculture, but a practical adaption of those criteria to secure the underlying purposes of the policy. I do not accept Miss Lieven's submission that to do this is to introduce impermissible personal circumstances into the planning judgment. It is to make the best feasible approach to a necessary judgment on the future needs of the agricultural land in question.

This is where the key paragraph of the decision letter, paragraph 9, in my view fails. For Mr Petter's chosen mode of agricultural production, profitability was no guide to its genuineness and a poor guide to its probable continuation. But it is from this test that the inspector derived his conclusion:

"I am not convinced that the unit is currently financially sound."

The true and analogous question in relation to Mr Petter was whether the unit was sustainable in his hands and in that sense viable and likely to continue so. It seems very probable that this question, had it been addressed, would have been answered affirmatively.

More will have to be decided before the applicants can obtain the restricted planning permission they seek, including, I suspect, a recasting of their application or appeal to combine an express application for permanent planning permission with either a concession or a section 72 condition or a section 106 planning obligation in order to ensure that the grant, if made, is coterminous with Mr Petter's stewardship of the holding and does not run with the land. But if, as I agree should happen, the Secretary of State's decision is quashed for error of law under section 288(5), these matters can be put before the Secretary of State when reconsideration comes to be given to the appeal from the decision of the local planning authority.

LORD JUSTICE NOURSE: I also agree that the appeal should be allowed and do not wish to add anything of my own.

Order: **appeal allowed with costs here and below; inspector's decision quashed and matter remitted to the Secretary of State for his further consideration in the**

APPENDIX [J]

OUR REF: PE/2016/0615/E

ASK FOR: **Duty Officer Tel: 01892 602011**

DATE: 08 March 2017

YOUR REF:

Wealden District Council

Ms Zoe Wangler

Kelvin Williams
Head of Planning and Environmental Services

Dear Ms Wangler

Re: **Pre-App reference**: PE/2016/0615/E
THE OLD CALF SHED, THE STREET, ARLINGTON
CHANGE OF USE FOR SITING OF 3 TEMPORARY AGRICULTURAL WORKERS DWELLINGS

I am writing to you following your recent pre-application meeting with my Officers to discuss the above development proposals. The reason for this letter is to bring to your attention the recent publication of the Wealden Local Plan for Sub-Committee's approval. Very shortly the evidence base prepared to support the plan will also be published including that around the protection of the Ashdown Forest.

Background

Following the examination and subsequent adoption of the Core Strategy Local Plan on 19 February 2013, the Council has been obliged to take into account evidence concerning the impact of development on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) as required by the Habitats Regulations.

The position which the Council is obliged to follow is that all development which would, either individually or in combination with other development, increase use of the Ashdown Forest for recreational and other purposes must mitigate its own impact. Each planning application is considered on a case by case basis.

In addition to recreational impacts, it is also necessary for the Council to assess all development which would, either alone or in combination with other development, increase the level of nitrogen deposition on the Ashdown Forest SAC. When considering nitrogen deposition the focus will be on the emissions from motorised vehicular traffic.

Wealden District Council, Vicarage Lane, Hailsham, East Sussex BN27 2AX
T **01323 443322** F **01892 602777**
planning@wealden.gov.uk **www.wealden.gov.uk**

Where it is assessed that there will be a likely significant effect due to an increase in the level of nitrogen deposition, and in the current absence of any identified mitigation measures, planning permission must be withheld.

Ashdown Forest SAC

Large parts of Ashdown Forest (2,729 hectares) are designated as a Special Area of Conservation (SAC). The SAC status was awarded because Ashdown Forest contains one of the largest single continuous blocks of lowland heath in south-east England. The SAC designation recognises the special nature of the vegetation found within Ashdown Forest, namely European dry heaths and North Atlantic wet heath and affords it legal protection by the Conservation of Habitats and Species Regulations 2012 (as amended) which transposes the requirements of the European Habitats Directive (92/43/EEC).

Monitoring the effects of Nitrogen deposition

As part of the Councils adopted Core Strategy Local Plan we are committed to investigating the impacts of nitrogen upon the Ashdown Forest SAC so that its effects upon development in the longer term can be more fully understood and mitigated if appropriate. The monitoring is "to undertake further investigation of the impacts of Nitrogen deposition on the Ashdown Forest Special Area of Conservation so that its effects on development can be more fully understood and mitigated if appropriate".

Wealden District Council is required to consider the effects of new developments on the integrity of the SAC. This includes considering the effect of new development on the SAC with regards to an increase in traffic that may result from such development. This is on the basis that excess nitrogen or an increase in nitrogen from more cars on the road or an increase in car journeys across the forest may result in damage to the protected species or a net decrease of species or habitat cover.

Significant work has been undertaken since 2013 to monitor nitrogen deposition and the impact on the ecology of the protected areas as an ongoing requirement following the Core Strategy and to model traffic flows, nitrogen deposition and ecological impact based on proposed development numbers and locations.

This has identified that the impact on the Ashdown Forest Special Area of Conservation (SAC) is significant in the immediate vicinity of the roads across the forest with high levels of nitrogen deposition recorded and consequent ecological damage. This is a wider impact than just relating to the A26 as initially considered as part of the adopted Core Strategy.

Taking into account existing levels of traffic and development commitments that are in place there is already an unacceptable level of impact from nitrogen deposition in the areas close to the forest roads.

Modelling the impact of the development numbers of the preferred option in the Issues, Options and Recommendations document over the original plan period of 2013 to 2037 shows an even greater effect above the acceptable level in these areas.

Alongside this the Council has gathered evidence of levels of nitrogen deposition across the whole of the SAC which indicates high but currently acceptable levels. The Council is proposing to adopt an approach which is based on delivering development at a level which will be below that which, applying the precautionary principle, would be deemed to be potentially damaging to the SAC overall.

The Council has explored a range of alternatives to the level of development proposed in order to protect the SAC including lower levels of development, alternative distributions for development and development conditions. In addition it has considered mitigation measures

including traffic speed restrictions, introducing tolls, restricting categories of vehicles and options for tunnels. For a variety of reasons these measures would not produce any significant improvements, either because they are already in place or because they are not practical or economically viable.

The Council recognises that, having considered and either implemented these options or found them to be of very limited value, there is a need to address the damage already being done to the SAC in the vicinity of the forest roads. The proposal is that compensatory measures will be put in place to provide equivalent comparable habitat to that being lost. It is recognised that this requires a public interest test which the Council believes will be met through the benefits from the provision of the development over the plan period including the associated employment opportunities.

In order to allow development to proceed the proposal is therefore to compensate for the damage which is already occurring close to the roads and alongside this to set a level of development across the district which will ensure that the overall integrity of the SAC is not damaged due to traffic movements and the consequent nitrogen deposition.

What does this mean for development proposals now?

The Council will continue to assess the impacts of development on the Ashdown Forest, as set out in the Background Section earlier in this letter, and until the necessary compensation/mitigation measures are in place, developments throughout the District (including those within the existing Core Strategy Local Plan and the emerging Wealden Local Plan that do not have existing planning permissions) can only proceed where they can prove that they will not damage the SAC any further.

In practical terms this means demonstrating that the development of a site will provide no more vehicle emissions than currently along the affected roads in the SAC.

As you may know, this constraint has been affecting development close to the SAC since 2013, however working with applicants some development has been able to proceed. We are keen to continue wherever possible to enable development to progress.

Further Information

There is information about this constraint on the Councils website and there will be further updates over the coming days/weeks. In the meantime if you are in any doubt about the impact on your own proposed development I would ask you to contact the case officer you met at the meeting (who will be best placed to assess the impact of this update on your particular proposals), or if this is not possible then contact the Councils duty planning service on 01892 602011, Monday - Friday 09.30-12.30.

Yours sincerely

K Williams

Head of Planning & Environmental Services

APPENDIX [K]

Zoe Wangler <zoe@ecologicalland.coop>

Planning Application WD/2017/0340/F

Judith James <Judith.James@wealden.gov.uk> Tue, Mar 7, 2017 at 2:38 PM
To: Zoe Wangler <zoe@ecologicalland.coop>
Cc: Sharon Collins <Sharon.Collins@wealden.gov.uk>, David Saunders <david@ecologicalland.coop>, Marian Smith <Marian.Smith@wealden.gov.uk>

Dear Ms Wangler

I confirm that the details you indicated you could submit regarding the proposed dwellings with an amended D & A Statement will be sufficient to validate the application in this instance, given the particular circumstances of your scheme. If approved we would then condition the submission of final details. I have discussed and agreed this with Marian Smith our Technical Team Manager.

Regarding the Ashdown Forest issue, it is potential traffic movements within the Forest which is causing the adverse impact upon the habitat of the protected areas; but our studies have confirmed that the traffic using those roads is generated from the whole of the Wealden District and wider, and so traffic going to and from the Arlington area will be contributing to this. The Council is required to take a precautionary approach when undertaking assessments of proposals under the Habitats Regulations, and so as it cannot be proven that traffic movements district wide will not adversely impact upon the Forest, we have to take the stance that they will at the current time. As advised, whilst you may be able to demonstrate that the occupiers of the site will not increase such movements, this is not possible for delivery and service vehicles etc which wider routes will inevitably involve using roads which lead to the Forest.

There will be further information relating to the newly published Draft Proposed Submission of the Wealden Local Plan published last Friday and the implications for planning applications on our web site in the coming weeks.

Lastly it will be possible to withdraw the application and receive a refund of the fee prior to its registration, but you indicated that you wish to continue with this and will be forwarding the additional information required to Miss Collins shortly and I have returned the file to her for this purpose.

Mrs James

Judith James

South Team Leader

Wealden District Council

Planning and Environmental Services

Council Offices

Vicarage Lane

Hailsham

East Sussex

BN27 2AX

Tel: 01892 602475

e.mail: planning@wealden.gov.uk

www.wealden.gov.uk

Please note: This reply is furnished after appropriate enquiries and in belief that it is in accordance with the information at present available to the Officer of the Council, but on the distinct understanding that neither the Council nor any Officer of the Council is legally responsible therefore.

From: Zoe Wangler [mailto:zoe@ecologicalland.coop]
Sent: 07 March 2017 14:21
To: Judith James
Cc: Sharon Collins; David Saunders
Subject: Planning Application WD/2017/0340/F

[Quoted text hidden]

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Wealden District Council

APPENDIX [L]

Briefing Note:

Interim approach to assessing planning applications for potential impact on the Ashdown Forest SAC

In March 2017, the High Court handed down a judgment in relation to nitrogen deposition on the Ashdown Forest Special Area of Conservation (SAC). Wealden District Council brought a legal challenge against the Joint Core Strategy prepared by Lewes District Council and the South Downs National Park Authority. The legal challenge centred on the assessment of air quality impact on the Ashdown Forest SAC which was based on advice provided by Natural England. The *Wealden*[1] judgment found that the advice provided by Natural England on the in combination assessment was flawed and the outcome was that the judge quashed part of the Joint Core Strategy.

The potential air quality impacts on the Ashdown Forest SAC arise from additional nitrogen deposition resulting from increased traffic emissions as a consequence of new development. Natural England had advised that the Design Manual for Roads and Bridges (DMRB) could be used to assess air quality impacts applying the 1000 Annual Average Daily Traffic (AADT) methodology. It was advised that if the development proposals in a Plan by itself were calculated to be below 1000 AADT, then the air pollution impacts could be considered not significant and no further work would be needed.

The judge had to consider if development could be screened out for Habitats Regulations purposes if the development did not cause an increase of more than 1000 AADT on roads within and surrounding Ashdown Forest where the assessment looked at the effects of the development by itself (alone). However, the judge found that the advice provided by Natural England was erroneous and that an assessment of air quality impact should include other development proposals thus considering the in combination effect of nitrogen deposition from increased traffic.

The judgment suggests that planning applications will require a consideration of the potential in combination air quality impacts arising from the proposed development, however, the judge gave no ruling as to the practical effects of the judgment. The parameters for any assessment of traffic impact are now unclear beyond a general presumption that any development that is likely to lead to air quality impacts on the Ashdown Forest SAC in the form of additional traffic will need to be considered through a Habitats Regulations Assessment.

At present it is uncertain what form further advice from Natural England will take and when this will be completed, however, the judge supported the use of thresholds as a means of identifying which development can be eliminated from further consideration because of *de minimis* impacts. The Judge also did not necessarily hold the 1000 AADT threshold to be unlawful, rather that when assessing if the effects of a proposed development will exceed the 1000 AADT threshold, the in combination effects of other plans and projects also need to be included. It should also be noted that while the *Wealden* decision does not necessarily hold that the thresholds set out in the DMRB or elsewhere are inherently unlawful, it does raise questions as to whether in the spirit of the decision they remain defensible, even in combination, particularly without justification.

Mid Sussex District Council understands the considerable challenges and uncertainty that the *Wealden* decision has created and wishes to address the issues as practically as possible. The consequence is that District Council will need to assess each planning

[1] Wealden District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 351 (Admin) (20 March 2017): http://www.bailii.org/ew/cases/EWHC/Admin/2017/351.html.

application for its potential traffic impacts on Ashdown Forest. This is an interim approach until further guidance is issued to the District Council or further evidence becomes available.

Any advice given by Mid Sussex District Council should be considered in conjunction with the Habitats Directive, the Habitats Regulations, relevant Acts, relevant case law, planning policy, Government Circulars, and recognised European Commission and Government guidance. Applicants should satisfy themselves that all relevant and current policy, legislation, case law and guidance has been considered and complied with.

The aim of Mid Sussex District Council is to take a positive approach that both protects the integrity of the Ashdown Forest SAC and leads to practical and timely decision making. However, in consenting development in the District, Mid Sussex now needs to satisfy itself, before granting consent, that proposals, alone and in combination with other projects and plans, will not lead to adverse effects on the integrity of the Ashdown Forest SAC. These effects could arise from the nature of the development proposed or the effect of any additional traffic that is generated by the proposal.

In most cases, Mid Sussex District Council's suggested starting point is to identify the likely traffic effects from proposals, alone and in combination, and to proceed to the appropriate assessment stage of the Habitats Regulations Assessment where such effects cannot be ruled out.

To support the emerging Mid Sussex District Plan, the Council has undertaken a transport modelling exercise using the West Sussex Transport Model to consider the traffic effects of known development allocations. This is an in combination approach which includes growth assumptions for areas beyond the District, based on assumptions derived from Plans and the National Trip End Model (NTEM). This transport modelling exercise suggests that the proposed allocations of the District Plan, together with an allowance for windfall development, are unlikely to impact the SAC, subject to the final Habitats Regulations Assessment. This is, in part, because the major allocations of the District Plan are some distance from Ashdown Forest. The modelling exercise suggests that the influences of traffic through the Forest arise from both the location and the scale or type of development. There is no part of the District that can necessarily be excluded from the need for a screening assessment, although it is accepted that some types of development are unlikely to create additional traffic. It should also be noted that there is no agreed zone of influence for impacts on the SAC.

This transport modelling work will form the starting point for the District Council's assessment of the likelihood of any significant effects from proposals as they come forward. Where traffic generating proposals come forward which have already been tested as part of the District Plan, it is likely to be possible to 'screen out' the need for further assessment as long as the in combination growth assumptions used in the modelling remain valid. For cases which have not been tested, or where in combination growth circumstances have changed since the original modelling, further modelling will be required. In these cases, the recommended option would be to use the West Sussex Transport Model to assess proposals. Requests to use the model should be made through the District Council in order to ensure that the in combination assumptions are made consistently.

Where a proposal is assessed to have a likely impact on traffic through the Forest, the proposal will need to be subject to appropriate assessment. This assessment will identify the pollution effects of the additional traffic on the integrity of the SAC. While not necessarily the case that additional traffic through the Forest will be detrimental to the SAC, it is unlikely that the District Council will be able to make a decision until this absence of effect can be reasonably demonstrated. The District Council will discuss the approach needed for appropriate assessment with applicants and where appropriate, will undertake consultation with relevant statutory bodies.

At the screening or appropriate assessment stages, applicants may also propose additional measures to avoid significant effects, including mitigation. These will be considered practically in terms of their effectiveness in avoiding effects on the Ashdown Forest SAC.

The Council remains open to the discussion of other approaches and commits to work with surrounding local authorities, statutory agencies and Government to identify other ways to meet Habitats Regulations requirements in positive and practical ways.

The Council suggests the following in relation to specific applications:

1. Planning applications that can reasonably demonstrate that the proposed development will not result in additional traffic are unlikely to be affected. The District Council has already assessed these types of development as generally unlikely to lead to an increase in traffic:
    - Advert consent
    - Discharge of condition
    - Listed building consent
    - Minor householder, e.g. porch, conservatory, small extension, fencing, walls
    - Permitted development except where it is for the change of use of a building to flats and dwelling houses
    - Telecommunications
    - Tree works
    - Variation of condition

    The planning application can be submitted in the usual way. The Council will advise applicants of any concerns in relation to specific proposals.

2. For planning applications where the proposed development has been assessed through existing relevant District Council transport modelling (because they are allocations in the emerging District Plan, allocations in a neighbourhood plan or where they are within the modelled windfall capacity), it may be possible to screen out the need for further assessment. In all cases, the District Council will complete a Habitats Regulations Assessment Screening Report, which will set out the reasons for the screening opinion.

3. For planning applications where the proposed development has not been assessed through the Mid Sussex Transport Study, the District Council will need to satisfy itself on the potential traffic impacts as part of a Habitats Regulations Assessment in terms of screening and any further appropriate assessment. The Habitats Regulations, ref. Regulation 61(2), state that the applicant must provide information that the competent authority (Mid Sussex District Council) reasonably requires for the purposes of a Habitats Regulations Assessment. If further work is necessary, this is likely to mean transport evidence will need to be undertaken to indicate the level of impact that the proposed development will have on Ashdown Forest. Further advice will be issued to applicants in this situation.

It is recommended that an applicant contacts the District Council prior to submitting a planning application or at the pre-application stage to check how the planning application will be assessed and if any further transport evidence is required.

Should you have any questions about the interim approach or how a planning application will be assessed, then please contact Development Management on 01444 – 477566 or planninginfo@midsussex.gov.uk.

APPENDIX [M]

Submitted to Client:
South Downs National Park Authority and Lewes District Council

Submitted by:
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Scott House
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United Kingdom

South Downs National Park Authority Local Plan/Lewes Joint Core Strategy Habitats Regulations Assessment Addendum

Traffic-Related Effects on Ashdown Forest SAC

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Rev No	Comments	Date
1	Following legal review	15/09/17

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September 2017

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1 Executive Summary

1.1.1 In March 2017 a High Court judgment against the adopted Lewes/South Downs Joint Core Strategy (JCS)[1] concluded that the method that had been used in the JCS Habitat Regulations Assessment to rule out the potential for 'in combination' air quality effects from their plan on Ashdown Forest SAC was legally flawed, whether or not it complied with advice the Council had been given by Natural England, because it relied entirely on examining the flows arising from the JCS in isolation and took no account of the potential accumulation of growth from multiple authorities all affecting vehicle flows through the SAC, and the role (or not) of the JCS in any cumulative effect. In layman's terms, because the JCS used a shorthand assessment method agreed with Natural England, the HRA of the JCS *asserted* that its contribution was too small to contribute meaningfully to any 'in combination' effect but did not *demonstrate* that conclusion since it did not attempt to quantify the 'in combination' effect or demonstrate what the contribution of the JCS would actually mean in terms of changes in air quality.

1.1.2 AECOM was appointed to address the matter raised by the High Court judgment. That is the purpose of this HRA Addendum. Forecast vehicle flows on roads through Ashdown Forest in 2033 are compared with baseline flows on the same roads in order to ascertain the air quality effect. The relative contribution of growth in South Downs Local Plan/Lewes Joint Core Strategy (JCS) is then separated out from growth in other authorities in order to establish the relative contribution of the South Downs Local Plan/Lewes JCS to any change in air quality by 2033.

1.1.3 Nitrogen oxides (NOx) are the main pollutant emitted by traffic of relevance to vegetation, because they are a source of nitrogen, which is a fertiliser. The analysis shows that for all modelled links NOx concentrations within 200m of the roadside are forecast to be below the critical level (the concentration above which adverse effects may arise) by 2033 due to expected improvements in vehicle emissions and background, notwithstanding the projected increase in traffic on the road. The Lewes JCS/South Downs Local Plan is predicted to retard this improvement slightly (by up to 0.2 μgm^{-3}) within 20m of the A26 and A275. This is the worst-case retardation expected. Since the ecologically significant role of NOx is as a source of nitrogen the next step is to consider what effect this may have on nitrogen deposition rates.

1.1.4 Ashdown Forest SAC is designated for its heathland. The lowest part of the nitrogen Critical Load range for this habitat (the most stringent deposition rate above which adverse effects may occur) is 10 kg/N/ha/yr and as such baseline nitrogen deposition within 200m of the A26, A22 and A275 is above the Critical Load. However, notwithstanding the expected growth in traffic flows, nitrogen deposition is forecast to reduce by up to c. 1.9 kgN/ha/yr by 2033, although it is expected to remain above the critical load. In other words, the improvement in vehicle emission factors and in background nitrogen deposition rates expected over the period to 2033 are forecast to more than offset the increase in nitrogen deposition from an increase in the volume of vehicle movements.

1.1.5 On the A26 and A275 the South Downs Local Plan/Lewes JCS retards this improvement slightly, but only within 5m of the roadside and only by 0.01 kgN/ha/yr. This is so small that it is almost too small to appear in the model and is well within the probable limits of annual variation in background nitrogen deposition. It equates to 0.1% of the critical load or 0.08% of the deposition rate that would otherwise be expected by 2033. It is a sufficiently small amount (a total of 1 milligram of nitrogen[2] deposited per square metre over the course of a year) that it is ecologically insignificant and no retardation of any expected improvement in vegetation would occur. For example, data on lowland heathland[3] indicate that at deposition rates of c. 10-15kgN/ha/yr, an increase of 0.8 - 1.3 kgN/ha/yr would be required to lose one species from the sward. At higher background deposition rates (such as may apply at some parts of Ashdown Forest SAC) even greater additional nitrogen is required to remove one species. Growth stimulation responses that

[1] Wealden District Council vs Secretary of State for Communities and Local Government. Lewes District Council and South Downs National Park Authority and Natural England. [2017] EWHC 351 (Admin)

[2] For ease of comparison, a teaspoon of salt typically weighs 5000-6000 milligrams and a pinch of salt (c. $1/16^{th}$ of a teaspoon) weighs roughly 300 milligrams

[3] Caporn, S., Field, C., Payne, R., Dise, N., Britton, A., Emmett, B., Jones, L., Phoenix, G., S Power, S., Sheppard, L. & Stevens, C. 2016. Assessing the effects of small increments of atmospheric nitrogen deposition (above the critical load) on semi-natural habitats of conservation importance. Natural England Commissioned Reports, Number 210.

are not sufficiently severe to result in loss of species would occur before this scale of increase was achieved, but the very small magnitude of 0.01 kgN/ha/yr is evident[4]. Since the overall trend to 2033 is expected to be a positive one and will not be retarded to an ecologically significant extent by the South Downs Local Plan and JCS, there is thus not considered to be an adverse effect on the integrity of Ashdown Forest SAC in combination with growth arising from surrounding authorities.

1.1.6 Moreover, the Local Plan and Joint Core Strategy both contain sustainability policies (notably Local Plan policy SD19 (Transport and Accessibility) and Joint Core Strategy policy 13 (Sustainable Travel)) which are not factored into these traffic/air quality calculations and aspects of which have some potential to reduce the need for journeys to work by private vehicle towards Ashdown Forest; thus further reducing the already small contribution to increased vehicle movements on the A26 that is forecast to arise from the Local Plan and JCS.

1.1.7 Although it does not constitute mitigation (and is not presented as such), as a further safeguard the South Downs National Park Authority has also convened an Ashdown Forest Working Group which first met in April 2017. The shared objective of the working group is to ensure that impacts on the Ashdown Forest are properly assessed through HRA and that, if required, a joint action plan is put in place should such a need arise. It should be noted that the absence of any need for 'mitigation' associated with the scale of future growth in a particular authority does not prevent the Ashdown Forest authorities cooperatively working together to do whatever they jointly consider appropriate in reducing traffic and improving nitrogen deposition etc. around the Forest as a matter of general good stewardship, at least until 2040 after which it is likely an improvement in road-related air quality will start to be realised due to the Government's announcement to ban the sale of new petrol and diesel vehicles at that point. The aforementioned working group would be a suitable forum.

[4] To further illustrate the relative magnitude, Section 6.1 of Caporn et al (2016) describes increases in nitrogen deposition of 1-2kg N/ha/yr as '*relatively small increases'*.

2 Introduction

2.1.1 In the HRA of their adopted Joint Core Strategy (JCS), Lewes District Council used a 'change in flow' metric of 1,000 Annual Average Daily Traffic (AADT) as a basis to conclude that likely significant effects on the Ashdown Forest SAC due to changes in air quality would not arise either from their plan alone or their plan in combination with other projects and plans. This was because the expected change in flows due to the JCS on any road within 200m of Ashdown Forest SAC fell well below this metric. However, because this metric was used, no actual air quality calculations were undertaken and therefore no form of quantitative assessment examined the overall 'in combination' air quality effect from housing and employment growth in multiple authorities around the SAC.

2.1.2 In March 2017 a High Court judgment against the adopted Lewes/South Downs Joint Core Strategy[5] concluded that the simple application of the 1,000 AADT threshold as a basis to rule out the potential for 'in combination' effects from a plan in isolation was legally flawed (whether or not it complied with advice the Council had been given by Natural England) because the application of such a threshold to a single Local Plan in isolation explicitly took no account of the potential accumulation of growth. The judge did accept in paragraph 95 of the judgment that in principle there must be a change in flows (and thus air quality) which would make a *de minimis* contribution to an 'in combination' effect[6]. However, he determined that 1,000 AADT was an insufficiently precautionary threshold to be applied to a plan in isolation in the absence of further evidence to support its use in that way and in the absence of any attempt to put the contribution of Lewes JCS within the context of an 'in combination' analysis. In layman's terms, because the JCS used a shorthand assessment method agreed with Natural England, the HRA of the JCS *asserted* that that its contribution was too small to contribute meaningfully to any 'in combination' effect but did not *demonstrate* that conclusion since it did not attempt to quantify the 'in combination' effect or demonstrate what the contribution of the JCS would actually mean in terms of changes in air quality.

2.1.3 AECOM was appointed to address the matter raised by the High Court judgment. That is the purpose of this HRA Addendum. Transport modelling and air quality calculations have been undertaken for the adopted Lewes Joint Core Strategy and the emerging South Downs Local Plan (taken collectively). Due to the way in which such modelling and calculations are undertaken they calculate the expected 'future year' air quality adjacent to a road link as a result of the total cumulative growth in traffic expected from local authorities around Ashdown Forest SAC and further afield. The calculations are therefore inherently 'in combination' by virtue of the fact that they consider traffic growth by 2033 irrespective of point of origin. This therefore addresses the High Court judgement, which was based on the fact that there was no evidence of consideration of the effects of growth from the JCS area cumulatively with growth elsewhere over the same period[7]. The methodology used in this analysis is therefore compliant with the requirement of the Conservation of Habitats and Species Regulations 2010 (as amended) to consider whether an adverse effect on the integrity of a European site will result either alone, or in combination with other plans and projects.

2.1.4 In addition to determining the total cumulative 'in combination' effect on roadside air quality at Ashdown Forest SAC, the calculations presented in this analysis also consider the contribution of the Lewes JCS and South Downs Local Plan to that 'in combination' effect. This is necessary to determine whether the contribution is ecologically material and thus whether mitigation of that contribution is required. This is relevant to determining whether the contribution of the Lewes JCS and South Downs Local Plan to any 'in combination' effect is (to use the words of Justice Jay in paragraph 95 of the High Court judgment) '*very low indeed*'.

[5] Wealden District Council vs Secretary of State for Communities and Local Government. Lewes District Council and South Downs National Park Authority and Natural England. [2017] EWHC 351 (Admin)

[6] *'… I can well see that distinctions may be capable of being drawn in practice because if it is known that specific impacts are very low indeed, or are likely to be such, these can properly be ignored…'*

[7] The HRA of the Lewes Joint Core Strategy also included an analysis of air quality effects on the Lewes Downs SAC. However, the assessment relating to that SAC was not challenged because air quality calculations were undertaken, 'in combination' with growth arising from all sources and the HRA for that European site was therefore legally compliant.

3 Methodology

3.1.1 Vehicle exhaust emissions only have a local effect within a narrow band along the roadside, within 200m of the centreline of the road. Beyond 200m emissions are considered to have dispersed sufficiently that atmospheric concentrations are essentially background levels. The rate of decline is steeply curved rather than linear. In other words concentrations will decline rapidly as one begins to move away from the roadside, slackening to a more gradual decline over the rest of the distance up to 200m.

3.1.2 There are two measures of relevance regarding air quality impacts from vehicle exhausts. The first is the concentration of oxides of nitrogen (known as NOx) in the atmosphere. In extreme cases NOx can be directly toxic to vegetation but its main importance is as a source of nitrogen, which is then deposited on adjacent habitats. The guideline atmospheric concentration advocated by Government for the protection of vegetation is 30 micrograms per cubic metre (μgm^{-3}), known as the Critical Level, as this concentration relates to the growth effects of nitrogen derived from NOx on vegetation.

3.1.3 The second important metric is a measure of the rate of the resulting nitrogen deposition. The addition of nitrogen is a form of fertilization, which can have a negative effect on heathland and other habitats over time by encouraging more competitive plant species that can force out the less competitive species that are more characteristic. Unlike NOx in atmosphere, the nitrogen deposition rate below which we are confident effects would not arise is different for each habitat. The rate (known as the Critical Load) is provided on the UK Air Pollution Information System (APIS) website (www.apis.ac.uk) and is expressed as a quantity (kilograms) of nitrogen over a given area (hectare) per year ($kgNha^{-1}yr^{-1}$).

3.1.4 For completeness, rates of acid deposition have also been calculated. Acid deposition derives from both sulphur and nitrogen. It is expressed in terms of kiloequivalents (keq) per hectare per year. The thresholds against which acid deposition is assessed are referred to as the Critical Load Function. The principle is similar to that for a nitrogen deposition Critical Load but it is calculated very differently.

3.2 Traffic modelling

3.2.1 A series of road links within 200m of Ashdown Forest Special Area of Conservation (SAC) were identified for investigation. These links were chosen as they are all representative points on the busiest roads through the SAC. Traffic data were generated for each of these links for three scenarios:

- Base Case
- Do Nothing (DN)
- Do Something (DS)

3.2.2 The Base Case uses measured flows, percentage Heavy Duty Vehicles (HDVs) and average vehicle speeds on the relevant links, as provided by Wealden District Council (WDC). The Wealden traffic counts were undertaken in 2014. For the purposes of consistency with the other traffic modelling used to inform the Habitat Regulations Assessment (HRA) of the South Downs Local Plan, which use measured traffic counts from 2017, these data were 'grown' by AECOM transport planners to 2017. Since the South Downs Local Plan is backdated to 2014 and the Joint Core Strategy to 2010, this means that housing and employment development that has been delivered and occupied prior to 2017 is allowed for in the measured baseline flows. However, this is also true for all other local authorities, so there is no disparity in treatment of local authorities in the modelling. Development that has been consented but not actually completed/occupied does not appear in the baseline flows.

3.2.3 The Do Nothing scenario shows future flows on the same roads at the end of the South Downs Local Plan period (2033), without consideration of the role of the South Downs Local Plan or of the Lewes Joint Core Strategy. This therefore presents the expected contribution of other plans and projects to flows by 2033. The end of the Local Plan period has been selected for the future scenario as this is the point at which the total emissions due to South Downs Local Plan/JCS

traffic will be at their greatest. The scenario is calculated by extrapolating the observed traffic data. The Do Nothing scenario adds all traffic growth from 2017 to 2033 that will result in additional journeys on the modelled road links.

3.2.4 For the purposes of 'in combination' assessment (i.e. incorporating growth into the model due to multiple Local Plans and Core Strategies for surrounding authorities) it was decided that modelling the adopted Local Plans directly would not reflect actual housing growth in those authorities between 2017 and 2033 because:

1. Since most commence in 2006 they include a large number of allocations that are historic (i.e. already delivered and occupied) and these are already part of the measured base flows.
2. Adopted plans for these authorities may not accurately reflect growth over the period 2017 to 2033 because, with the exception of Lewes Joint Core Strategy, all the adopted plans for the boroughs/districts immediately around Ashdown Forest SAC finish seven years before the South Downs Local Plan, which runs to 2033 whereas the adopted plans (other than the Lewes JCS) all run to 2026 or 2027. This means that there will be 6-7 years of growth which is not covered by most adopted plans.

3.2.5 Expected development in these authorities over the period 2017 to 2033 was therefore included in the model by using the National Trip End Model Presentation Program (TEMPRO). TEMPRO produces a growth factor that is applied to the measured flows. It is based on data for each local authority district in the UK (distributed by statistical Middle Layer Super Output Area[8]) regarding future changes in population, households, workforce and employment (in addition to data such as car ownership) but is not limited to a given period of time. Traffic growth factors are utilised for the statistical Middle Layer Super Output Areas (MSOAs) within which the modelled links are located. TEMPRO has the advantages of being forecastable to 2033 and beyond, using growth assumptions that are regularly updated and distributed to the level of Middle-Layer Super Output Area (of which there are 21 in Wealden District alone) and of being an industry standard database tool across England meaning that modelling exercises that use TEMPRO will have a high degree of consistency.

3.2.6 The authorities immediately surrounding Ashdown Forest are those in which development is most likely to influence annual average daily traffic flows through the SAC. For those authorities (Wealden, Mid-Sussex, Tunbridge Wells, Sevenoaks and Tandridge) scrutiny of the relevant adopted Local Plans or Core Strategies and the associated housing growth rates in TEMPRO resulted in the conclusion that the adopted plans (and TEMPRO) may currently underestimate growth to 2033 and this could in turn materially affect the estimation of 2033 AADT flows on the relevant roads. The decision was therefore made to raise the growth allowances for these authorities to reflect their most recent Objectively Assessed Need (OAN)[9]. The OAN figure was derived from published information released by the Councils themselves or (in the case of Mid-Sussex) by their Local Plan inspector. Although housing growth rates were adjusted upwards, expected broad housing distributions were not altered. Employment growth assumptions in TEMPRO for these authorities were not adjusted. The authorities and their quanta and broad distributions of housing growth as considered in our analysis are as follows:

- **Tunbridge Wells** – The adopted Core Strategy plans for 6,000 additional homes from 2006 to 2026 (300 dwellings per annum) with the majority (70%) in Royal Tunbridge Wells. The new Local Plan is currently in the early stages of development. The most recent Objectively Assessed Need for Tunbridge Wells is 648 dwellings per annum. Since this is a substantial difference from that in the adopted Core Strategy the higher rate was used in the model.

- **Sevenoaks** – The adopted Core Strategy allows for 3,000 dwellings from 2006 to 2026 or 165 dwellings per annum. Distribution is almost 40% in Sevenoaks itself, with 18% in Swanley and 11% in Edenbridge. The new Local Plan is in the early stages of development. The most recent Objectively Assessed Need for Sevenoaks is 620 dwellings per annum. Since this is a substantial difference from that in the adopted Core Strategy the higher rate was used in the model.

[8] Middle Layer Super Output Areas are a geographical hierarchy designed to improve the reporting of small area statistics in England and Wales. They are a series of areas each of which has a minimum population of 5,000 residents. They have a mean population of 7,200 residents.
[9] Note that the Objectively Assessed Need figures are as of June 2017

- **Wealden** – Adopted Local Plan Core Strategy Policy WCS1 specifies delivery of 4,525 dwellings over the period 2010 to 2027 (266 per annum). A new draft Local Plan has been consulted upon but is currently being updated and revised. Growth in Uckfield and Crowborough (as well as smaller settlements around the SAC such as Maresfield) is most likely to affect flows through the SAC, although development across the district is likely to contribute cumulatively. At Uckfield '*The* [adopted] *Local Plan will allow for a redevelopment of the towns retail centre providing some 10,000 m² of new retail space as well as the creation of 12,650 m² of employment space. It limits to 1000 the number of new homes to be built between now and 2027, and identifies Ridgewood as the most sustainable place for the growth needed to support the vibrancy of the town'*.[10] The main focus of growth at Uckfield is an urban extension to the west of the town. At Crowborough: '*Wealden's* [adopted] *Core Strategy Local Plan, approved in 2012, allows for a significant amount of new housing in Crowborough, with supporting office space and commercial premises within the town at appropriate locations. It will see some 450 new houses built in existing settlements across Wealden each year up until 2027… Within Crowborough the Local Plan allows for some 140 new homes to be built in the town at Pine Grove and Jarvis Brook. It also allows for 160 new homes to be built in an urban extension to the south east of the town.'*[11] The most recent Objectively Assessed Need for Wealden is 832 dwellings per annum. Since this is a substantial difference from that in the published Core Strategy the higher rate was used in the model, although it is accepted that this may overestimate the scale of growth that the next iteration of Wealden Local Plan actually proposes for the district.

- **Mid-Sussex** – The submitted Local Plan (2014 – 2031) plans for 13,600 dwellings (800 dwellings per annum). A large part of the housing and employment development is intended to consist of a new strategic development (3,500 dwellings) north of Burgess Hill, 13km south-west of the SAC, as well as existing commitments in that same settlement. The submitted plan also proposes 600 dwellings at Pease Pottage, 12km west of the SAC and smaller levels of growth elsewhere. Housing in East Grinstead (and to a lesser extent Haywards Heath) is most likely to be relevant to flows through Ashdown Forest as East Grinstead lies on the A22 approximately 4km north of the SAC. These are both Category 1 settlements in the Local Plan's hierarchy and can therefore be expected to take a sizeable proportion of the dwellings expected to be allocated 'elsewhere in the district' over the plan period according to policy DP5. During the plan's Examination in Public, the Inspector identified in February 2017 that he was minded to increase the growth rate from 800 per annum to 1,026 per annum. Although it is now understood that number may be reduced, the 1,026 figure has been used in this analysis to be precautionary.

- **Tandridge** – The adopted Core Strategy expects 2,500 dwellings from 2006 to 2026 at an average rate of 125 dwellings per annum. The majority of development will take place within the existing built up areas of Caterham, Warlingham, Whyteleafe, Oxted and Hurst Green. The new Local Plan is in the early stages of development (broad strategy published in March 2017 but no information on detailed scale or location of growth) with a forthcoming Garden Village consultation in autumn 2017. The most recent Objectively Assessed Need for Tandridge is 470 dwellings per annum. Since this is a substantial difference from that in the published Core Strategy the higher rate was used in the model as a precaution, although it is accepted that the level of growth in the final Local Plan for Tandridge may be less than this number.

3.2.7 The Do Nothing (and thus Do Something) Scenario is therefore intentionally precautionary and allows for growth over the period to 2033 beyond that in adopted (or even published draft) Local Plans in those authorities immediately surrounding Ashdown Forest SAC.

3.2.8 The Do Something scenario reflects the combined role of the South Downs Local Plan, Lewes Joint Core Strategy and subsidiary Neighbourhood Plans by 2033, in addition to growth in other authorities. Detailed modelling of Local Plan/Neighbourhood Plan growth locations undertaken by the AECOM transport planning team was added to the adjusted TEMPRO growth for all other

[10] http://www.wealden.gov.uk/Wealden/Residents/Planning_and_Building_Control/Planning_Policy/CoreStrategy/Planning_Core_Strategy_Uckfield.aspx (accessed 05/09/17)

[11] http://www.wealden.gov.uk/Wealden/Residents/Planning_and_Building_Control/Planning_Policy/CoreStrategy/Planning_Core_Strategy_Crowborough.aspx (accessed 05/09/17)

authorities. To build the Local Plan model, housing and employment sites in Lewes District and the National Park (allocations in the Local Plan, Joint Core Strategy, allocations in Neighbourhood Plans, unimplemented planning permissions and windfall) were geographically assigned to 'distribution groups' across the National Park and Lewes District using GIS software. The distribution of each of these groups was calculated using Census 2011 journey to work data, and the trips associated with each distribution group then manually assigned across the network.

3.2.9 The 'in combination' growth scenario is therefore the Do Something flows, as these include existing traffic, all future journeys arising from within the South Downs National Park and Lewes District due to the Local Plan, Joint Core Strategy or Neighbourhood Plan proposals (from AECOM's model), and future traffic arising from all other authorities (from TEMPRO, adjusted for expected higher growth rates in some authorities). The difference between the Do Something scenario and the Do Nothing scenario illustrates the role of the Local Plan/Joint Core Strategy (and Neighbourhood Plans) in changing future flows compared to what would be expected without the Local Plan/Joint Core Strategy proposals. Some links see increases compared to Do Nothing (where trips are concentrated due to the scale and location of development in the Local Plan/Joint Core Strategy) and some see slight decreases[12].

3.3 Air quality calculations

3.3.1 Using these scenarios and information on average vehicle speeds and percentage Heavy Duty Vehicles (both of which influence the emissions profile), AECOM air quality specialists calculated expected NOx concentrations, nitrogen deposition rates and acid deposition rates for all modelled road links. The predictions are based on the assessment methodology presented in Annex F of the Design Manual for Roads and Bridges (DMRB), Volume 11, Section 3, Part 1 (HA207/07)[13] for the assessment of impacts on sensitive designated ecosystems due to highways works. Background data were sourced from the Department of Environment, Food and Rural Affairs (Defra) background maps[14] [15].

3.3.2 Given that the assessment year (2033) is a considerable distance into the future, it is important for the air quality calculations to take account of improvements in background air quality and vehicle emissions that are expected nationally over the plan period. Making an allowance for a realistic improvement in background concentrations and deposition rates is in line with the Institute of Air Quality Management (IAQM) position[16] as well as that of central government. Background nitrogen deposition rates were sourced from the Air Pollution Information System (APIS) website[17]. Although in recent years improvements have not kept pace with predictions, the general long-term trend for NOx has been one of improvement (particularly since 1990) despite an increase in vehicles on the roads[18]. The current DMRB guidance for ecological assessment suggests reducing nitrogen deposition rates by 2% each year between the base year and assessment year. However, due to some uncertainty as to the rate with which projected future vehicle emission rates and background pollution concentrations are improving, the precautionary assumption has been made in this assessment that not all improvements projected by Defra will occur. Therefore, the air quality calculations assume that conditions in 2023 (an approximate midpoint between the base year and the year of assessment) are representative of conditions in 2033 (the year of assessment). This approach is accepted within the professional air quality community and accounts for known recent improvements in vehicle technologies (new standard Euro 6/VI vehicles), whilst excluding the more distant and therefore more uncertain projections on the evolution of the vehicle fleet. No discussion is made in this analysis of the UK Government's recent decision to ban the sale of new petrol and diesel vehicles from 2040 since it

[12] Note that these 'decreases' simply indicate lower flows than the Do Nothing forecasts and are essentially a modelling artefact due to the slightly different ways that TEMPRO and the AECOM model assign journeys to the network; compared to measured base flows there is always a net increase

[13] Design Manual for Roads and Bridges, HA207/07, Highways Agency

[14] Air Quality Archive Background Maps. Available from: http://laqm.defra.gov.uk/review-and-assessment/tools/background-maps.html

[15] It is understood that measured data exists for Ashdown Forest but they were not available at the time this analysis was undertaken. The use of any measurement data for Ashdown Forest would likely change the absolute concentrations and deposition rates presented in this analysis but not the overall trends or conclusions with regard to the South Downs Local Plan/Lewes Joint Core Strategy

[16] http://www.iaqm.co.uk/text/position_statements/vehicle_NOx_emission_factors.pdf

[17] Air Pollution Information System (APIS) www.apis.ac.uk

[18] Emissions of nitrogen oxides fell by 69% between 1970 and 2015. Source: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579200/Emissions_airpollutants_statisticalrelease_2016_final.pdf [accessed 08/06/17]

would not affect the time period under consideration, but that announcement illustrates the general long-term direction of travel for roadside air quality in the UK and underlines that allowing for improvements in both vehicle emissions factors and background rates of deposition over long timescales is both appropriate and realistic.

3.3.3 Annual mean concentrations of NOx were calculated at varied intervals back from each road link, with the closest distance being the closest point of the designated site to the road. Predictions were made using the latest version of ADMS-Roads using emission rates derived from the Defra Emission Factor Toolkit (version 6.0.2) which utilises traffic data in the form of 24-hour Annual Average Daily Traffic (AADT), detailed vehicle fleet composition and average speed. The tables in Appendix A present the calculated changes in NOx concentration, nitrogen deposition and acid deposition 'in combination' (i.e. the difference between Do Something and the 2017 Base case) and the role played by Local Plan/Joint Core Strategy development compared to that which would occur in any case over the plan period (i.e. the difference between Do Something and Do Nothing).

4 Results

4.1 Traffic modelling

4.1.1 The flows forecast by 2033, and how these differ between Do Nothing (without the Local Plan/JCS) and Do Something (including the Local Plan and JCS) are presented below.

A	B	C	D	E	F	G	H	I
Link ID	**Link Description**	**Wealden Model Base 2014 AADT**	**2017 Base AADT**	**2033 DN AADT**	**2033 DS AADT**	**Difference between 2017 Base and DS (all traffic growth)**	**Difference between 2017 DN and DS (contribution of South Downs Local Plan/JCS)[19]**	**Percentage growth from 2017-2033 attributable to South Downs Local Plan/JCS**
6	A22 Royal Ashdown Forest Golf Course	11,480	11,509	13,474	13,581	2,072	107	5%
33	A22 Wych Cross	12,340	12,371	14,483	14,460	2,089	-23	0%
34	A22 Nutley	11,360	11,389	13,333	13,317	1,928	-16	0%
37	A275 Wych Cross	4,530	4,542	5,317	5,515	973	198	20%
38	A26 Poundgate	16,150	16,191	18,955	19,215	3,024	260	9%

4.1.2 All links are forecast to experience an increase in traffic flows between 2017 and 2033 when all expected traffic growth sources (including the South Downs Local Plan/Lewes JCS) are taken into account (columns E and F). The increase including the South Downs Local Plan/Lewes JCS (column G) varies from c. 1,000 AADT on the A275 to c. 3,000 AADT on the A26. Although the busiest link is the A26, 'busy' is a relative term. The total measured 2014 flows on this part of the A26 (column C) are not particularly high in themselves. For comparison, traffic counts in 2017 have identified that the A3 in the west of the South Downs National Park has base flows of 47,000 AADT.

4.1.3 The contribution of the Local Plan/Joint Core Strategy growth to this change (column H) is small, ranging from effectively zero (links 33 and 34) to a further 260 journeys per day on the A26 by 2033. The greatest change in flows is forecast to occur on the A26, while the A275 is the link on which the Lewes JCS/South Downs Local Plan is forecast to make their greatest proportional contribution to the expected change in flows (20%). However, this is also the modelled link with the lowest overall traffic flows, having total flows in 2014 of just 4,530 AADT. The small contribution of growth in the South Downs and Lewes District is most likely to be a function of the distance between the population centres in Lewes District/South Downs National Park and the modelled links, and thus the small role these links play in daily journeys to work for residents of these areas.

4.2 Air quality calculations

4.2.1 Based on background mapping, adjusted for the effect of the road, the air quality calculations provided in Appendix A show that the baseline NOx concentrations are above the 30 μgm^{-3} general Critical Level for vegetation up to 20m from the roadside along the A26 at Poundgate (link 38) and the A275 at Wych Cross (link 37) and on one of the modelled transects along the A22 within the vicinity of Royal Ashdown Forest Golf Course (link 6). For all other links, NOx

[19] NB. For reasons already explained, a slight negative result essentially denotes no expected effect on the modelled road from the DS scenario compared to the DN scenario.

concentrations are currently identified as being below the critical level even at the roadside. Such a result would be unsurprising given the modest measured traffic flows on even the busiest road (the A26) and the essentially rural location of Ashdown Forest.

4.2.2 Under the DN scenario (without the Local Plan/Joint Core Strategy), concentrations are forecast to reduce to below the critical level on all three of these links by 2033 due to changes in vehicle emissions, notwithstanding the projected increase in traffic on the road. On the A26 and A275, this improvement in NOx concentrations is forecast to be retarded slightly by up to 0.2 μgm^{-3} within 20m of the roadside when Local Plan/JCS growth is taken into account, while a nominal retardation of 0.1 μgm^{-3} at the roadside is forecast from some of the transects along the A22 at Royal Ashdown Forest Golf Course (link 6). However, concentrations are forecast to remain below the critical level in all cases. Since the ecologically significant role of NOx is as a source of nitrogen the next step is to consider what effect the slight retardation of improvement may have on nitrogen deposition rates[20].

4.2.3 Ashdown Forest SAC is designated for its heathland. It has been assumed for the purposes of this analysis that functional heathland is present (or could be present with suitable management) throughout any or all of the 200m transects modelled in this analysis. In practice this is unlikely to be the case due to other factors associated with the presence of the road e.g. presence/retention of dense tree planting as a screen from the road, effects of salt deposition, or changes to local geology and hydrology when the road was constructed or re-surfaced, or where roadside services or drainage have been installed. However those potential factors have not been included in this analysis, which assumes pristine heathland. It is therefore an inherently precautionary assessment. Critical loads are always presented as a range, which for heathland is 10 kgN/ha/yr to 20 kgN/ha/yr[21]. The lowest part of the nitrogen Critical Load range has been used in this assessment as that is the most precautionary stance to take, although it is possible that the actual critical load could be a higher figure. That also makes the analysis reported in this document a precautionary assessment (as does the assumption of higher housing growth rates than contained in adopted Local Plans as reported earlier). The baseline for nitrogen deposition within 200m of the A26, A22 and A275 is above the Critical Load at c.14-15 kgN/ha/yr. Under both the DN and DS scenarios nitrogen deposition is expected to remain above the critical load, but is forecast to reduce by up to c. 1.9 kgN/ha/yr to 2033 notwithstanding overall growth in flows on the road. In other words, the improvement in vehicle emission factors and in background nitrogen deposition rates expected over the period to 2033 are forecast to more than offset the increase in nitrogen deposition from an increase in the volume of vehicle movements.

4.2.4 For the A26 and A275 the DS scenario (factoring in the Local Plan/JCS) retards this improvement slightly but only within 5m of the roadside and only by 0.01kgN/ha/yr[22]. If the contribution were only slightly smaller it would not appear in the model at all. It equates to 0.1% of the critical load or 0.08% of the forecast 2033 DN deposition rate and is likely to be well within the normal limits of annual variation in deposition rates. It is a sufficiently small amount (a total of 1 milligram of nitrogen[23] deposited per square metre over the course of a year) that it is ecologically insignificant and no retardation of any expected improvement in vegetation would occur, given that no habitats that have been studied to date are responsive to such very small incremental changes in nitrogen deposition. For example, data on dose response relationships in lowland heathland[24] indicate that at deposition rates of c. 10-15kgN/ha/yr (representative of current and forecast future deposition rates in this area using background mapping of deposition

[20] Acid deposition rates for all transects on all modelled links are expected to improve over the plan period and the contribution of the South Downs Local Plan/JCS to any retardation of that improvement is zero, in that any contribution is too small to show in the model (i.e. it would affect the third decimal place or beyond, which are never reported in modelling). Acid deposition is therefore not discussed further in this document.

[21] APIS advises to use the high end of the range with high precipitation and the low end of the range with low precipitation and to use the low end of the range for systems with a low water table, and the high end of the range for systems with a high water table.

[22] There is always an element of uncertainty in the modelling of future traffic flows, as with any form of forecasting. However, the assessment is based on the best available data, with traffic projections based on current methodologies. The worst-case predicted impact of the change in traffic flows on nitrogen deposition due to growth to 2033 in Lewes District and the South Downs National Park is so low (0.01 KgN/ha/yr) that variations in future predicted traffic flows would not materially affect the conclusions of this assessment. For example, even if the 2033 nitrogen deposition due to the Lewes JCS/South Downs Local Plan proved to be double that forecast in this analysis (0.02 KgN/ha/yr) it would remain a very small contribution and would not affect the interpretation and conclusions presented in this report.

[23] For ease of comparison, a teaspoon of salt typically weighs 5000-6000 milligrams and a pinch of salt (c. $1/16^{th}$ of a teaspoon) weighs roughly 300 milligrams

[24] Caporn, S., Field, C., Payne, R., Dise, N., Britton, A., Emmett, B., Jones, L., Phoenix, G., S Power, S., Sheppard, L. & Stevens, C. 2016. Assessing the effects of small increments of atmospheric nitrogen deposition (above the critical load) on semi-natural habitats of conservation importance. Natural England Commissioned Reports, Number 210.

rates) an increase of 0.8 - 1.3 kgN/ha/yr would be required to lose one species from the sward (Appendix B). An even greater increase would be required if actual measured deposition rates are shown to be substantially higher than those extrapolated from Defra mapping; for example, at background deposition rates of 30 kgN/ha/yr an additional 2.4 kgN/ha/yr would be required to reduce the average species richness of the sward by one species. Growth stimulation responses that are not sufficiently severe to result in loss of species would occur at some point before this scale of increase was achieved, but the very small magnitude of 0.01 kgN/ha/yr is evident.

4.2.5 Even in the very unlikely event that there was no improvement in either background nitrogen deposition rates or vehicle emission factors by 2033 (and was thus a net deterioration in deposition rates once total traffic growth over the same period was included) the relative contribution of the additional traffic on the network due to the Lewes Joint Core Strategy and South Downs Local Plan taken together would be essentially identical to that discussed above[25] and thus the conclusion regarding the ecological importance of the contribution to any overall effect 'in combination' would remain the same.

4.2.6 The development of nitrogen dose-response relationships for various habitats clarifies the rate of additional nitrogen deposition required to achieve a measurable effect on heathland vegetation (defined in available metrics as whether or not it will result in the loss of at least one species from the sward). This in turn makes it possible to gauge whether a given plan is not just of small magnitude (in which event it could still contribute meaningfully to an effect 'in combination') but of such small magnitude that its contribution would exist in theory (in the second decimal place of the air quality model), but not in practice (on the ground). Such a plan would be one in which one could say with confidence that a) there would not be a measurable difference in the vegetation whether or not that plan proceeded and b) there would not be a measureable effect on the vegetation (and thus protection conveyed to the European site) whether or not the contribution of that plan was 'mitigated' (i.e. reduced to such an extent that it did not appear in the model at all). It would clearly be unreasonable to claim that such a plan caused an adverse effect 'in combination' or that it should be mitigated. The contribution of the Lewes Joint Core Strategy and South Downs Local Plan falls well within those parameters.

4.2.7 Since the overall trend to 2033 is expected to be a positive one and will not be retarded to an ecologically significant extent by the South Downs Local Plan and JCS, there is thus not considered to be an adverse effect on the integrity of Ashdown Forest SAC in combination with growth arising from surrounding authorities. Moreover, the Local Plan and Joint Core Strategy both contain sustainability policies (notably Local Plan policy SD19 (Transport and Accessibility) and Joint Core Strategy policy 13 (Sustainable Travel)) which are not factored into these traffic/air quality calculations and aspects of which have some potential to reduce the need for journeys to work by private vehicle towards Ashdown Forest; thus further reducing the already small contribution to increased vehicle movements on the A26 that is forecast to arise from the Local Plan and JCS. For information, these policies are presented in Appendix C.

4.2.8 Although it does not constitute mitigation (and is not presented as such), as a further safeguard the SDNPA has also led on convening an Ashdown Forest working group which first met in April 2017. The shared objective of the working group is to ensure that impacts on the Ashdown Forest are properly assessed through HRA and that, if required, a joint action plan is put in place should such a need arise. It should be noted that the absence of any need for 'mitigation' associated with future growth in a particular authority does not prevent the various Ashdown Forest authorities cooperatively working together to do whatever they jointly consider appropriate in reducing traffic and improving nitrogen deposition etc. around the Forest as a matter of general good stewardship, at least until 2040 after which it is likely an improvement in road-related air quality will start to be realised due to the Government's announcement to ban the sale of new petrol and diesel vehicles at that point. This would also enable future trends in air quality to be tracked and the modelling (and responses to that modelling) to be updated as necessary. The aforementioned working group would be a suitable forum for this cooperative working.

[25] Modelling of a 'no improvement' scenario indicates that the worst-case contribution of the JCS/Lewes Local Plan to nitrogen deposition on the A26 by 2033 would rise slightly (due to the assumption of no improvement in emission factors) from 0.01 KgN/ha/yr to 0.02 KgN/ha/yr at the same location.

5 Conclusion

5.1.1 It can therefore be concluded that no adverse effect upon the integrity of Ashdown Forest SAC is expected to result from development provided by the South Downs Local Plan and Lewes Joint Core Strategy, even in combination with other plans and projects. This is due to a combination of a) an expected net improvement in air quality over the Local Plan period and b) the fact that, whether or not that improvement occurs to the extent forecast, the contribution of the South Downs Local Plan and Lewes Joint Core Strategy to changes in roadside air quality is demonstrably ecologically negligible due to the very small magnitude. In the words of Mr. Justice Jay in his judgement regarding the Joint Core Strategy Judicial Review when discussing when a *de minimis* conclusion would be appropriate: '*…if it is known that specific impacts are very low indeed, or are likely to be such, these can properly be ignored…'*[26]. This therefore supports the original conclusion of the HRA of the Lewes JCS.

[26] Wealden District Council vs Secretary of State for Communities and Local Government. Lewes District Council and South Downs National Park Authority and Natural England. [2017] EWHC 351 (Admin). Paragraph 95 of the judgment

Appendix A. Detailed Modelling Results

Receptor 38: the A26 at Poundgate

Lookup ID	Road Link	Distance From Road (m)	Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
			BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)
1	38_0m	0	35.7	25.5	25.7	0.2	-9.9	14.23	12.34	12.35	0.01	-1.87	1.12	1.07	1.07	0.00	-0.04
2	38_5m	5	25.8	18.9	19.0	0.1	-6.8	13.72	12.00	12.00	0.01	-1.72	1.06	1.04	1.04	0.00	-0.03
3	38_10m	10	21.5	15.9	16.0	0.1	-5.5	13.50	11.84	11.85	0.00	-1.65	1.04	1.02	1.02	0.00	-0.02
4	38_15m	15	19.2	14.4	14.4	0.1	-4.7	13.37	11.76	11.76	0.00	-1.62	1.03	1.01	1.01	0.00	-0.01
5	38_20m	20	17.7	13.3	13.4	0.1	-4.3	13.29	11.70	11.70	0.00	-1.59	1.02	1.01	1.01	0.00	-0.01
6	38_30m	30	15.8	12.1	12.1	0.0	-3.7	13.20	11.63	11.64	0.00	-1.56	1.01	1.00	1.00	0.00	-0.01
7	38_40m	40	14.8	11.4	11.4	0.0	-3.4	13.14	11.59	11.60	0.00	-1.54	1.00	1.00	1.00	0.00	-0.01
8	38_50m	50	14.1	10.9	10.9	0.0	-3.2	13.10	11.57	11.57	0.00	-1.53	1.00	0.99	0.99	0.00	-0.01
9	38_60m	60	13.6	10.5	10.6	0.0	-3.0	13.07	11.55	11.55	0.00	-1.52	1.00	0.99	0.99	0.00	0.00
10	38_70m	70	13.2	10.3	10.3	0.0	-2.9	13.05	11.53	11.54	0.00	-1.52	0.99	0.99	0.99	0.00	0.00
11	38_80m	80	12.9	10.1	10.1	0.0	-2.8	13.03	11.52	11.52	0.00	-1.51	0.99	0.99	0.99	0.00	0.00
12	38_90m	90	12.7	9.9	9.9	0.0	-2.7	13.02	11.51	11.52	0.00	-1.51	0.99	0.99	0.99	0.00	0.00
13	38_100m	100	12.5	9.8	9.8	0.0	-2.7	13.01	11.51	11.51	0.00	-1.50	0.99	0.99	0.99	0.00	0.00
14	38_125m	125	12.1	9.5	9.5	0.0	-2.6	12.99	11.49	11.49	0.00	-1.50	0.99	0.99	0.99	0.00	0.00
15	38_150m	150	11.9	9.4	9.4	0.0	-2.5	12.98	11.48	11.48	0.00	-1.49	0.99	0.98	0.98	0.00	0.00
16	38_175m	175	11.7	9.2	9.2	0.0	-2.4	12.97	11.48	11.48	0.00	-1.49	0.99	0.98	0.98	0.00	0.00
17	38_200m	200	11.5	9.1	9.1	0.0	-2.4	12.96	11.47	11.47	0.00	-1.49	0.98	0.98	0.98	0.00	0.00

Receptor 37W – A275 at Wych Cross

Lookup ID	Road Link	Distance From Road (m)	Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
			BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)
18	37W_0m	0	18.7	14.3	14.5	0.2	-4.2	14.21	12.52	12.53	0.01	-1.68	1.09	1.08	1.08	0.00	-0.01
19	37W_5m	5	15.6	12.2	12.3	0.1	-3.4	14.04	12.40	12.41	0.01	-1.64	1.07	1.07	1.07	0.00	-0.01
20	37W_10m	10	14.5	11.4	11.4	0.1	-3.1	13.98	12.36	12.36	0.00	-1.62	1.07	1.06	1.06	0.00	0.00
21	37W_15m	15	13.9	10.9	11.0	0.1	-2.9	13.95	12.34	12.34	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
22	37W_20m	20	13.5	10.7	10.7	0.0	-2.8	13.93	12.32	12.32	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
23	37W_30m	30	13.1	10.4	10.4	0.0	-2.7	13.91	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
24	37W_40m	40	12.8	10.2	10.2	0.0	-2.6	13.89	12.30	12.30	0.00	-1.59	1.06	1.05	1.05	0.00	0.00
25	37W_50m	50	12.7	10.1	10.1	0.0	-2.6	13.88	12.29	12.29	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
26	37W_60m	60	12.6	10.0	10.0	0.0	-2.6	13.88	12.29	12.29	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
27	37W_70m	70	12.5	9.9	10.0	0.0	-2.5	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
28	37W_80m	80	12.4	9.9	9.9	0.0	-2.5	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
29	37W_90m	90	12.4	9.9	9.9	0.0	-2.5	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
30	37W_100m	100	12.3	9.8	9.8	0.0	-2.5	13.86	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
31	37W_125m	125	12.3	9.8	9.8	0.0	-2.5	13.86	12.27	12.27	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
32	37W_150m	150	12.2	9.7	9.7	0.0	-2.5	13.86	12.27	12.27	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
33	37W_175m	175	12.2	9.7	9.7	0.0	-2.4	13.85	12.27	12.27	0.00	-1.58	1.05	1.05	1.05	0.00	0.00
34	37W_200m	200	12.1	9.7	9.7	0.0	-2.4	13.85	12.27	12.27	0.00	-1.58	1.05	1.05	1.05	0.00	0.00

Receptor 37E – A275 at Wych Cross

Lookup ID	Road Link	Distance From Road (m)	Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
			BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)
35	37E_0m	0	18.1	13.9	14.1	0.2	-4.0	14.18	12.50	12.51	0.01	-1.67	1.09	1.07	1.08	0.00	-0.01
36	37E_5m	5	15.4	12.0	12.1	0.1	-3.3	14.03	12.39	12.40	0.01	-1.63	1.07	1.06	1.06	0.00	-0.01
37	37E_10m	10	14.3	11.2	11.3	0.1	-3.0	13.97	12.35	12.36	0.00	-1.62	1.06	1.06	1.06	0.00	0.00
38	37E_15m	15	13.8	10.9	10.9	0.1	-2.9	13.94	12.33	12.33	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
39	37E_20m	20	13.4	10.6	10.7	0.0	-2.8	13.92	12.32	12.32	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
40	37E_30m	30	13.0	10.3	10.4	0.0	-2.7	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
41	37E_40m	40	12.8	10.2	10.2	0.0	-2.6	13.89	12.29	12.30	0.00	-1.59	1.06	1.05	1.05	0.00	0.00
42	37E_50m	50	12.7	10.1	10.1	0.0	-2.6	13.88	12.29	12.29	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
43	37E_60m	60	12.6	10.0	10.0	0.0	-2.5	13.88	12.28	12.29	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
44	37E_70m	70	12.5	9.9	9.9	0.0	-2.5	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
45	37E_80m	80	12.4	9.9	9.9	0.0	-2.5	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
46	37E_90m	90	12.4	9.9	9.9	0.0	-2.5	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
47	37E_100m	100	12.3	9.8	9.8	0.0	-2.5	13.86	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
48	37E_125m	125	12.3	9.8	9.8	0.0	-2.5	13.86	12.27	12.27	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
49	37E_150m	150	12.2	9.8	9.8	0.0	-2.5	13.86	12.27	12.27	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
50	37E_175m	175	12.2	9.7	9.7	0.0	-2.5	13.85	12.27	12.27	0.00	-1.58	1.05	1.05	1.05	0.00	0.00
51	37E_200m	200	12.2	9.7	9.7	0.0	-2.4	13.85	12.27	12.27	0.00	-1.58	1.05	1.05	1.05	0.00	0.00

Receptor 34 – A22 at Nutley

Lookup ID	Road Link	Distance From Road (m)	Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
			BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)
52	34_0m	0	29.0	20.7	20.7	0.0	-8.3	15.04	13.11	13.11	0.00	-1.92	1.17	1.13	1.13	0.00	-0.03
53	34_5m	5	22.0	16.1	16.1	0.0	-6.0	14.67	12.87	12.87	0.00	-1.80	1.13	1.11	1.11	0.00	-0.02
54	34_10m	10	18.9	14.0	14.0	0.0	-4.9	14.51	12.76	12.76	0.00	-1.75	1.11	1.10	1.10	0.00	-0.01
55	34_15m	15	17.2	12.9	12.9	0.0	-4.3	14.42	12.70	12.70	0.00	-1.72	1.10	1.09	1.09	0.00	-0.01
56	34_20m	20	16.2	12.2	12.2	0.0	-3.9	14.36	12.66	12.66	0.00	-1.70	1.10	1.09	1.09	0.00	-0.01
57	34_30m	30	14.9	11.4	11.4	0.0	-3.5	14.29	12.62	12.62	0.00	-1.67	1.09	1.08	1.08	0.00	-0.01
58	34_40m	40	14.2	10.9	10.9	0.0	-3.3	14.25	12.59	12.59	0.00	-1.66	1.09	1.08	1.08	0.00	-0.01
59	34_50m	50	13.7	10.6	10.6	0.0	-3.1	14.22	12.57	12.57	0.00	-1.65	1.08	1.08	1.08	0.00	0.00
60	34_60m	60	13.4	10.4	10.4	0.0	-3.0	14.21	12.56	12.56	0.00	-1.65	1.08	1.08	1.08	0.00	0.00
61	34_70m	70	13.1	10.2	10.2	0.0	-2.9	14.19	12.55	12.55	0.00	-1.64	1.08	1.08	1.08	0.00	0.00
62	34_80m	80	12.9	10.1	10.1	0.0	-2.8	14.18	12.54	12.54	0.00	-1.64	1.08	1.08	1.08	0.00	0.00
63	34_90m	90	12.8	10.0	10.0	0.0	-2.8	14.17	12.54	12.54	0.00	-1.63	1.08	1.07	1.07	0.00	0.00
64	34_100m	100	12.6	9.9	9.9	0.0	-2.7	14.17	12.53	12.53	0.00	-1.63	1.08	1.07	1.07	0.00	0.00
65	34_125m	125	12.4	9.7	9.7	0.0	-2.7	14.15	12.52	12.52	0.00	-1.63	1.08	1.07	1.07	0.00	0.00
66	34_150m	150	12.2	9.6	9.6	0.0	-2.6	14.14	12.52	12.52	0.00	-1.62	1.07	1.07	1.07	0.00	0.00
67	34_175m	175	12.1	9.6	9.6	0.0	-2.6	14.14	12.51	12.51	0.00	-1.62	1.07	1.07	1.07	0.00	0.00
68	34_200m	200	12.0	9.5	9.5	0.0	-2.5	14.13	12.51	12.51	0.00	-1.62	1.07	1.07	1.07	0.00	0.00

Receptor 33 – A22 at Wych Cross

Lookup ID	Road Link	Distance From Road	Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
			BL Base	DM (Base	DS (Scn1	Change (DS-	Change (DS-	BL Base	DM (Base	DS (Scn1	Change (DS-	Change (DS-	BL Base	DM (Base	DS (Scn1	Change (DS-	Change (DS-

		(m)		2033)	2033)	DM)	BL)		2033)	2033)	DM)	BL)		2033)	2033)	DM)	BL)
69	33_0m	0	23.9	17.7	17.7	0.0	-6.2	14.49	12.71	12.71	0.00	-1.78	1.12	1.10	1.10	0.00	-0.02
70	33_5m	5	18.9	14.3	14.3	0.0	-4.7	14.23	12.53	12.53	0.00	-1.70	1.09	1.08	1.08	0.00	-0.01
71	33_10m	10	16.9	12.9	12.9	0.0	-4.0	14.12	12.45	12.45	0.00	-1.67	1.08	1.07	1.07	0.00	-0.01
72	33_15m	15	15.8	12.1	12.1	0.0	-3.7	14.06	12.41	12.41	0.00	-1.65	1.07	1.07	1.07	0.00	-0.01
73	33_20m	20	15.1	11.6	11.6	0.0	-3.4	14.02	12.38	12.38	0.00	-1.64	1.07	1.06	1.06	0.00	-0.01
74	33_30m	30	14.2	11.0	11.0	0.0	-3.2	13.97	12.35	12.35	0.00	-1.62	1.06	1.06	1.06	0.00	0.00
75	33_40m	40	13.7	10.7	10.7	0.0	-3.0	13.95	12.33	12.33	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
76	33_50m	50	13.4	10.5	10.5	0.0	-2.9	13.93	12.32	12.32	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
77	33_60m	60	13.2	10.3	10.3	0.0	-2.9	13.92	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
78	33_70m	70	13.0	10.2	10.2	0.0	-2.8	13.91	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
79	33_80m	80	12.9	10.1	10.1	0.0	-2.8	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
80	33_90m	90	12.8	10.0	10.0	0.0	-2.7	13.89	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
81	33_100m	100	12.7	10.0	10.0	0.0	-2.7	13.89	12.29	12.29	0.00	-1.59	1.06	1.05	1.05	0.00	0.00
82	33_125m	125	12.5	9.9	9.9	0.0	-2.6	13.88	12.29	12.29	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
83	33_150m	150	12.4	9.8	9.8	0.0	-2.6	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
84	33_175m	175	12.3	9.7	9.7	0.0	-2.6	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
85	33_200m	200	12.3	9.7	9.7	0.0	-2.6	13.86	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00

Receptor 6b_37_33 – Junction of A22 and A275

			Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
Lookup		Distance	BL	DM (Base	DS (Scn1	Change		BL	DM (Base	DS (Scn1	Change		BL	DM (Base	DS (Scn1	Change	
ID	Road Link	From Road (m)	Base	2033)	2033)	(DS-DM)	(DS-BL)	Base	2033)	2033)	(DS-DM)	(DS-BL)	Base	2033)	2033)	(DS-DM)	(DS-BL)
86	6b_37_33_0m	0	25.2	18.7	18.8	0.1	-6.4	14.55	12.75	12.76	0.01	-1.79	1.12	1.10	1.10	0.00	-0.02
87	6b_37_33_5m	5	22.5	16.8	16.9	0.1	-5.6	14.41	12.66	12.66	0.01	-1.75	1.11	1.09	1.09	0.00	-0.02
88	6b_37_33_10m	10	21.0	15.8	15.9	0.1	-5.1	14.34	12.60	12.61	0.00	-1.73	1.10	1.09	1.09	0.00	-0.02
89	6b_37_33_15m	15	20.1	15.2	15.2	0.1	-4.9	14.28	12.57	12.57	0.00	-1.71	1.10	1.08	1.08	0.00	-0.01
90	6b_37_33_20m	20	19.4	14.7	14.7	0.1	-4.6	14.25	12.54	12.54	0.00	-1.70	1.09	1.08	1.08	0.00	-0.01
91	6b_37_33_30m	30	18.2	13.9	13.9	0.0	-4.3	14.18	12.50	12.50	0.00	-1.68	1.09	1.07	1.08	0.00	-0.01
92	6b_37_33_40m	40	17.3	13.3	13.3	0.0	-4.0	14.14	12.46	12.47	0.00	-1.67	1.08	1.07	1.07	0.00	-0.01
93	6b_37_33_50m	50	16.6	12.8	12.9	0.0	-3.8	14.10	12.44	12.44	0.00	-1.66	1.08	1.07	1.07	0.00	-0.01
94	6b_37_33_60m	60	16.1	12.5	12.5	0.0	-3.6	14.07	12.42	12.42	0.00	-1.65	1.07	1.07	1.07	0.00	-0.01
95	6b_37_33_70m	70	15.7	12.2	12.2	0.0	-3.5	14.05	12.40	12.40	0.00	-1.64	1.07	1.07	1.07	0.00	-0.01
96	6b_37_33_80m	80	15.3	11.9	11.9	0.0	-3.4	14.03	12.39	12.39	0.00	-1.64	1.07	1.06	1.06	0.00	-0.01
97	6b_37_33_90m	90	15.0	11.7	11.7	0.0	-3.3	14.01	12.38	12.38	0.00	-1.63	1.07	1.06	1.06	0.00	-0.01
98	6b_37_33_100m	100	14.8	11.5	11.6	0.0	-3.2	14.00	12.37	12.37	0.00	-1.63	1.07	1.06	1.06	0.00	-0.01
99	6b_37_33_125m	125	14.2	11.2	11.2	0.0	-3.1	13.97	12.35	12.35	0.00	-1.62	1.06	1.06	1.06	0.00	0.00
100	6b_37_33_150m	150	13.8	10.9	10.9	0.0	-2.9	13.95	12.33	12.33	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
101	6b_37_33_175m	175	13.5	10.7	10.7	0.0	-2.9	13.93	12.32	12.32	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
102	6b_37_33_200m	200	13.3	10.5	10.5	0.0	-2.8	13.92	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00

Receptor 6b - A22 at Royal Ashdown Forest Golf Course

			Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
Lookup		Distance	BL	DM (Base	DS (Scn1	Change		BL	DM (Base	DS (Scn1	Change		BL	DM (Base	DS (Scn1	Change	
ID	Road Link	From Road (m)	Base	2033)	2033)	(DS-DM)	(DS-BL)	Base	2033)	2033)	(DS-DM)	(DS-BL)	Base	2033)	2033)	(DS-DM)	(DS-BL)
103	6b_3m	3	21.7	16.2	16.2	0.0	-5.5	14.35	12.61	12.61	0.00	-1.74	1.10	1.09	1.09	0.00	-0.02
104	6b_8m	8	18.6	14.0	14.1	0.0	-4.5	14.18	12.49	12.49	0.00	-1.69	1.09	1.07	1.07	0.00	-0.01

105	6b_13m	13	17.0	13.0	13.0	0.0	-4.0	14.10	12.43	12.43	0.00	-1.66	1.08	1.07	1.07	0.00	-0.01
106	6b_18m	18	16.1	12.3	12.4	0.0	-3.7	14.05	12.40	12.40	0.00	-1.65	1.07	1.06	1.06	0.00	-0.01
107	6b_23m	23	15.4	11.9	11.9	0.0	-3.5	14.01	12.38	12.38	0.00	-1.64	1.07	1.06	1.06	0.00	-0.01
108	6b_33m	33	14.6	11.4	11.4	0.0	-3.2	13.97	12.35	12.35	0.00	-1.62	1.06	1.06	1.06	0.00	0.00
109	6b_43m	43	14.2	11.1	11.1	0.0	-3.1	13.94	12.33	12.33	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
110	6b_53m	53	13.8	10.8	10.9	0.0	-3.0	13.93	12.32	12.32	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
111	6b_63m	63	13.6	10.7	10.7	0.0	-2.9	13.91	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
112	6b_73m	73	13.4	10.6	10.6	0.0	-2.9	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
113	6b_83m	83	13.3	10.5	10.5	0.0	-2.8	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
114	6b_93m	93	13.2	10.4	10.4	0.0	-2.8	13.89	12.29	12.29	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
115	6b_103m	103	13.1	10.4	10.4	0.0	-2.8	13.89	12.29	12.29	0.00	-1.59	1.06	1.05	1.05	0.00	0.00
116	6b_128m	128	12.9	10.2	10.2	0.0	-2.7	13.88	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
117	6b_153m	153	12.8	10.2	10.2	0.0	-2.7	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
118	6b_178m	178	12.8	10.1	10.1	0.0	-2.6	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
119	6b_203m	203	12.7	10.1	10.1	0.0	-2.6	13.86	12.27	12.27	0.00	-1.59	1.05	1.05	1.05	0.00	0.00

Receptor 6aSW – A22 at Royal Ashdown Forest Golf Course

			Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
Lookup		Distance	BL	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)
ID	Road Link	From Road (m)	Base					Base					Base				
120	6aSW_0m	0	29.0	21.3	21.3	0.0	-7.7	14.73	12.87	12.88	0.00	-1.85	1.14	1.11	1.11	0.00	-0.03
121	6aSW_5m	5	21.6	16.2	16.2	0.0	-5.3	14.34	12.60	12.61	0.00	-1.73	1.10	1.09	1.09	0.00	-0.02
122	6aSW_10m	10	18.7	14.3	14.3	0.0	-4.4	14.19	12.50	12.50	0.00	-1.69	1.09	1.07	1.08	0.00	-0.01
123	6aSW_15m	15	17.2	13.2	13.2	0.0	-4.0	14.11	12.44	12.44	0.00	-1.66	1.08	1.07	1.07	0.00	-0.01
124	6aSW_20m	20	16.3	12.6	12.6	0.0	-3.7	14.05	12.41	12.41	0.00	-1.65	1.07	1.07	1.07	0.00	-0.01
125	6aSW_30m	30	15.1	11.8	11.8	0.0	-3.3	13.99	12.36	12.37	0.00	-1.63	1.07	1.06	1.06	0.00	0.00
126	6aSW_40m	40	14.5	11.4	11.4	0.0	-3.1	13.96	12.34	12.34	0.00	-1.62	1.06	1.06	1.06	0.00	0.00
127	6aSW_50m	50	14.1	11.1	11.1	0.0	-3.0	13.94	12.33	12.33	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
128	6aSW_60m	60	13.8	10.9	10.9	0.0	-2.9	13.92	12.31	12.31	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
129	6aSW_70m	70	13.6	10.7	10.7	0.0	-2.9	13.91	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
130	6aSW_80m	80	13.4	10.6	10.6	0.0	-2.8	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
131	6aSW_90m	90	13.3	10.5	10.5	0.0	-2.8	13.89	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
132	6aSW_100m	100	13.2	10.5	10.5	0.0	-2.7	13.89	12.29	12.29	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
133	6aSW_125m	125	13.0	10.3	10.3	0.0	-2.7	13.88	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
134	6aSW_150m	150	12.9	10.2	10.2	0.0	-2.7	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
135	6aSW_175m	175	12.8	10.2	10.2	0.0	-2.6	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
136	6aSW_200m	200	12.7	10.1	10.1	0.0	-2.6	13.86	12.27	12.27	0.00	-1.59	1.05	1.05	1.05	0.00	0.00

Receptor 6aSE – A22 at Royal Ashdown Forest Golf Course

			Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
Lookup		Distance	BL	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)
ID	Road Link	From Road (m)	Base					Base					Base				
137	6aSE_0m	0	32.7	23.7	23.8	0.1	-8.8	14.91	13.00	13.00	0.01	-1.91	1.16	1.13	1.13	0.00	-0.03
138	6aSE_5m	5	23.8	17.7	17.8	0.1	-6.0	14.46	12.68	12.69	0.00	-1.77	1.11	1.09	1.09	0.00	-0.02
139	6aSE_10m	10	20.4	15.4	15.4	0.0	-5.0	14.28	12.56	12.56	0.00	-1.72	1.10	1.08	1.08	0.00	-0.01
140	6aSE_15m	15	18.6	14.2	14.2	0.0	-4.4	14.18	12.49	12.50	0.00	-1.69	1.09	1.07	1.07	0.00	-0.01
141	6aSE_20m	20	17.5	13.4	13.4	0.0	-4.1	14.12	12.45	12.45	0.00	-1.67	1.08	1.07	1.07	0.00	-0.01
142	6aSE_30m	30	16.2	12.5	12.5	0.0	-3.7	14.05	12.40	12.40	0.00	-1.65	1.07	1.07	1.07	0.00	-0.01
143	6aSE_40m	40	15.4	12.0	12.0	0.0	-3.4	14.01	12.38	12.38	0.00	-1.63	1.07	1.06	1.06	0.00	-0.01

144	6aSE_50m	50	15.0	11.7	11.7	0.0	-3.3	13.98	12.36	12.36	0.00	-1.62	1.07	1.06	1.06	0.00	0.00
145	6aSE_60m	60	14.6	11.4	11.4	0.0	-3.2	13.97	12.35	12.35	0.00	-1.62	1.06	1.06	1.06	0.00	0.00
146	6aSE_70m	70	14.4	11.3	11.3	0.0	-3.1	13.95	12.34	12.34	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
147	6aSE_80m	80	14.2	11.1	11.1	0.0	-3.0	13.94	12.33	12.33	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
148	6aSE_90m	90	14.0	11.0	11.0	0.0	-3.0	13.93	12.32	12.32	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
149	6aSE_100m	100	13.9	10.9	10.9	0.0	-3.0	13.93	12.32	12.32	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
150	6aSE_125m	125	13.7	10.8	10.8	0.0	-2.9	13.91	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
151	6aSE_150m	150	13.5	10.7	10.7	0.0	-2.8	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
152	6aSE_175m	175	13.4	10.6	10.6	0.0	-2.8	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
153	6aSE_200m	200	13.3	10.5	10.5	0.0	-2.8	13.89	12.29	12.29	0.00	-1.60	1.06	1.05	1.05	0.00	0.00

Receptor 6aNE – A22 at Royal Ashdown Forest Golf Course

			Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
Lookup ID	Road Link	Distance From Road (m)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Base	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)
154	6aNE_0m	0	28.2	20.7	20.8	0.1	-7.4	14.70	12.85	12.85	0.00	-1.84	1.14	1.11	1.11	0.00	-0.03
155	6aNE_5m	5	21.7	16.3	16.3	0.0	-5.3	14.36	12.62	12.62	0.00	-1.74	1.10	1.09	1.09	0.00	-0.02
156	6aNE_10m	10	18.9	14.4	14.4	0.0	-4.5	14.21	12.52	12.52	0.00	-1.69	1.09	1.08	1.08	0.00	-0.01
157	6aNE_15m	15	17.5	13.4	13.4	0.0	-4.0	14.13	12.46	12.46	0.00	-1.67	1.08	1.07	1.07	0.00	-0.01
158	6aNE_20m	20	16.5	12.7	12.8	0.0	-3.7	14.08	12.42	12.43	0.00	-1.65	1.08	1.07	1.07	0.00	-0.01
159	6aNE_30m	30	15.4	12.0	12.0	0.0	-3.4	14.02	12.38	12.38	0.00	-1.63	1.07	1.06	1.06	0.00	-0.01
160	6aNE_40m	40	14.7	11.5	11.5	0.0	-3.2	13.98	12.36	12.36	0.00	-1.62	1.07	1.06	1.06	0.00	0.00
161	6aNE_50m	50	14.3	11.2	11.2	0.0	-3.1	13.96	12.34	12.34	0.00	-1.62	1.06	1.06	1.06	0.00	0.00
162	6aNE_60m	60	13.9	11.0	11.0	0.0	-3.0	13.94	12.33	12.33	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
163	6aNE_70m	70	13.7	10.8	10.8	0.0	-2.9	13.93	12.32	12.32	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
164	6aNE_80m	80	13.5	10.7	10.7	0.0	-2.8	13.92	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
165	6aNE_90m	90	13.4	10.6	10.6	0.0	-2.8	13.91	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
166	6aNE_100m	100	13.2	10.5	10.5	0.0	-2.7	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
167	6aNE_125m	125	13.0	10.3	10.3	0.0	-2.7	13.89	12.29	12.29	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
168	6aNE_150m	150	12.9	10.2	10.2	0.0	-2.6	13.88	12.29	12.29	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
169	6aNE_175m	175	12.7	10.1	10.1	0.0	-2.6	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
170	6aNE_200m	200	12.7	10.1	10.1	0.0	-2.6	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00

Receptor 33N – A22 at Wych Cross

			Annual Mean Nox Conc. (ug/m3)					Annual Mean N Dep (k N/ha/yr)					Annual Mean A Dep (keq/ha/yr)				
Lookup ID	Road Link	Distance From Road (m)	BL Baseline	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Baseline	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)	BL Baseline	DM (Base 2033)	DS (Scn1 2033)	Change (DS-DM)	Change (DS-BL)
171	33N_0m	0	22.9	17.1	17.0	0.0	-5.9	14.44	12.67	12.67	0.00	-1.77	1.11	1.09	1.09	0.00	-0.02
172	33N_5m	5	18.3	13.9	13.9	0.0	-4.4	14.19	12.50	12.50	0.00	-1.69	1.09	1.07	1.07	0.00	-0.01
173	33N_10m	10	16.4	12.6	12.6	0.0	-3.8	14.09	12.43	12.43	0.00	-1.66	1.08	1.07	1.07	0.00	-0.01
174	33N_15m	15	15.4	11.9	11.9	0.0	-3.5	14.03	12.39	12.39	0.00	-1.64	1.07	1.06	1.06	0.00	-0.01
175	33N_20m	20	14.7	11.4	11.4	0.0	-3.3	14.00	12.37	12.37	0.00	-1.63	1.07	1.06	1.06	0.00	-0.01
176	33N_30m	30	14.0	10.9	10.9	0.0	-3.0	13.95	12.34	12.34	0.00	-1.62	1.06	1.06	1.06	0.00	0.00
177	33N_40m	40	13.5	10.6	10.6	0.0	-2.9	13.93	12.32	12.32	0.00	-1.61	1.06	1.06	1.06	0.00	0.00
178	33N_50m	50	13.2	10.4	10.4	0.0	-2.8	13.91	12.31	12.31	0.00	-1.60	1.06	1.06	1.06	0.00	0.00
179	33N_60m	60	13.0	10.3	10.3	0.0	-2.8	13.90	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
180	33N_70m	70	12.9	10.2	10.2	0.0	-2.7	13.89	12.30	12.30	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
181	33N_80m	80	12.8	10.1	10.1	0.0	-2.7	13.89	12.29	12.29	0.00	-1.60	1.06	1.05	1.05	0.00	0.00
182	33N_90m	90	12.7	10.0	10.0	0.0	-2.6	13.88	12.29	12.29	0.00	-1.59	1.05	1.05	1.05	0.00	0.00

183	33N_100m	100	12.6	10.0	10.0	0.0	-2.6	13.88	12.29	12.29	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
184	33N_125m	125	12.5	9.9	9.9	0.0	-2.6	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
185	33N_150m	150	12.4	9.8	9.8	0.0	-2.5	13.87	12.28	12.28	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
186	33N_175m	175	12.3	9.8	9.8	0.0	-2.5	13.86	12.27	12.27	0.00	-1.59	1.05	1.05	1.05	0.00	0.00
187	33N_200m	200	12.2	9.7	9.7	0.0	-2.5	13.86	12.27	12.27	0.00	-1.59	1.05	1.05	1.05	0.00	0.00

Appendix B. Extract from Caporn et al (2010)

Table 21 of Caporn et al (2010): Summary of relationships between long-term nitrogen deposition and species richness by habitat expressed as the amount of incremental N deposition (in kg N ha^{-1} yr^{-1}) associated with a reduction in species richness of one species along the survey gradient sites. Modelled relationship only applied over N deposition range in which survey sites occurred; where no sites were surveyed at a given N deposition level '-' is shown.

Survey/ Habitat/	Max. species richness	Habitat/ species critical load kg N ha^{-1} yr^{-1}	Increase in N deposition (in kg N ha^{-1} yr^{-1}) required to reduce measured species richness by 1 at different background long-term N deposition levels					
			5 kg N	10 kg N	15 kg N	20 kg N	25 kg N	30 kg N
Upland heath (TU 2009)								
Total species richness	42 spp.	10-20	0.4 kg	0.8 kg	1.3 kg	1.7 kg	2.0 kg	2.4 kg
Upland heath (MRS)*								
Total species richness	16 spp.	10-20	1.7 kg	2.0 kg	2.5 kg	3.3 kg	5.0 kg	20.0 kg
Lowland heath (TU 2009)								
Total species richness	37 spp.	10-20	0.4 kg	0.8 kg	1.3 kg	1.7 kg	2.0 kg	2.4 kg
Bog (TU 2009)								
Total species richness	32 spp.	5-10	3.3 kg					
Sand dunes (TU 2009, all sites)								
Total species richness	77 spp.	8-15	0.1 kg	0.5 kg	1.1 kg	2.0 kg	-	-
Sand dunes TU 2009 (pH ≥6.5)								
Total species richness	77 spp.	8-15	0.3 kg	0.6 kg	0.9 kg	1.3 kg	-	-
Sand dunes TU 2009 + 2002 (Fixed dune grasslands)								
Total species richness	77 spp.	8-15	0.3 kg	0.6 kg	0.9 kg	1.3 kg	-	-
Acid grasslands (BEGIN)								
Total species richness	42 spp.	10-15	1.7 kg	1.7 kg	2.0 kg	2.0 kg	2.5 kg	2.5 kg

*in the upland heath MRS survey quadrat size was 0.5 x 0.5 m. This produced different results than the other surveys which used 2 x 2 m quadrats.

Appendix C. Existing or Proposed Sustainable Transport Policies

Core Policy 13 – Sustainable Travel

The local planning authority will promote and support development that encourages travel by walking, cycling and public transport, and reduces the proportion of journeys made by car, in order to help achieve a rebalancing of transport in favour of sustainable modes by:

1. **Ensuring that new development is located in sustainable locations with good access to schools, shops, jobs and other key services by walking, cycling and public transport in order to reduce the need to travel by car (unless there is an overriding need for the development in a less accessible location).**

2. **Ensuring that the design and layout of new development prioritises the needs of pedestrians, cyclists and users of public transport over ease of access by the motorist.**

3. **Ensuring that new residential developments are designed to achieve speeds of 20 mph or less.**

4. **Ensuring that new development minimises the need to travel and incorporates appropriate measures to mitigate for any transport impacts which may arise from that development.**

5. **Requiring new development to provide for an appropriate level of cycle and car parking in accordance with parking guidance approved by the local planning authority.**

6. **Requiring development which generates a significant demand for travel, and/or is likely to have other transport implications to:**

   i. **Be supported by a Transport Assessment/Transport Statement and sustainable Travel Plan, where appropriate;**

ii. Contribute to improved sustainable transport infrastructure, including the provision of safe and reliable sustainable transport modes; and
iii. Provide facilities and measures to support sustainable travel modes.

The local planning authority will work with East Sussex County Council and other relevant agencies to encourage and support measures that promote improved accessibility, create safer roads, reduce the environmental impact of traffic movements, enhance the pedestrian environment, or facilitate highway improvements. In particular, the local planning authority will:

a. Support the expansion and improvement of public transport services, particularly those providing links between the rural and urban areas;
b. Encourage improvements to existing rail services, new or enhanced connections or interchanges between bus and rail services, and improvements to the quality and quantity of car and cycle parking at railway stations; and
c. Support the development of a network of high quality walking and cycling routes throughout the district.

South Downs Local Plan Policy SD19: Transport and Accessibility (not yet adopted)

1. Development proposals will be permitted provided that they are located and designed to minimise the need to travel or promote the use of sustainable modes of transport.

2. Development proposals that are likely to generate a significant number of journeys, especially of vehicles, must be located near existing town and village centres, public transport routes, the cycle network and main roads. Such developments will be required to provide a transport assessment or transport statement.

3. Development proposals must demonstrate the continued safe and efficient operation of the strategic and local road networks.

4. The following improvements to public transport infrastructure will be supported:

a) Public transport waiting facilities, particularly those with reliable and accessible information;

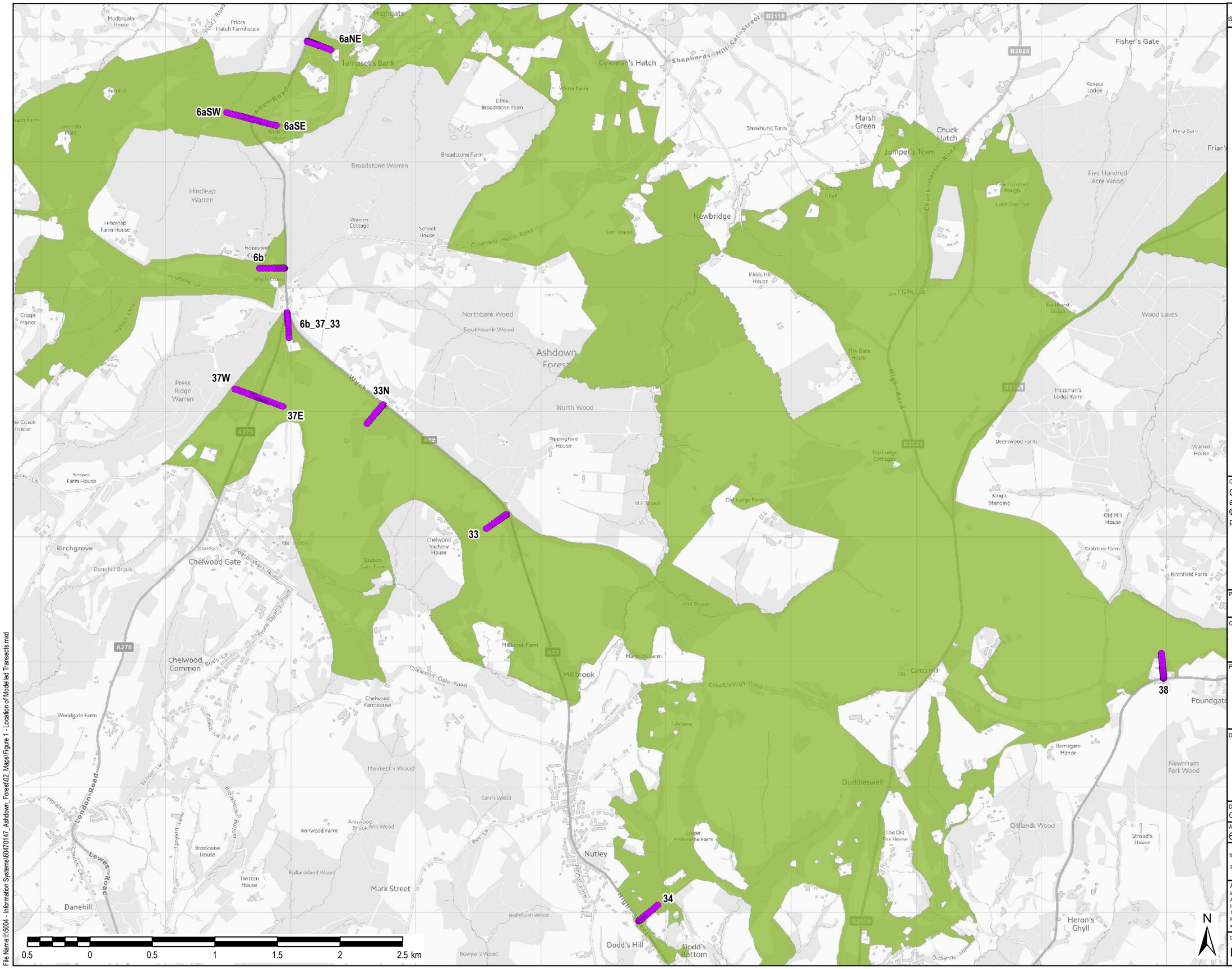
b) Infrastructure supporting the transfer of freight from road to rail and water;

c) Improvements to walking, cycling and bus connectivity at all transport interchanges;

d) Improvements to the quality and provision of cycle parking at railway stations and key bus stops.

5. In town and village centres, development will be permitted which appropriately provides for improved footways and cycle routes, cycle parking, and measures to restrict the impact of heavy goods vehicles and other traffic on historic streets.

6. Development proposals for powered aircraft landing or operation sites, or the expansion or intensification of such uses, will be refused. If exceptional circumstances exist which indicate that such development proposals are necessary, these will only be permitted where the impacts on both the special qualities, and on local amenity, can be fully mitigated.



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LEGEND

- Modelled Receptor
- Ashdown Forest Special Area of Conservation (SAC)

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Purpose of Issue
FINAL

Client
SOUTH DOWNS NATIONAL PARK AUTHORITY AND LEWES DISTRICT COUNCIL

Project Title
AIR QUALITY ASSESSMENT FOR ASHDOWN FOREST SAC

Drawing Title
LOCATIONS OF MODELLED TRANSECTS

Drawn	Checked	Approved	Date
CN	JW	JR	13/09/2017

AECOM Internal Project No.	Scale @ A3
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FIGURE 1

Rev
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File Name:I:\60047 - Information Systems\60470147_Ashdown_Forest\02_Maps\Figure 1 - Location of Modelled Transects.mxd

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APPENDIX [N] Suggested Planning Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

2. No development shall commence on site until the expiration of 21 days from the date written notice is given to the local planning authority of the intention to start development works.

3. The development hereby permitted shall be carried out in accordance with the following approved plans: L-001 rev (b), L-002, L-003.

4. No development shall take place before a scheme for the on-site storage and regulated discharge of surface water run-off has been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

5. None of the hereby approved shall be occupied until works for the disposal of sewerage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

6. No Development shall take place before a scheme of landscaping, phased in relation to any phasing of the development, which shall include details of both hard and soft landscape works and earthworks, has been submitted to, and approved in writing by, the Local Planning Authority. The scheme as approved shall be carried out in the first planting season following the completion of each development phase. Any trees, shrubs or plants that die within a period of five years from the completion of each development phase, or are removed and/or become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the Local Planning Authority gives prior written permission for any variation.

7. Prior to the first occupation of the dwellings the access shall have been formed and visibility splays laid out and constructed in accordance with approved plan L-003.

8. Prior to the siting of each of the temporary dwellings hereby permitted, business plans for the respective agricultural business to be operated on site shall be submitted to the local authority. Each business plan shall show how it would be essential for the proper functioning of the enterprise for one or more workers to be readily available at most times.

9. Prior to the siting of each of the temporary dwellings hereby permitted, details of the temporary dwellings' dimensions, means of construction, design and materials shall be submitted to and approved in writing by the local planning authority, and development shall be carried out in accordance with the approved details.

10. The occupation of the temporary dwellings hereby permitted shall be limited to persons solely or mainly employed in the agricultural business operated on the site or a widow or widower of such a person, together with their spouse or partner and any resident dependants.

11. If any one of the smallholdings should be amalgamated with either one of the other two smallholdings, or both of them, so as to constitute one holding, only one temporary dwelling shall be permitted to remain on the amalgamated site and the other(s) shall be removed from the land within six months of the date that the amalgamation of the plots occurred.

12. The dwellings hereby permitted shall be removed and the land restored to its former condition on or before five years of the commencement of development in accordance with a scheme of work submitted to and approved by the Local Planning Authority.