

# **PLANNING PROOF OF EVIDENCE**

**Prepared by: David Hutchison BSc (Hons) DipTP MRTPI**

## **SECTION 78 APPEAL BY PERSIMMON HOMES THAMES VALLEY**

### **LAND NORTH WEST OF GORING STATION, GORING BY SEA, NR WORTHING**

#### **PROPOSAL:**

**MIXED USE DEVELOPMENT COMPRISING UP TO 475 DWELLINGS ALONG WITH ASSOCIATED ACCESS, INTERNAL ROADS AND FOOTPATHS, CAR PARKING, PUBLIC OPEN SPACE, LANDSCAPING, LOCAL CENTRE (USES INCLUDING A1, A2, A3, A4, A5, D1, D2, AS PROPOSED TO BE AMENDED TO USE CLASSES E, F AND SUI GENERIS) WITH ASSOCIATED CAR PARKING, CAR PARKING FOR THE ADJACENT RAILWAY STATION, UNDERGROUNDING OF OVERHEAD HV CABLES AND OTHER SUPPORTING INFRASTRUCTURE AND UTILITIES.**

**TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)  
PLANNING AND COMPULSORY PURCHASE ACT 2004**

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## 1. PERSONAL BACKGROUND

- 1.1 My name is David Hutchison. I hold a Bachelor of Science Degree and Diploma in Town Planning from Cardiff University.
- 1.2 I am a Chartered Town Planner and I am employed as a Planning Consultant at the firm of Pegasus Group. I currently hold the position of Executive Director and I am based in the Cirencester Office.
- 1.3 I have worked in the private sector as a Planning Consultant since 1999 (22 years). Prior to my appointment at Pegasus (when the company was first established in 2003), I worked for Chapman Warren and the RPS Group.
- 1.4 I have a wide range of experience in all aspects of Town Planning, dealing with both Development Control and Planning Policy. I now work primarily for residential developers and I am responsible for all aspects of their work ranging from site promotion through the Development Plan process to preparing and submitting planning applications for various scales, including large scale strategic urban extensions.
- 1.5 As well as dealing with outline applications for larger developments I am also involved in negotiations on a day to day basis in relation to reserved matter applications on behalf of residential developers.
- 1.6 I represent clients at appeals and I have presented evidence on their behalf at numerous Public Inquires and Informal Hearings.
- 1.7 The evidence that I have prepared and provide for this appeal (PINS Ref **APP/M3835/W/21/3281813**) is true and has been prepared and is given in accordance with the guidance of my professional institution, irrespective of by whom I am instructed. I can confirm that the opinions expressed are my true and professional opinions.

## 2. INTRODUCTION

2.1 This Proof of Evidence has been prepared on behalf of Persimmon Homes Thames Valley (the Appellant). It relates to a Planning Appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of land north west of Goring Station, Goring-by-Sea, near Worthing (the Appeal Site).

2.2 The appeal was lodged following the decision of Worthing Borough Council to refuse a planning application which sought outline planning permission for a proposed development comprising:-

**“Mixed use development comprising up to 475 dwellings along with associated access, internal roads and footpaths, car parking, public open space, landscaping, local centre (uses including A1, A2, A3, A4, A5, D1, D2, as proposed to be amended to use classes E, F and Sui Generis) with associated car parking, car parking for the adjacent railway station, undergrounding of overhead HV cables and other supporting infrastructure and utilities.”**

2.3 The application was submitted on 10<sup>th</sup> August 2020 and was allocated the reference number AWDM/1264/20.

2.4 Following a period of negotiation, it was reported to the Council's Planning Committee on 10th March 2021 with an Officer recommendation for refusal.

2.5 Having considered the advice from Officers, the Committee resolved to refuse the application. The decision notice which is dated 11th March 2021 identifies 6no. reasons for refusal and these read as follows:

**1) The proposed development is outside the built-up area as defined in the Worthing Core Strategy and the emerging Submission Draft Worthing Local Plan and is not allocated for residential development. The proposal is therefore contrary to policy 13 of the Worthing Core Strategy and emerging policies SS4, SS5 and SS6 of the Submission Draft Worthing Local Plan, resulting in the coalescence of settlements and the loss of an important area of green space that contributes to local amenity, sense of place and wildlife. Furthermore, it is considered that the adverse impacts of the development would demonstrably outweigh the benefits as substantial adverse landscape and visual effects would arise from the development affecting the local area and the wider landscape, including the landscape setting to the National Park (therefore adversely affecting its statutory purpose to conserve and enhance its natural beauty and cultural heritage), Highdown Hill scheduled Monument and the Conservation Area.**

2) The application is considered to be premature as the development proposed is so substantial, and its cumulative effect would be so significant, that to grant permission would undermine the plan-making process in particular its overall spatial strategy about the location of new development, its landscape evidence and proposed green space designations that are central to the emerging Submission Draft Worthing Local Plan. The proposal therefore fails to comply with paragraph 49 of the National Planning Policy Framework.

3) The Local Planning Authority is not satisfied that adequate information has been submitted to demonstrate that the proposal is acceptable in terms of access and would not therefore give rise to increased hazards to highway users including the Strategic Road Network. The proposal therefore fails to comply with the relevant guidance of the National Planning Policy Framework which requires that the potential impacts of development on transport networks can be addressed in development proposals.

4) The Local Planning Authority does not consider that adequate information has been submitted to demonstrate that the mitigation proposed is acceptable in terms of its impact on the local highway network including (but not limited to) the Goring Crossroads and A259/ Goring Way/ Aldsworth Avenue junctions and Strategic Road Network. As such it has not been demonstrated that the development would not have a severe impact on the local highway network and therefore the proposal fails to comply with paragraph 109 of the National Planning Policy Framework 2019.

5) It has not been demonstrated to the satisfaction of the Local Planning Authority that the development provides suitable mitigation for the impact of the development upon ground nesting birds.

6) It has not been demonstrated to the satisfaction of the Local Planning Authority that the infrastructure requirements of the development can be adequately met in respect of the provision of affordable housing, public and open space, highways

2.6 For ease of reference during the Inquiry, a copy of the Decision Notice is provided as Appendix 1 to my evidence and the Officer Report is provided as Appendix 2.

**APPENDIX 1 – DECISION NOTICE**  
**APPENDIX 2 – OFFICER REPORT**

### **The Updated Position on the Reasons for Refusal**

- 2.7 To assist the Inspector, I set out below a brief update on the RfR to explain how some of the issues in dispute have now been narrowed.
- 2.8 I am advised by Mr Wares that there is agreement with National Highways that the concerns raised in **RfR3** regarding safe and suitable access and impacts on the strategic highway network have now been resolved.
- 2.9 During the Case Management Conference call (CMC) held on 24th November 2021, the LPA agreed that **RfR 5** (mitigation for ground nesting birds) and **RfR6** (affordable housing and infrastructure requirements) could be satisfactorily addressed through conditions and/or s/106 planning obligations.
- 2.10 These are not therefore matters that remain in dispute and which need to be debated at the public inquiry.

### **My Evidence**

- 2.11 My evidence deals principally with the planning policy matters raised in the Reasons for Refusal (RfR). It focuses in particular on the issues set out in RfR 1 and RfR 2 as well addressing the overall planning balance. I will also deal with the other issues raised by the 3<sup>rd</sup> parties that were not included in the LPA's RfR.
- 2.12 I reserve the right to add to or amend my evidence on receipt of the evidence submitted by the other parties.

### **Other Proofs of Evidence submitted on behalf of the Appellant**

- 2.13 My evidence should be read alongside the other Proofs of Evidence that have been prepared on behalf of the Appellant as follows:-
- a. Neil Tiley - Housing Need and Land Supply
  - b. James Stacey – Affordable Housing
  - c. Clive Self – Landscape and Visual Impact
  - d. Gail Stoten – Heritage
  - e. Tony Wares – Traffic and Transportation

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**Statements of Common Ground**

2.14 My evidence should also be read in conjunction with the following Statements of Common Ground (SoCG) which are expected to be signed and agreed shortly:-

- a. Planning
- b. Heritage
- c. Highways
- d. Housing Land Supply
- e. Landscape and Visual Impact

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### **3. THE SITE DESCRIPTION AND LOCATION**

- 3.1 A description of the appeal site and its surroundings is set out in the Planning SoCG. To avoid unnecessary duplication, I do not intend to repeat it in full here.
- 3.2 In summary the appeal site is located at Goring-by-Sea, adjacent to the railway station, approximately 4.5km to the west of Worthing Town Centre.
- 3.3 The site itself is irregular in shape and extends to 19.96ha. It is relatively flat and comprises a single gently sloping field which is currently in agricultural use.
- 3.4 The site is well related to the existing pattern of built development and is closely surrounded by built development on three sides whilst the remaining boundary of the wider land parcel is delineated by the A259 Littlehampton Road.
- 3.5 The site itself is not subject to any designations relating to landscape, ecology, public open space or heritage.
- 3.6 The Environment Agency's flood zone mapping shows that the majority of the site lies within Flood Zone 1 (lowest probability of flooding), although small areas alongside the Ferring Rife are within Flood Zones 2 and 3.

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#### 4. THE DEVELOPMENT PROPOSALS

4.1 The planning application that is now the subject of this appeal was submitted to Worthing Borough Council on 10<sup>th</sup> August 2020 (LPA ref. AWDM/1264/20).

4.2 The description of development as set out on the application forms reads as follows:-

**“Mixed use development comprising up to 475 dwellings along with associated access, internal roads and footpaths, car parking, public open space, landscaping, local centre (uses including A1, A2, A3, A4, A5, D1, D2, as proposed to be amended to use classes E, F and Sui Generis) with associated car parking, car parking for the adjacent railway station, undergrounding of overhead HV cables and other supporting infrastructure and utilities.”**

4.3 The application was submitted in outline with all matters of detail reserved for subsequent consideration at the reserved matters stage.

4.4 The main features of the scheme are described in more detail in the SoCG and the Design and Access Statement that supported the original planning application.

## **5. PLANNING HISTORY**

5.1 The planning history of the site is set out in the SoCG.

## **6. PLANNING POLICY**

- 6.1 The planning policies and national guidance that are of most relevance to this appeal are identified in the Planning SoCG.
- 6.2 I refer to relevant policies and guidance and the weight that ought to be afforded to them in the Case for the Appellant and in the Overall Planning Balance.

## 7. CASE FOR THE APPELLANT

7.1 In this section of my evidence, I will explain why I consider that the appeal proposals represent sustainable development, and I will demonstrate that there are compelling reasons that justify the grant of planning permission.

### **Background Context**

7.2 The housing land supply position is of particular importance in this case because it has a direct effect on the way that this appeal should be determined. It means that the “tilted balance” in paragraph 11d of the NPPF is capable of being engaged by virtue of NPPF Footnote 8.

7.3 The LPA already accepts that it cannot demonstrate a five-year supply of housing land (5YRHLS), as required by the NPPF<sup>1</sup>.

7.4 However, the parties do not agree on the extent of the shortfall and the supply position varies from **1.81 years** according to the LPA, and **1.49 years** according to Mr Tiley for the Appellant. This has implications for the weight to be afforded to both the provision of additional housing and the out-of-date Development Plan policies in the overall planning balance.

7.5 Notwithstanding the differences of opinion, the shortfalls are on any assessment very substantial, and I consider that the provision of additional open market and affordable homes should each be afforded very substantial weight in the planning balance.

7.6 It is not necessary to identify multiple routes into the tilted balance, but in this case it is also relevant to note that the housing policies of the Worthing Core Strategy (WCS) are out of date and inconsistent with national policy in the NPPF because they are derived from the long since revoked South East Plan. This in turn infects the settlement boundaries (or the defined built-up area as they are referred to in Worthing) and the directly related countryside protection policies. I deal with this in more detail later in my evidence.

7.7 Once the tilted balance is engaged, the onus rests with the LPA (or other interested parties) to demonstrate that there are either policies in the NPPF which provide a

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<sup>1</sup> LPA SoC §8.16

clear reason for refusal<sup>2</sup> or that any residual adverse impacts would significantly and demonstrably outweigh the benefits of granting planning permission.<sup>3</sup>

### **The Main Planning Policy Issues**

7.8 My evidence concentrates on the planning policy issues raised in RfR 1 and RfR 2. The main strands of the LPA's case on these matters can be summarised as follows:-

- a. The site is not allocated for residential development.
- b. The proposed development is located outside the defined built-up area.
- c. It will result in coalescence.
- d. There will be the loss of an important area of green space.
- e. The proposal is contrary to Policy 13 of the Worthing Core Strategy and emerging policies SS4, SS5 and SS6 of the Submission Draft Worthing Local Plan.
- f. The adverse impacts of the development (including landscape and heritage) would significantly and demonstrably outweigh the benefits, and
- g. The proposals are premature for the purposes of NPPF paragraph 49 of the NPPF.

7.9 The main issues for the inquiry are identified in the Inspector's Case Management Conference Note and I have adopted these for the purposes of my evidence. In order to make my evidence more manageable I have broken down main issues (i) and (ii) as follows:-

**Issue 1**      **Whether the appeal site offers an appropriate location for development having regard to local and national planning policy [RfR 1 and Inspector Issue i]**

**Issue 2**      **Whether the appeal site offers an appropriate location for development having regard to the emerging Local Plan [RfR 1 and Inspector Issues i and ii]**

**Issue 3**      **Prematurity [RfR 2 and Inspector Issue i]**

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<sup>2</sup> See NPPF Footnote 7

<sup>3</sup> NPPF Paragraph 11d

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#### **Issue 4      Other matters raised in third party objections**

7.10 I will deal with these issues separately whilst also cross referring to the evidence that has been presented by other witnesses on behalf of the Appellant, where relevant.

7.11 The Planning balance is dealt with in Section 8.

#### **Issue 1      Whether the appeal site offers an appropriate location for development having regard to local and national planning policy [RfR 1 and Inspector Issue i]**

7.12 The starting point for the determination of any planning application or appeal is the Development Plan. The planning system is “plan led” and Planning Law requires that applications for planning permission must be determined in accordance with the Development Plan, unless other material considerations indicate otherwise.

##### The Development Plan

7.13 In this case, the relevant parts of the Development Plan are as follows:-

- a. The Worthing Core Strategy 2011 (WCS);
- b. Saved policies of the Worthing Local Plan 2003 (WLP03);

7.14 The policies that will be of most importance for the determination of this appeal are identified in the Planning SoCG.

##### Compliance with the Development Plan

7.15 This is not a case where I seek to argue that the proposals accord with the Development Plan when it is read as a whole, such that the appeal should be determined in the context of NPPF paragraph 11c.<sup>4</sup> Instead, this is a case where the most important policies are out of date and NPPF paragraph 11d applies.<sup>5</sup>

7.16 I will nonetheless demonstrate that the appeal proposals are still in general accordance with the spatial strategy of the Development Plan insofar as the general

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<sup>4</sup> Approving development proposals that accord with an up-to-date development plan without delay

<sup>5</sup> The “tilted balance”

distribution of development is concerned, as well as other relevant development management policies. On my analysis it is certainly not the wrong development in the wrong place.

#### The adopted housing requirement

7.17 Policy 7 of the adopted Worthing Core Strategy (WCS) identifies a housing requirement of 4,000 net additional dwellings for the period 2006-26 (200 dwellings per annum).

7.18 However, from the outset it is important to note that the housing requirement of the adopted WCS is out of date and inconsistent with the NPPF. That is because:-

- a. The WCS was prepared in the context of the now revoked South East Plan [see WCS para 1.11].
- b. The national policy upon which the WCS was based (including PPS3 and PPS7<sup>6</sup>) has long since been replaced by (three different versions of) the NPPF.
- c. The approach of the NPPF is materially different because it seeks to significantly boost the supply of housing to meet the currently assessed need for housing (see especially **Hunston Properties Ltd v St Albans CDC and SoS CLG** [2013] EWCA Civ 1610 [CD.J67] and **Gallagher Homes Ltd v Solihull MBC** [2014] EWHC 1283 paras 97-99, which has been upheld by the CA).
- d. I would in particular draw attention to paragraph 97 of the judgment of Hickinbottom J in **(1) Gallagher Homes Limited (2) Lioncourt Homes Limited v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin)** [CD.J25] which recognised the “major” policy shift when the NPPF was introduced.

7.19 A key aim of the first NPPF was to boost significantly the supply of housing and provide a stepped change in housing delivery. It also introduced a more nuanced and balanced approach towards housing on greenfield land/in the countryside,

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<sup>6</sup> See the Policy Linkages set out in WCS Appendix 1

recognising that there are competing objectives which need to be pursued in mutually supportive ways.

- 7.20 The latest NPPF (2021) still carries this forward (albeit with a more standardised approach dealing with Local Housing Need) and importantly it retains the national policy imperative to boost significantly the supply of homes [paragraph 60].
- 7.21 In order to maintain a suitable supply of housing, where Development Plans become more than five years old then NPPF paragraph 74 now requires that housing land supply should be calculated against the standard method. The WCS was adopted in 2011, over ten years ago and as so the standard method applies.
- 7.22 We know that WCS only required **200 dwellings per annum (dpa)**. Paragraph 3.13 of the emerging Local Plan (eLP) (CD.E2) identifies that in 2020 the standard method produced a minimum local housing need for **885 homes per annum** which is obviously much higher (a 443% increase).
- 7.23 At this point in my evidence it is suffice to say that the appeal proposals would make a very significant contribution (475 homes) towards addressing the up to date minimum housing need figure that now applies in Worthing.

#### The Spatial Strategy and WCS Policy 13

- 7.24 The thrust of the spatial strategy of the WCS is for development to take place on previously developed land within the existing built-up area boundary of the town. West Durrington was a greenfield urban extension that was to be treated as an exception.
- 7.25 As well as generally restricting development to PDL within the built up areas, Policy 13 places an absolute blanket restriction on housing beyond the built up area and states that:-

#### **"Policy 13**

.....

**Residential development outside of the existing built up area boundary will only be considered as part of a borough-wide housing land review if there is a proven under-delivery of housing within the Core Strategy period**

....." (my emphasis)

7.26 The appeal site is not allocated for housing, it is not previously developed land and it falls outside the built up area. Accordingly, I accept that the appeal proposals do not accord with the terms of Policy 13.

7.27 However, Policy 13 is out of date. It is also inconsistent with national policy and the weight to be afforded to any conflict with this policy should be very much reduced. I consider that any such conflict should be afforded no more than limited weight.

7.28 Policy 13 is a policy that is very much of its time. The supporting text at paragraph 8.11 refers to a policy approach which is:-

**“.....primarily protective.”**

7.29 It goes on to say how:-

**.....development in the countryside will be controlled and will only be considered where a countryside location is justified in that the use can only take place in that location due to their nature, such as agriculture or informal leisure.....”**

7.30 The policy reflects the very different national planning policies that were in place at the time of its preparation. PPS3 and PPS7 took a very different approach. PPS7 for example included the following:-

**“strictly control new housebuilding (including single dwellings) in the countryside, away from established settlements or on areas allocated for housing in development plans” [para 9(ii)] (my emphasis)**

7.31 Similarly, WCS Policy 13 acts as a blocking policy for any meaningful scale of housing development beyond the defined built-up area. This general strategy is in stark contrast with the current NPPF. There is no such presumption against housing on greenfield sites and/or in the countryside.

7.32 Policy 13 does not provide any criteria against which proposals for housing beyond the built-up area may be considered, and positively supported. There is also no allowance for a balancing of harm against benefits; the policy approach that underpins the NPPF.

7.33 The out of datedness of the housing requirement inevitably infects Policy 13. This policy does not serve to significantly boost the supply of housing because it seeks

to constrain housing (as a matter of principle) to an area which was drawn to meet a much lower housing requirement.

- 7.34 The authors of the WCS were planning for 200dpa up to 2026. We now know that the minimum Local Housing Need is much greater at 885dpa and the plan period will need to be extended to 2036. The defined built-up area in the WCS has not been amended since its adoption to accommodate this increased scale of development.
- 7.35 It must therefore follow that any policy, which seeks to constrain development to a defined built-up area, which is predicated upon revoked policy and guidance and significantly out of date evidence, is the antithesis of the NPPF approach to boost significantly the supply of housing by meeting the objectively assessed needs.
- 7.36 I was involved in another recent appeal at Desborough where the LPA relied upon a very similar policy. The Inspector agreed with me that the policy was out of date and inconsistent with the framework following a very similar analysis [see CD.J46 paragraphs 10 to 18].
- 7.37 It is agreed that a 5YRHLS has not been maintained in Worthing for some time, and the scale of the shortfall is not only substantial, but it is also deeply concerning.
- 7.38 Policy 13 offers no plan led solutions. There is no contingency mechanism in Policy 13 that allows greenfield sites beyond the built-up area to come forward when supply is failing. Instead, the policy suggests that we must wait for a review of the plan if there is a proven under-delivery of housing within the Core Strategy period. In the meantime, housing needs go unmet and this is no doubt reflected in the 1.49 year housing land supply position. The real world social and economic consequences will only continue to worsen if Policy 13 is rigidly applied.
- 7.39 The Government no longer considers this to be an acceptable way of dealing with such serious problems. There is no national policy or guidance that lends support to this approach of putting off the need for development until there is a plan review.
- 7.40 In circumstances where the plan-led system has failed, it is necessary to allow the Development Management process to intervene. That is manifestly the intended purpose of the “tilted balance” in paragraph 11d of the NPPF (which post-dates the WCS). Where an LPA is unable to demonstrate a 5YRHLS, Footnote 8 of the NPPF is triggered and policies that to restrict and frustrate housing delivery will be

deemed out of date. As per the Suffolk Coastal judgement some policies will need to be afforded reduced weight to allow housing to come forward.

7.41 Therefore, whilst I accept that the appeal proposals do not accord with the Development Plan, only limited weight can be afforded to any conflict with Policy 13. In the absence of any other plan led mechanism, the policy must give way if the identified housing needs of the area are to be met.

7.42 That said, this is not a site which is located in deep rural countryside or detached and unrelated to the urban area such that it is completely at odds with the spatial strategy of the plan. Instead, this is a site which is closely surrounded by development on three sides and is severed from the wider countryside and the National Park to the north by the A259.

7.43 It is well related to the existing built-up area and whilst it does not accord with the terms of Policy 13 it is still consistent with the overarching strategy of the WCS to concentrate development at the existing built-up areas.

The LPA's approach to Policy 13 on other sites

7.44 The Officer Report to Committee argues that the LPA has not just put off the release of greenfield sites until the Local Plan Review but has taken positive steps to bring sites forward ahead of the eLP [see my Appendix 2 paragraph 446]. The Housing Implementation Strategy Topic Paper at paragraph 6.3 refers to unallocated greenfield land at West Durrington (240 dwellings) as an example [see CD.J49].

7.45 I don't dispute this. In fact, I commend the LPA for taking this action. My point of contention is the inconsistency in approach. The LPA resisted development at the appeal site whilst relying upon Policy 13 despite recognising that the policy is out of date. I don't for one moment suggest that the policy should be ignored or afforded no weight just because of the 5YRHLS position. However, I see no evidence in the Officer Report or the LPA SoC to suggest that Officers reduced weight to this policy that serves to block and frustrate housing delivery on greenfield sites despite there being no alternatives.

7.46 The LPA can't credibly say that it was the conflict with the eLP that was determinative, because Officers conceded that it should only be afforded limited weight at the time of the decision [see my Appendix 2 paragraph 463].

7.47 When I look at the approach taken on West Durrington, permission was not granted because it was in accordance with Policy 13. Whilst it lay within the defined built-up area it was still a large unallocated greenfield site that did not accord with the policy. However, this did not represent a bar to development in that case and officers were keen to stress the need for positive action in light of the significant housing problems at the time (and which have since worsened). Officers commented that:-

**“Against the backdrop of significant and growing housing need (particularly affordable housing) the Council must, where possible, continue to take positive steps to bring forward sustainable opportunities to deliver new development. Whilst the progression of the Local Plan provides the main mechanism through which sites will be allocated the Council must also consider ways in which housing delivery can be increased in advance of plan adoption.”**

.....

**Current national planning policy within the NPPF identifies a clear presumption in favour of sustainable development and gives strong impetus given to boosting housing supply, requiring local planning authorities to have at least a 5 year housing land supply of deliverable sites assessed in relation to housing requirements. Measured in relation to Objectively Assessed Need (OAN) the Council can only demonstrate a supply of 2.4 years. The release of this site would clearly make a significant contribution toward meeting housing need in the Borough.”** (my emphasis)

7.48 Notably in the conclusions section we can see that this was not a scheme that would come forward without harm.

7.49 It can be readily seen that most of the harms mirror those that the LPA alleges against the appeal site. There is heritage harm, landscape harm including harm to the National Park (and objections from SDNP – it is noted that they raise no objection to the appeal scheme) as well as GCN issues. Conflict with the Development Plan is not even mentioned yet all these harms were outweighed by the clear and considerable benefits. It would seem that the LPA did not even need to rely upon the tilted balance. The benefits outweighed the harms on an unweighted balance.

**“In conclusion, Officers consider the potentially harmful impacts of the proposed development on: (i) the setting of nearby designated heritage assets, (ii) surrounding landscape and the setting of the National Park and (iii) a**

**protected species (GCN), are outweighed in this case by the clear and considerable public benefit that would result from an appropriately sensitive development of this site to provide up to 240 new dwellings when assessed against the imperative need for housing to serve the town and the chronic lack of alternative large sites that could deliver significant housing numbers on the same scale as this site.**

7.50 Officers had also referred to the affordable housing situation as “acute”:-

**“The proposed development would clearly make a welcome contribution toward addressing the acute need for affordable housing in the town.” [pdf p.52]**

7.51 The tone of the report for the appeal site is very different despite:-

- a. Policy 13 not being determinative in other cases,
- b. The housing land supply now being even worse at circa 1.49 years,
- c. Worsening affordability issues, and
- d. The accepted position of there being a “chronic lack of alternative large sites” that could deliver significant housing.

Other policies and designations

7.52 There are no other adopted Development Plan policies or designations that are directly applicable to the appeal site that would suggest that it is unsuitable for housing. In policy terms the site is relatively unconstrained.

7.53 The only policy reason that is preventing the site from coming forward to deliver much needed homes is that it lies on the wrong side of the line which defines the out-of-date Built-Up Area boundary.

7.54 The site does not lie within the National Park and there are no other landscape, ecology or heritage designations that directly relate to the site itself. It is also not protected as public open space.

7.55 The built parts of the proposed development would also avoid areas at risk of flooding.

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Strategic/Local Gap Policies

7.56 The site is not identified (or protected) as a strategic or local gap in the adopted Development Plan.

Local Green Space

7.57 The site is not designated as Local Green Space in the adopted Development Plan.

7.58 This is important because the Inspector in his Case Conference note identified one of the main issues as being “The effect of the proposed development on local green space.” Local Green Space (LGS) has particular meaning in the context of NPPF paragraphs 101 to 103. It also figures in the list of restrictive policies set out in footnote 7 that have the potential to dis-apply the tilted balance.

7.59 In pure planning policy terms, the proposals cannot have any effect on LGS because the appeal site has no LGS status.

7.60 I will return to this matter later in my evidence when I deal with the emerging Local Plan.

The Relationship between the Site and the Existing Built-Up Area

7.61 The appeal site is very well related to the defined built-up areas.

7.62 The site is closely surrounded and enclosed by existing development on three sides. The Railway to the south, the Ferring Rife and the A259 Littlehampton to the north further reinforces the sense of containment.

7.63 The pattern of built development in the area is such that the site would represent a logical rounding off for this part of the built-up area. It is essentially a large infill site. It would not represent a new outward incursion into the open countryside and it would not encroach any closer to the National Park than the existing pattern of development. In that in that regard, the proposals are still consistent with the overarching objective of the spatial strategy to focus development at the existing built-up areas.

Accessibility

7.64 The WCS at paragraph 3.61 states that:-

**“3.61 A key aim of the Core Strategy is to reduce the need to travel by locating homes, jobs, shops and services in the most accessible places.”**

7.65 The close relationship between the site and the built-up area means that the site is accessible to a range of key facilities. It would therefore be consistent with national and local planning policies which seek to reduce the need to travel and which seek to encourage modal shift.

7.66 The Design and Access Statement and the Transport Assessment provide further details and demonstrate that the site is in an accessible and sustainable location. They show that new residents will have access to shops, services and facilities that are within walking and cycling distance and that there will be opportunities to use public transport. The proximity of the site to some of those key facilities is summarised below:-

Shops

- Tesco Express 600-metres
- Tesco Extra 1.8km
- Royal Mail 1.1km
- Town Centre 5km

Education

- Pre-school 1.5km
- Primary School 1.3km
- High School 450m
- College 500m

Healthcare

- Pharmacy 550m
- Surgery 1.7km
- Hospital 1.0km
- Dentist 1.3km

- 7.67 The evidence of Mr Wares considers accessibility in further detail and notes that the site is accessible by bus.
- 7.68 The location of the site adjacent to the railway station offers the opportunity to travel longer distances by train. The appeal proposals also include car parking close to the station that would make travel by rail more attractive to existing users and thus encourage modal shift.
- 7.69 My overall conclusion is that the site represents an excellent location for residential development which could make a very significant impact on housing delivery (both open market and affordable housing) in the short and medium term.
- 7.70 To summarise:-
1. This is the right development in the right location, at the right time.
  2. I accept that the proposals do not accord with Policy 13 which seeks to restrict new housing to PDL sites within the built-up area or land at West Durrington. However, Policy 13 is out of date by virtue of the 5YRHLS position and it is also inconsistent with the NPPF. I attach only limited weight to this policy conflict.
  3. The housing requirement of the WCS is also out of date because it is based on the revoked South East Plan. It pre-dates the NPPF and does not (and could not) reflect more recent changes in national policy.
  4. The WCS housing requirement has been overtaken by the standard method because the WCS is now more than 5 years old. The WCS only required 200dpa whereas the Standard Method now requires a very significant increase of 885 dpa.
  5. Any policy which seeks to constrain housing development to PDL within a defined built-up area, which is predicated upon revoked policy and guidance and an out of date housing requirement is the antithesis of the NPPF policy imperative to boost significantly the supply of housing.
  6. The LPA has been inconsistent in its application of Policy 13 as illustrated by the fact that it was not a barrier to the grant of planning permission for 240 dwellings on unallocated greenfield land at West Durrington [CD.J.49].
  7. The merits of the appeal site are self-evident. It is well related to the built-up area and in that regard, it would be consistent with the general thrust of the spatial strategy which seeks to reduce the need to travel by locating homes in the most accessible places.
  8. There are excellent opportunities to walk, cycle and use public transport. The site even lies immediately adjacent to a mainline railway station.
  9. The proposals represent a logical rounding off for this part of the settlement. They would not represent a new outward incursion into the open countryside.

and would not encroach closer on the National Park than the existing pattern of development in the area. It would in fact be set back behind the Ferring Rife.

10. The site itself is not subject to any designations and is relatively unconstrained in planning policy terms. It is not identified (and protected) as a strategic/local gap, or Local Green Space in the adopted Development Plan.

**Issue 2 Whether the appeal site offers an appropriate location for development having regard to the emerging Local Plan [RfR 1 and Inspector Issues i and ii]**

7.71 The LPA is in the process of preparing a new Local Plan (eLP) as explained in the SoCG.

7.72 A Submission Draft was submitted to the Secretary of State on Friday 11th June 2021 for independent examination. The Examination hearings were held between 2nd and 23rd November 2021. At the time of writing we do not have a final Inspector's Report.

The Inspector's Initial Advice Letter [CD.E6].

7.73 Following the hearing sessions, the EIP Inspector wrote to the LPA on 9<sup>th</sup> December 2021 to provide some "initial advice" and he identifies further work that will be required.

7.74 It is not necessary for me to repeat large sections of the letter but I would make the following observations insofar as they are material to this appeal. The relevant paragraph numbers in the Inspector's Initial Advice letter are provided in square brackets.

- a. The Inspector has not concluded that the plan is sound or that it meets the tests for legal compliance. Those conclusions will be set out in his final report [2].
- b. The Inspector suggests various changes that indicate that the plan is not sound in its current form.
- c. The Inspector also raises concerns about legal compliance and makes various comments which suggest that the SA is inadequate [3 to 8].

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- d. Legal compliance issues are not capable of being retrospectively fixed.
  - e. His legal compliance concerns include amongst other things, how the LPA arrived at its housing requirement of 3,672 homes when the lowest option tested was 4,323 homes [5].
  - f. Even on this basis 651 homes are unaccounted for. That exceeds the number proposed as part of this appeal.
  - g. The Inspector does not rule out the possibility of the need for changes to the plan in view of the above [8].
  - h. There is no mention of whether the duty to cooperate has been met and how the plan can be found “effective” in the context of NPPF paragraph 35(c) when the LPA is plainly deferring its unmet needs indefinitely.
  - i. The Inspector’s letter is silent on the topic of NPPF paragraph 11b and the important test in plan making which was not applied during the plan making stage (as conceded by the LPA at the EIP).
  - j. The unmet need figure would increase further if Site A13 (Titnore Lane) is deallocated as is suggested by the Inspector [29].
  - k. Policies that the LPA relies upon in its RFR including SS4, SS5 and SS5 are all likely to change [eg. 18, 21 and 24]. Indeed, the LPA has already suggested draft Main Modifications that indicate to me that the LPA accepts that they are not sound.
  - l. Modifications are required to differentiate LGS and LGG areas from open countryside and avoid internal inconsistencies [18].
  - m. Notwithstanding the exceptional housing need issue, the Inspector does not deal with the primary consideration of whether LGS policy in the eLP is consistent with planning sustainable development and providing a sufficient number of homes [see NPPF 101].
  - n. The Inspector is not satisfied that Chatsmore Farm (which includes the appeal site) qualifies as LGS [12].

- o. The Inspector says that it is not necessary to demonstrate exceptional circumstances for the purpose of Policy SS5 and he says it is necessary to remove reference to coalescence and openness which are akin to Green Belt policy [21].
- p. The Inspector is inviting changes to the plan through Main Modifications [39] and these will need to be subject to consultation [40].
- q. We obviously cannot prejudge the outcome of this process.

7.75 In my opinion the Initial Advice letter raises lots of questions. I have serious concerns about process and legal compliance which my client will take up with the LPA through the plan making process (or through other means if necessary).

7.76 On any assessment, this is an eLP that still has a long way to go before it can be adopted.

Weight to be afforded to the eLP

7.77 NPPF paragraph 48 explains that LPAs may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);**
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and**
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)**

7.78 I consider that eLP can be afforded no more than limited weight at the time of writing. My reasons include:-

- a. I accept that the eLP is progressing but I would not say that it is at an advanced stage in NPPF terms.
- b. It has been the subject of Examination hearings but we still don't have a final Inspector's Report. That would normally be my milestone for whether a plan is advanced.

- c. We now know from the Inspector's Initial Advice letter that he requires work and modifications to make the plan sound and legally compliant.
- d. Policies SS4, SS5 and SS6 are all live policies for the purposes of this appeal but they are all likely to change and require further consultation before adoption.
- e. The issue of the housing requirement and unmet needs has not been properly resolved.
- f. At the present time objections to the eLP remain unresolved and if the LPA progresses to Main Modifications there is still scope for further objections.
- g. These unresolved objections are far from trivial. The Appellant's objections alone go to the heart whether the eLP is legally compliant and meets the tests of soundness. These cover a range of issues including housing numbers, the spatial strategy and allocations. There is also the matter of local designations such as the proposed local green gaps and LGS.
- h. Issues of legal compliance which my client will be pursuing, further could well lead to the plan having to go back to earlier stages in the plan making process before it can progress forwards.

7.79 It is relevant to note that the LPA only afforded limited weight to the Submission Draft eLP in the Officer Report that preceded the application being refused [see my Appendix 2 paragraph 463]. Firstly, that is not normally sufficient to justify a refusal particularly when the tilted balance is engaged. Secondly, little has changed since that time. It is still the same version of the plan and it remains subject to the same objections. The EIP Inspector has listened to the arguments and provided an Initial Advice letter but he requires more work before the plan can be found sound or legally compliant. I don't see how this can justify elevating the weight that should be afforded to the eLP. There are still many hurdles for the plan to get over before it can be adopted.

7.80 In this context I would draw the Inspector's attention to the appeal decision concerning land at Oxford Road, Enstone [CD.J47]. In that case the eLP was at a

more advanced stage in the plan making process<sup>7</sup>, yet the appeal Inspector concluded that it should still only be afforded limited weight. The relevant paragraphs read as follows:-

**“19. I understand that the first sessions of the Local Plan Examination took place in November 2015. The Examination was subsequently suspended to allow further work to be undertaken to ensure a sound housing strategy. Proposed modifications were published for consultation and further Examination sessions took place in the summer of 2017. Arising from these sessions, further reports and modifications were forwarded to the Examining Inspector. The Inspector has recently issued a letter with his interim findings.**

**20. I acknowledge that the Examination is at a relatively advanced stage, and the Inspector has indicated that, subject to further modifications, the emerging Local Plan is likely to be capable of being found legally compliant and sound. All that said, and importantly, the Examination is not concluded and the consultation process on main modifications is still in progress. Further liaison is required with the Inspector in respect of the wording of some of the further modifications. Importantly, the Inspector has yet to produce his final report. In these circumstances, and in accordance with Paragraph 216 of the Framework, I consider only limited weight can be given to the Emerging Local Plan.”** (my emphasis)

7.81 The LPA was unsuccessful when it sought to challenge this point in the High Court [CD.J50].

7.82 I would draw attention to paragraph 57 of the judgement of Mr David Elvin QC. This confirms that weight is a matter of judgement for the decision maker. It was also found that it was not irrational to afford limited weight to an emerging plan if there is further consultation to be carried out on main modifications even if the Inspector has indicated the Plan is capable of being found sound:-

**“57. Mr Mackenzie faintly argued that the Inspector was not entitled to treat the ELP as of limited weight, but he has not pleaded irrationality and I consider the Inspector’s assessment of weight to be a matter for his own judgment and reject any suggestion that it might be irrational.”** (my emphasis)

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<sup>7</sup> Two sets of hearings, Main Modifications and an interim findings letter from the Inspector stating that subject to further modifications the plan is likely to be legally compliant and sound.

7.83 Notwithstanding my firm view that the Worthing eLP should only be afforded limited weight at this time, I will now go on to deal with the proposals against the emerging policies set out in the Submission Draft for completeness.

7.84 I will also refer to the LPA's suggested changes to Policies SS4, SS5 and SS6 [CD.E18]. I would however caution that they have not yet been published as part of the eLP for public consultation and the Inspector's Initial Advice Letter did not support all of them in any event.

#### The Spatial Strategy [Policy SS1]

7.85 The eLP spatial strategy continues to focus new development at the urban area similar to the adopted Local Plan, with housing being provided for within the defined built-up area and through a small number of edge of settlement allocations.

7.86 As explained in the context of the adopted WCS, the appeal site would be in general accordance with this "urban focus" strategy, being located immediately adjacent to the built-up area and in an accessible location where there are opportunities to reduce the need to travel.

7.87 I recognise policy SS1 refers to the protection of the countryside and Gaps (amongst other things) but the NPPF does not seek to protect the countryside for its own sake and it may be the case that the proposals could come forward that are in accordance with future iterations of the draft Local Green Gap policy.

#### The Appeal Site not being a Proposed Allocation for Housing

7.88 I accept that the appeal site does not form part of any draft housing allocation in the eLP. However, the Examination of the eLP is not complete and we can't prejudge the outcome of that process.

7.89 Normally alarm bells would be ringing when an eLP only proposes to meet 26% of the minimum Local Housing Need and when nobody knows where the unmet needs will be met contrary to NPPF paragraph 35(c). The issues are further compounded by the absence of an NPPF paragraph 11b assessment to justify the LPA's constrained housing requirement and an inadequate SA. There remains a very real possibility that the LPA could be required to revisit its position.

7.90 The appeal site remains an obvious candidate for allocation and where the adverse effects would not significantly and demonstrably outweigh the benefits<sup>8</sup>. The fact that the site is not currently proposed to be allocated in the current draft of the eLP means very little when viewed through these optics.

#### Policy SS4 – Countryside

7.91 Land beyond the built-up area (including the appeal site) will be treated as countryside and the policy does not appear to allow for housing development. On top of that the eLP proposes to designate the appeal site as a Local Green Gap (Policy SS5) and Local Green Space (Policy SS6) such that there is a “triple lock” on the site.

7.92 Firstly, given the housing land supply position this policy cannot be a bar to development that cannot be located anywhere else.

7.93 Secondly, we can see from the Inspector’s Initial Advice Letter[CD.E6 para 18] that there are concerns about the overlapping nature of policies SS4, SS5 and SS6. For example, if there were circumstances where a proposal complied with one policy could it still be precluded by another? This needs to be resolved through further changes to the plan for which there will need to be consultation.

7.94 I note the reference to the need to respect the setting of the National Park in criterion (f). the appeal proposals would accord with this.

#### The Proposed Local Green Gap [Policy SS5]

7.95 Draft Policy SS5 explains that the intended purpose of the proposed Local Green Gap that affects the appeal site (Chatsmore Farm) is to maintain the separate identity and character of the settlements at Worthing and Ferring.

7.96 Mr Self deals with the draft policy from a landscape and visual perspective, but I will also deal with it from a policy/spatial planning perspective.

#### Exceptional circumstances

7.97 The second part of the policy states that:-

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<sup>8</sup> NPPF paragraph 11d and 11b

**“Development within these Gaps will be carefully controlled and will only be permitted in exceptional circumstances.”**

7.98 I consider that exceptional circumstances can be demonstrated in this case:-

- a. The LPA recognises that the identified **need** for new homes is “exceptionally high” [CD.E14 para 4.15]
- b. The LPA accepts that there is an “acute” affordable housing problem [CD.J49 pdf p.52]
- c. The LPA accepts that there is a “chronic shortage” of large sites that could deliver significant housing numbers on the same scale as this site [CD.J49 pdf p.73].
- d. There is **no scope** to meet the need for development elsewhere in the Borough. The LPA cannot identify a single alternative site.
- e. There is an unmet need of 10,488 homes. The LPA has nothing in place to ensure that this need will be met in full elsewhere [CD.E2 para 3.28].
- f. The national imperative to boost significantly the supply of housing [NPPF 60] and to contribute toward economic growth will not be met in Worthing. These are important **national considerations**.
- g. Mr Tiley identifies the negative implications for the **local economy** and the supply of labour if jobs cannot be taken up because workers can’t afford to live in the area.
- h. Alternatively, it will contribute towards unsustainable in-commuting with the consequent costs for the environment and traffic congestion.
- i. The development proposals themselves will stimulate activity in the local economy.
- j. The **cost** of failing to meet housing needs also manifests itself in the lives of real people through worsening affordability, health problems and reduced life chances [see CD.I4].
- k. The **effect of the development on the environment** can be moderated to an acceptable degree, including its landscape and visual effects.

- l. Physical and visual separation between Worthing and Ferring can be maintained even with development.
- m. There is no ecology objection as there would be no unacceptable impact on wildlife. Impacts can be mitigated and there is a policy requirement for biodiversity enhancement overall.
- n. There is no overriding heritage objection. It is agreed that the public benefits outweigh the low level of harm to designated assets.
- o. There would be increased public access for recreation purposes.

7.99 I am mindful that the EIP Inspector's Initial Advice clearly says that demonstration of exceptional circumstances is not necessary because the policy criteria set out what would be acceptable [CD.E6 para 21]. I agree and so do the LPA, as demonstrated by the suggested policy changes that it presented at the EIP.

7.100 However, I consider that this exercise is still of assistance to this s.78 appeal. The factors that I say contribute towards exceptional circumstances respond positively to all three considerations set out in NPPF paragraph 177 for exceptional circumstances that might justify major development within National Parks.

7.101 Obviously, our site is not within the National Park and so this high test does not apply. But if it did, I would say that the appeal proposals would be capable of passing that exceptional circumstances test. If it can pass the very high test in the context of nationally important landscapes then it must be capable of passing the test for an emerging draft local gap policy.

7.102 I fully expect that the LPA will say that proposed Local Green Gap at Chatsmore Farm was considered as part of the EIP. However:-

- a. The appeal site and Chatsmore Farm are not the same. The appeal site only forms a part of the area referred to as Chatsmore Farm.
- b. The EIP has not thus far not considered the individual merits of the appeal site or the appeal proposals. The Inspector made it very clear in the Examination Guidance Notes that he was not considering omission sites [CD.E25 paras 12-14].

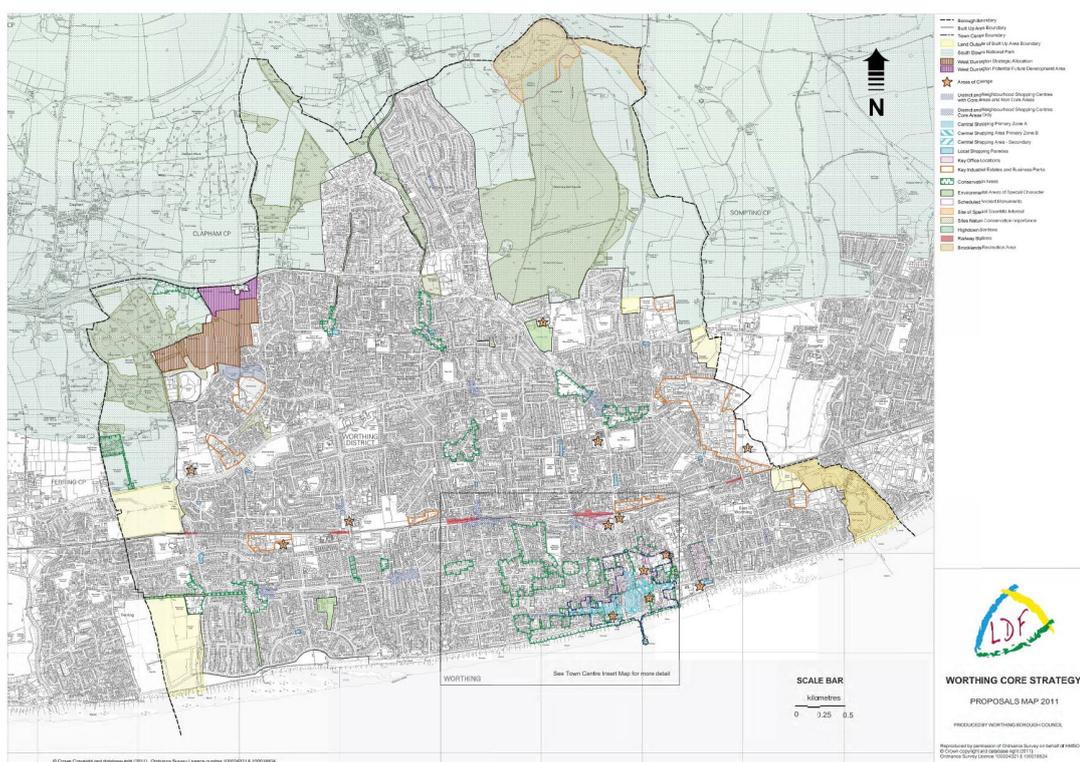
- c. The EIP Inspector did not have the same evidence that is available to our s.78 Inspector. Our s.78 Inspector will hear detailed site-specific evidence all based on a particular development proposal which will be properly scrutinised and tested in a way that could not be done at the EIP.
- d. I consider that soundly based decisions on the balance of the benefits and harms of a particular development proposal on this site can only be reached on the detailed evidence submitted as part of a specific planning application or appeal.

*Not to lead to coalescence of settlements [Criterion i]*

7.103 Criterion (i) states that any development within the Gap must not individually or cumulatively lead to coalescence between the settlements. It is therefore intended to be a spatial planning tool designed to maintain physical separation between settlements.

7.104 The EIP Inspector has already raised concerns about the coalescence test in his Initial Advice Letter as it would be akin to Green Belt Policy. I would suggest that it is also flawed for other important reasons:-

- a. Whether two or more things have coalesced is binary. It is an absolute term. It has either happened or it hasn't.
- b. It is an undeniable fact that Ferring has already coalesced with Worthing immediately to the south of the appeal Site along the route of the railway line and Goring Way. This is nothing new. This has been the case for decades.
- c. Precluding development on the appeal site does not therefore serve to prevent coalescence. It has already happened on any assessment.
- d. The adopted WCS Proposals Map (below) shows a continuous defined built up area between Ferring and Worthing. There is no differentiation. The built development between Worthing and Ferring is not washed over by any countryside designation. The eLP treats it as part of the same built up area.



e. The LPA’s EIP topic paper – Land Outside the Built Up Area Boundary [CD.E17 para 5.5 and 5.7] openly acknowledges that the settlements are already “linked”. Paragraph 5.7 states:-

**“The first half of the 20th century saw significant change with housing development and road building expanding both Ferring and Goring. During the 1950s the settlements were linked by a linear strip north of the Goring-Ferring Gap and south of Chatsmore Farm.”** (my emphasis)

- f. We mustn’t let the reference to a “linear strip” infer that this was a thin area of ribbon development that joins Ferring to Worthing. It is circa 600m wide. Ferring itself is only circa 800m wide measured east to west.
- g. A person travelling east/west along Goring Way would have no perception of leaving the built-up area of Worthing, passing through open countryside and then entering a physically separate settlement.
- h. Along the route there is development at depth either side of Goring Way and the impression for the person passing through would be that of a single built-up area.

- i. The WCS treats the Built-Up Area as a single entity. Whilst Ferring lies in Arun District, there are no WCS policies which refer to Ferring as a separate settlement or which expressly seek to protect its individual identity.
- j. Physical separation is not always required to maintain a separate identity. Indeed, the WCS acknowledges at paragraph 2.9 that the historical development of the town has involved the merging of villages but how they retain their own distinctiveness. The same could be said of Ferring:-

**"2.9 Outside of the town centre and seafront area, the borough is more suburban in character. The - historic development of the town occurred through the merging of separate villages and centres such as Tarring and Broadwater. The expansion of the town in this way is still evident today with distinct areas centred on the parish church or local shops that each have their own identity and character."**

(my emphasis)

7.105 It cannot therefore be a useful or reasonable test to ask whether the appeal proposals would lead to coalescence. The answer will always be no. It was the development in the 1950's that obviously led to and caused coalescence. I fully expect that this policy requirement will not be carried forward into the next version of the draft plan.

*Openness and unobtrusive development [Criterion ii]*

7.106 Even if the Inspector accepts my arguments about coalescence I recognise that there still remains the issue of openness to consider and the degree to which the openness between settlements might be reduced.

7.107 Criterion ii requires:-

**ii) it is unobtrusive and does not detract from the openness of the area;** (my emphasis)

7.108 I don't intend to deal with the issue of obtrusive development as that is a matter for Mr Self. With regards to openness, it remains to be seen what the final wording of the policy will be, but it is difficult to envisage that the policy could be adopted if it purports to allow development in exceptional circumstances but at the same time precludes any development that would "detract" in any way from openness. That is a nil detriment requirement and would be a restriction that goes further than Greenbelt policy.

7.109 A more sensible approach would be to consider whether the principle of separation would be maintained with new development and whether it would continue to function as a visual and physical gap.

7.110 That has been my experience when dealing with such matters in other appeals. In the case of land at Lutterworth for example [CD.J48], the Inspector allowed a development of 250 dwellings within a gap on that basis (referred to as an Area of Separation in that case). The Inspector also found one of the Local Plan policies to be inconsistent with the NPPF where it sought to preclude any reduction in separation per se (as would Policy SS5). The Inspector found that:-

**“9. There would still be a considerable area of open space retained between the two places allowing Lutterworth to be experienced as a completely separate settlement and its identity and character would not be influenced by the large distribution park. For these reasons the scheme would comply with CS policies CS1 h) and CS14 e) which aim to ensure that the principle of separation is maintained to safeguard character. Harborough District Council Local Plan 1991 - 2006 (LP), policy EV/3 relating to the AOS, restricts development which reduces this separation. However, as this would not take a balanced approach to development as sought by the National Planning Policy Framework (NPPF) and has been overtaken in its approach by NPPF compliant policies CS1 and CS14, I afford it limited weight in my consideration.”**

7.111 If it is the objective of the proposed gap policy to retain separation between Worthing and Ferring then I consider that the proposed Chatsmore Farm gap and the Goring-Ferring gap must be treated together as part of the same gap. Indeed, in the LPA’s response to IL01 – (Initial Letter from the EIP Inspector) dated August 2021 it repeatedly refers to them as being parts of the same Goring Gap [CD.E14 pages 75 and 76].

7.112 That being the case, my analysis against the objective of the policy would be as follows:-

- a. The two undeveloped areas extend to approximately 104ha in total (30ha in the northern part and 74ha in the southern part, as illustrated below).
- b. The broad footprint of the development area that forms part of the appeal proposals extends to approximately 13.5ha and that is ignoring the north-south green corridors that have been designed into the masterplan.



- c. If the appeal was allowed then circa 13% of the existing gap would be occupied by built development. 87% of the undeveloped area between Ferring and Worthing would remain unaffected.
- d. My client is even prepared to provide a s.106 planning obligation to transfer the land north of the Ferring Rife to the LPA to secure its undeveloped character in perpetuity.
- e. The vast majority of what the LPA refers to as the Goring Gap would therefore remain undeveloped and I consider this to be a very important material consideration.

7.113 I note that the LPA has suggested to the EIP that the coalescence and openness criteria might well be replaced with the following:-

- i) It would not undermine the physical and/or visual separation of settlements;**
- ii) It would not compromise the integrity of the gap;**

7.114 Whilst this stated intention can't be afforded much weight at all, even if that was the case, then the analysis that I have set out above, and that of Mr Self, serve to

demonstrate that the proposals accord rather than conflict with these policy requirements.

7.115 Mr Self explains how the proposals would comply with the other two criteria of the draft policy which the LPA left unchanged.

The 1974 Appeal decision [CD.J14]

7.116 I anticipate that the LPA will refer to the 1974 appeal in support of the approach it has taken on the proposed Local Green Gap and so I will deal with it now as follows:-

- a. Case law is clear that no Inspector is bound by an earlier appeal decision.
- b. It is not unusual to see planning permissions granted on application or at appeal following earlier unsuccessful appeals where there has been a material change in circumstances or indeed a significant change to the scale and form of the proposal as is the case here.
- c. The appeals do not relate to the same area of land. The 1974 scheme involved 580 dwellings on 74.5 acres (30ha). It was a larger number of houses on a larger site. It would have included all of the land between the railway and the A259. That would include the land in Arun to the west and more importantly it would take development well beyond the Ferring Rife. The current appeal scheme intentionally stops well short of the Rife and it excludes the Arun land. The impact on openness/separation would have been very different.
- d. The decision was made over 47 years ago. Much has changed in terms of planning policy including the publication of the NPPF which represented a major shift in national planning policy, as held by the courts.
- e. The SoS was also considering the proposals in the context of a very different need for housing and at a time when housing was also much more affordable.
- f. Whilst housing requirements are calculated very differently today, the appeal decision records that there was 5.7 year supply of housing at the time. We now have just 1.49 years of supply when measured against a minimum requirement to demonstrate 5 years.

g. The SoS seemed content about the availability of alternative land. Indeed, the LPA has evidently provided housing in the area without this site for almost half a century. However, there are no alternatives left in Worthing even on the LPA's case.

h. Loss of Agricultural Land (BMV) figures heavily in the decision. This forms no part of the LPA's case at this appeal. The decision refers to Various Circulars and a White Paper to say that at the time this was an exceptionally compelling argument regardless of housing land supply. This is not reflected in the current NPPF.

7.117 For all these reasons I would afford very limited weight to the previous appeal decision and would instead reiterate that the current appeal proposals would be consistent with the objectives of the emerging local gap policy in any event.

The proposed Local Green Space Designation at Chatsmore Farm

7.118 The NPPF at paragraph 101 explains that:-

**"101 .....Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services....."**

7.119 Most importantly the LPA's approach is not consistent with the planning sustainable development and providing a sufficient number of homes. The EIP Inspector's Initial Advice letter fails to address this primary consideration before going on to consider the merits of individual designations. We don't know if he has even considered it.

7.120 Instead of addressing the dire housing land supply position and seeking to maximise the amount of housing that can be delivered in the area to meet unmet needs (in a sustainable way of course) this draft policy is being used to block housing development. It would add a further layer of constraint to the land and give it the same protections as Green Belt<sup>9</sup>.

7.121 The NPPF at paragraph 102 explains that the Local Green Space designation should only be used where the green space meets all the following criteria:

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<sup>9</sup> see NPPF paragraph 103

**a) in reasonably close proximity to the community it serves;**

**b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and**

**c) local in character and is not an extensive tract of land.**

7.122 The site fails immediately due to its scale. The area proposed for designation is not local in character and LGS should not be used to provide a blanket designation over an extensive tract of land. That is exactly what is being done here with the draft designation washing over 30ha of open, arable farmland. The EIP Inspector shares these concerns [CD.E6 para 12] and I would be surprised if the LPA was to persist with an LGS designation on this land.

7.123 I note that the EIP Inspector was satisfied that the Chatsmore Farm land would meet criteria (a) and (b) but this becomes academic if it has already failed for the reasons set out above.

7.124 That said, the Inspector does not explain how he reached this conclusion. There is also nothing in his letter to explain whether the features of significance relate to the appeal site itself or whether they lie beyond the site boundary on other land at Chatsmore Farm.

7.125 Furthermore, the LPA's SoC at paragraph 8.13 states that:-

**"Whilst not a valued landscape in NPPF terms it is highly valued by the local community."**

7.126 It is not sufficient to just say that the land is of value to the local community. NPPF paragraph 102b also requires that it holds particular local significance. Examples of significance are beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of wildlife. Mr Self explains that none of these attributes can be reasonably applied to the appeal site.

7.127 It is also noteworthy that the LPA don't raise any ecology related objections based on the loss of wildlife and nor does the LPA consider the heritage impacts (even on its own case) to be sufficient to refuse planning permission<sup>10</sup>.

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<sup>10</sup> SoC para 8.4

7.128 In circumstances where the LPA has been unable to identify anything close to what is required to meet local housing needs it can ill afford to be adding further (unjustified) policy constraints to sites like this when the land should instead be considered for housing.

7.129 It is obviously not the role of our appeal Inspector to consider whether the site should be designated as LGS in the eLP. That is a matter for the LP Inspector and the plan making process. However, the Inspector's Initial Advice Letter and the evidence of Mr Self casts very significant doubt about whether this draft LGS designation will be confirmed, if and when the eLP is adopted. This diminishes the weight that can be afforded to any conflict with this policy.

7.130 To summarise on the emerging Local Plan:-

1. The eLP can be afforded no more than limited weight at this time, having regard to NPPF paragraph 48.
2. The emerging Local Plan is not at an advanced stage, it is subject to unresolved objections and it is not consistent with the NPPF.
3. The Inspector's Initial Advice letter has not concluded that the plan is sound or that it meets the tests for legal compliance. The letter is also silent on some fundamental matters. Further work is required and the plan will no doubt be subject to further change and consultation.
4. It would be inappropriate to resist the appeal proposals on the basis of any perceived conflict with the emerging Local Plan for both procedural and evidential reasons.
5. The LPA's RfR 1 relies upon eLP policies SS4, SS5 and SS6 which are all likely to change even according to the LPA.
6. In particular, the Inspector suggests that the Chatsmore Farm LGS designation does not meet the tests in the NPPF. The evidence of Mr Self reaches a similar conclusion.
7. I expect the exceptional circumstances test to be deleted from the draft Local Green Gap Policy SS5 as suggested by the EIP Inspector but I am in no doubt that there are exceptional circumstances that justify the appeal proposals in any event.
8. The fact that the site is not allocated and does not accord with the eLP policies as currently drafted means very little when viewed through these optics.
9. Even if the Local Green Gap policy was to survive in some form (and we don't know whether it will), the evidence demonstrates that the appeal proposals would maintain the integrity of what the LPA refers to as the Goring Gap.

10.87% of the undeveloped gap would remain. There would be functional separation in physical and visual terms. The proposals would therefore accord with the objective of the policy in any event.

11. There have been material changes in circumstances which distinguish this appeal from the 1974 appeal decision which dealt with matters of separation. It should be afforded very limited weight in the determination of the current appeal.

### **Issue 3 Prematurity [RfR 2 and Inspector Issue i]**

7.131 RfR 2 claims that that the proposals are premature as the development proposed is so substantial, and its cumulative effect would be so significant, that to grant permission would undermine the plan-making process. I do not agree.

7.132 National policy on the issue of prematurity is set out in NPPF paragraphs 49 and 50. We are told that in the context of the Framework – and in particular the presumption in favour of sustainable development (as is the case here):-

**“49..... arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:-**

**a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and**

**b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.”**

7.133 Paragraph 50 goes on to explain that

**“Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; ..... Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process”**

7.134 I will take each point in turn:-

#### Scale

7.135 The Local Housing need figure for the eLP is 14,160 homes. That is the minimum scale of development that the eLP should be planning for.

- 7.136 The appeal proposals involve a development of only 475 dwellings. That is only 3% of the minimum number of homes that is needed. That scale of development does not come anywhere close to “substantial” when looking at the plan as a whole.
- 7.137 It is also the case that the appeal proposals would not, in combination with other allocations and commitments, lead to an overall scale of development that exceeds the minimum housing need for the area. The LPA is only proposing to meet the needs of 3,672 households that are in need (just 26%).
- 7.138 If this appeal was allowed and the eLP was adopted in its current form, then we would still only expect to see 4,147 additional homes (or 29% of the minimum Local Housing Need).<sup>11</sup>
- 7.139 The LPA will no doubt argue that because the eLP only aims to deliver a fraction of its Local Housing Need (26%) then 475 additional houses would represent a substantial increase on that amount. It wouldn’t. It would still only represent a modest increase of 13% over and above what the LPA is planning for. Nobody is proposing more development than is needed. There will still be a substantial shortfall over the plan period.
- 7.140 National policy in NPPF paragraph 11 states that Plans and decisions should apply a presumption in favour of sustainable development. It goes on to state that:-

**11.**

**For plan-making this means that:**

.....

**b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas<sup>6</sup>, unless:**

**i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area<sup>7</sup>; or**

**ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.**

....

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<sup>11</sup> 475 + 3,672 = 4147 which equates to only 29% of the 14,160 homes that are needed.  
(475 / 3672) x 100 = 13%

7.141 During the EIP, the LPA was unable to demonstrate to the Inspector how NPPF paragraph 11b had been applied before deciding that it could not meet its identified housing need. The reduced housing requirement is not justified and is inconsistent with the NPPF. This is a fundamental flaw in the eLP. However, the EIP Inspector has yet to produce his final report although his Initial Advice letter does indicate further work and modifications will be required to make the plan sound and legally compliant (as explained above).

7.142 Simply put, if this appeal is allowed, having considered all of the evidence (evidence that has not and will not be considered by the EIP Inspector), then it will be because the evidence shows that any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits ie. the LPA has underestimated the capacity for sustainable development at least insofar as the appeal scheme is concerned.

#### Location

7.143 This is not a case where the eLP is saying that development should be directed to Town (A) but the Appellant is trying to redirect it to Town (B), such that it leads to a material and harmful distortion of the spatial strategy. If this appeal is dismissed then these homes (and the other benefits) won't be delivered at all. The LPA is not proposing any alternative location for this development.

7.144 The reality is that the appeal proposals are consistent with the urban focus strategy of the eLP which is based on a single defined urban area.

7.145 The site is also surrounded by housing on three sides, it is located immediately adjacent to a mainline railway station and is well related to local shops and facilities. It has the all the key locational characteristics that plan makers would normally look for in a site. It is an excellent housing site and I am very surprised that the LPA has rejected it.

#### Phasing

7.146 I am not aware of any implications that the appeal site would have for the phasing of other development in the area.

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Undermining the plan led process

- 7.147 There is no evidence to suggest that the LPA would even consider abandoning the eLP if this appeal was to be allowed.
- 7.148 I see no reason why allowing this appeal would lead to a fundamental rethink of the current spatial strategy or indeed any of the proposed allocations. The strategy of the eLP does not fall apart if the appeal site is released for development. I fully expect that the LPA would continue to progress with the plan regardless of the outcome of this appeal.
- 7.149 In circumstances where an Appellant can demonstrate that additional development can come forward in the area and make a very significant contribution to reducing the scale of unmet needs without causing unacceptable harm, then I consider this to be a positive outcome for the planning system. LPAs should positively plan for the needs of the area, looking for solutions not problems.
- 7.150 I recognise that there has been a significant level of objection to the appeal proposals (1,200 according to the Officer Report) and there may be some disillusionment in the planning system if their objections are not accepted by the Inspector.
- 7.151 However, the level of objection must be put into context. The eLP tells us that Worthing is now one of the largest towns in West Sussex, with around 110,700 residents. 1% of the population object to this application. The corollary is that 99% have not objected and it is widely accepted that objectors are more likely to engage in the planning process than those that are neutral or supportive.
- 7.152 Of the 1,200 people that object I presume that most of them have a decent home. Under the eLP circa 10,500 households (23,100 people assuming a household size of 2.2 persons per household) will not get the home that they need and deserve.
- 7.153 I don't say this just to be provocative, but planning requires us to balance social, economic and environmental objectives and to make planning judgements about how we can achieve sustainable development for the wider public good. This is a well-considered development proposal which strikes the right balance between these objectives.

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The proposed Green Space Designations

- 7.154 RfR 2 relies upon the “Green Space” designations as being part of the prematurity argument and indicates that that the LPA considers them to be central to the eLP.
- 7.155 Firstly, paragraph 49 is concerned with the scale, location and phasing of development. It does not say anything about proposed restrictive designations.
- 7.156 Secondly, even if it did, the clue is in the name of the proposed designations in that they are related to local green gaps and local green spaces. They are of local significance. As such they cannot be considered to be central to the strategy of the eLP.
- 7.157 The LP Inspector has already indicated in his Initial Advice letter [CD.E6] that he is not persuaded by the LPA’s attempts to designate the appeal site as LGS. I have not heard anything to suggest that the LPA is now looking to tear up the plan for this reason.
- 7.158 With regards to the Local Gap Policy SS5, the Inspector has raised significant concerns about the wording of the draft policy. We will need to wait for Main Modifications to be published for consultation but if the policy is amended in line with the suggested changes that were put to the EIP [CD.E18], I have already explained that the proposals would accord rather than conflict with the policy.

Whether the emerging plan is at an advanced stage

- 7.159 The NPPF does not define what is meant by an advanced stage. It is a matter of judgement for the Inspector to decide whether the eLP has reached an advanced stage.
- 7.160 I do not believe that the eLP is at a sufficiently advanced stage to for it warrant a reason for refusal on the grounds of prematurity, particularly when the tilted balance is engaged.
- 7.161 Paragraph 50 states that refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination. However national policy is silent about what happens after a plan is submitted for examination. That must be right because every case will need to be considered on its merits. As I have already explained in the context of NPPF paragraph 48, this is a plan which still has hurdles to get over before it can be adopted.

7.162 In this context I would again draw the Inspector's attention to the Enstone appeal decision and the related legal judgement [CD.J47 and CD.J50].

7.163 To summarise:-

1. Arguments that an application is premature are unlikely to justify a refusal of planning permission other than in limited circumstances [NPPF para 49].
2. Both of the tests in NPPF paragraph 49 for when prematurity might justify refusal are simply not met in this case.
3. The appeal proposals involve amount to 475 dwellings. That is only 3% of the minimum number of homes that the LPA should be providing for anyway.
4. 475 homes is still only a 13% increase on top of the 3,672 dwellings the LPA is planning for. This is not "so substantial" and in any event there are major questions about how the LPA arrived at its constrained housing figure.
5. The location of the site is consistent with the urban focus strategy of the eLP and puts development in an accessible location which reduces the need to travel. The proposals do not give rise to a material and harmful distortion of the spatial strategy in locational terms.
6. There is no suggestion that allowing this appeal will cause the LPA to abandon the eLP or for there to be a fundamental rethinking of the plan.
7. The Local Green Gap and Local Green Space policies are of local significance rather than something which is central to the strategy of the eLP
8. The LGS at Chatsmore Farm looks likely to fail regardless of this appeal. The LPA has not suggested that it will cause them to tear up the plan.
9. I have already demonstrated that the appeal scheme could accord with the LPA's latest thinking on the Local Green Gap policy in any event.
10. The NPPF does not define what is meant by "at an advanced stage." It is a matter of judgement and this plan still has many hurdles to overcome before it can be found sound and legally compliant.
11. I do not believe that the eLP is at a sufficiently advanced stage to warrant refusal on grounds of prematurity.
12. The eLP is planning to fail. If an Appellant is able to demonstrate that the LPA has underestimated the capacity for sustainable development at a time when the needs of circa 10,500 households are going to go unmet, then that is a positive outcome for the planning system. It is clearly in the public interest rather than something that should be criticised as undermining the plan led process.

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#### **Issue 4      Other matters raised in third party objections**

7.164 As requested by the Inspector at the CMC I will now deal briefly with the other objections raised by third parties.

7.165 I will only deal with the issues that are not addressed already in my evidence or in the evidence prepared by other witnesses on behalf of the appellant, such as traffic and transportation for example.

##### Ecology and wildlife

7.166 The application is supported by a suite of ecological assessments which included surveys of protected species [CD.A9] Breeding Bird surveys [CD.A6], Wintering Bird Surveys [CD.A7] and a Biodiversity Net Gain (BNG) Assessment [CD.A8].

7.167 The survey of protected species report identifies that proposed development will result in negative impacts to breeding birds, foraging and commuting bats, water vole and reptiles, however, long-term adverse effects on the conservation status of these species are not predicted.

7.168 Mitigation methods are recommended to reduce and offset the predicted impacts on a proportionate basis. Measures to enhance the ecology of the site post-construction which are conducive to being shown spatially are depicted on the Ecological Mitigation Plan at Appendix X of the report. A biodiversity net gain assessment has been carried out separately to demonstrate the overall value of the site for ecology after development.

7.169 The BNG assessment concludes that there will be no loss in linear habitats as a result of the proposed development. The existing lines of trees will be retained in their current condition. Significant native hedgerow planting is proposed which results in a 1577.20% net gain in linear habitats.

7.170 The majority of baseline area habitats (mainly arable) will be lost with small sections at the boundaries retained. Significant areas of biodiverse habitats will be created as part of the landscape strategy, resulting in an overall net gain of 9.22% in area habitats.

7.171 There will be additional biodiversity enhancements provided as part of the proposed development including the provision of bat boxes, bird boxes, and habitat piles for

amphibians and invertebrates, in suitable locations. However, these are currently not accounted for in version 2.0 of the Defra Metric.

7.172 With regard to birds it is notable that the Sussex Ornithological Society did not object [CD.B4] and commented that they believed that the Breeding Bird and Winter Bird surveys have been carried out to a high standard. They have no additional records of birds to add any worthwhile information to that contained in the two reports. They agreed with all 10 recommendations and would like to see them all implemented. It is agreed with the LPA that the s.106 can secure suitable mitigation for birds off site as well as other measures on site.

7.173 The LPA raise no objections on ecology grounds.

#### Flood Risk and Drainage

7.174 The application is supported by a Flood Risk Strategy and Drainage Strategy [CD.A16].

7.175 It explains that the site is located in Flood Zones 1 to 3, although development will be restricted to areas falling fully within Flood Zone 1.

7.176 Surface water will be dealt with via sustainable means with attenuated storage being provided through permeable paving and above ground features including pond(s) and wetland(s). Flows will discharge to Ferring Rife as infiltration has been found to be unviable following on-site investigation and testing. Shallow infiltration testing is to be undertaken to verify whether infiltration is viable at shallow depths.

7.177 Betterment will be provided in terms of run-off rates; which will be less than existing 'pre -development' greenfield run-off rates. The on-site drainage proposals will accommodate a 1-in-100-year storm event, inclusive of an allowance (40%) for climate change as well as urban creep (10%).

7.178 Additional, independent flood modelling has been undertaken to fully establish and consider the predicted flood extents and levels in view of a 1-in-100-year storm event, inclusive of climate change allowances. The initial masterplan avoids the areas of the site indicated as being 'at risk' of flooding in view of all mapping and modelling assessed.

7.179 It is proposed that foul water will outfall to the Southern Water public sewer network, via gravity connections to the public sewers located in Green Park (west)

as well as in Goring Street (east). In conclusion, this development is suitable with regards to flood risk and surface water drainage.

7.180 West Sussex County Council (WSCC), in its capacity as the Lead Local Flood Authority (LLFA) and the Environment Agency have been consulted and they raise no objections subject to conditions. Southern Water also raise no objections [see CD.B5, B8 and B6 respectively].

#### Pressure on local amenities

7.181 The S.106 Agreement will include sufficient provisions to serve the development and to mitigate for any infrastructure deficiencies arising from the development.

7.182 No evidence is presented to demonstrate why any local amenities could not cope if the appeal is allowed and there are no outstanding objections from any statutory consultee on this matter.

#### There are plenty of previously developed sites available to meet the need

7.183 This is simply not the case. No party presents any evidence to substantiate this claim.

7.184 The fact that the LPA has only been able to identify enough land to deliver 26% of the homes that are needed indicates that there is not enough PDL land available.

#### Loss of amenity land

7.185 Whilst there are two public rights of way within the site, there is no other public access.

7.186 Local residents would however have greater access to the site and the extensive areas of proposed public open space if the appeal is allowed.

#### Residential amenity of neighbouring residents

7.187 Matters relating to residential amenity can be addressed at the Reserved Matters stage. There is no reason why this cannot be achieved.

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This surrounding area, is an expensive area to live, no way could todays youngsters, afford to buy here, enabling them to climb on the property ladder

7.188 I agree. The evidence of Mr Tiley and Mr Stacey support this claim. However, I don't see how it can be used as a reason to object to the appeal proposals.

7.189 Simple economic theory tells us that high prices are linked to shortages in supply. Refusing planning permissions will never address the problem.

7.190 To summarise on the third party objections:-

1. The planning application provided the necessary information to confirm that there is no evidential basis for objection on any of these grounds.
2. There are no outstanding objections from statutory consultees relating to these matters.
3. In view of the above and in the absence of any robust technical evidence to the contrary, there is no reason why planning permission should be withheld on these grounds.

## 8. THE OVERALL PLANNING BALANCE

8.1 The planning balance is ultimately a matter of judgement for the decision maker. The Inspector will obviously need to reach his own conclusions, but I will now explain how I believe that the Inspector should approach the determination of this appeal.

### The Decision Making Framework

8.2 I do not seek to argue that the appeal proposals accord with the Development Plan when read as a whole such that this appeal should be determined in the context of NPPF paragraph 11c.<sup>12</sup> Instead, this is a case where NPPF paragraph 11d applies.<sup>13</sup>

8.3 It is agreed that the LPA is unable to demonstrate a 5 Year Housing Land Supply as required by the NPPF. As a consequence, footnote 8 of the NPPF is engaged and the most important policies for determining the application are deemed out-of-date.

8.4 There are two NPPF footnote 7 policies that are potentially engaged in this case are these relate to:-

- a. Designated Heritage Assets, and
- b. The National Park

8.5 I deal with these matters later in my evidence and explain that they don't provide clear reasons for refusal nor do they cause the tilted balance to be disapplied.

8.6 I accept that the tilted balance does not change the statutory presumption in favour of the Development Plan set out in Section 38(6) of The Planning & Compulsory Purchase Act 2004. It does however mean that some policies may need to be afforded reduced weight in accordance with the Suffolk Coastal Supreme Court judgement. Otherwise, those policies will continue to block and frustrate the national imperative to significantly boost the supply of housing.

8.7 Once paragraph 11d is engaged, the decision maker must consider whether any adverse impacts arising from granting planning permission would significantly and

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<sup>12</sup> Approving development proposals that accord with an up-to-date development plan without delay

<sup>13</sup> The "tilted balance"

demonstrably outweigh the benefits. The Suffolk Coastal judgement indicates that the decision maker must then consider in the context of Section 38(6) of the 2004 Act whether these amount to “other material considerations” that justify the grant of planning permission.

- 8.8 Having set out the framework for decision making, I will now go on to identify the positive benefits and the adverse effects that I have taken into account to reach my own conclusions.<sup>14</sup>

### **The benefits associated with the application proposals**

- 8.9 I consider that the appeal proposals if allowed, would secure a range of important benefits that respond to all three of the Government’s overarching objectives for sustainable development (social, economic and environmental).<sup>15</sup> I have outlined the benefits of the appeal proposals below.

#### The Social Benefits

- 8.10 I consider that Very Substantial weight should be afforded to the provision of **additional open market homes**. It is extremely rare for me to apply weightings above “substantial” in Proofs of Evidence, but the issues in this case are so exceptional that they justify the very highest weighting.
- 8.11 It is an undisputed fact that this country is in the middle of a housing crisis. The Government accepts that the housing market is broken and the NPPF includes the national policy imperative that requires LPA’s to significantly boost the supply of housing [paragraph 60].
- 8.12 I rely upon the evidence of Mr Tiley which demonstrates that the local housing land supply position in Worthing is beyond desperate. The LPA is unable to demonstrate a 5YRHLS. At best the LPA claim **1.81** years and Mr Tiley says it could be as low as **1.49** years.
- 8.13 In all my experience of dealing with housing schemes I have never faced an LPA with such a low 5YRHLS, and which is further compounded by a proposed plan period shortfall of circa 10,500 homes.

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<sup>14</sup> For the avoidance of doubt, the weightings that I will apply are as follows:- Very Limited, Limited, Moderate, Significant, Substantial and Very Substantial.

<sup>15</sup> NPPF paragraph 8

- 8.14 The shortfalls are very substantial. The LPA is running a prematurity argument yet the eLP does precious little to address the exceptional need for housing in the area. It only proposes to meet 26% of the need and there is no mechanism in place to meet the unmet needs in full anywhere else.
- 8.15 An additional supply of open market housing provides the opportunity to tackle the problem of rising housing prices and to make market housing more affordable to those looking to get on the housing ladder. The evidence of Mr Stacey highlights acute affordability issues in Worthing with the ratio of lower quartile house prices to income being almost 10:1. That is simply not affordable for a large proportion of society.
- 8.16 In terms of lower quartile house prices themselves, within the Castle ward where the site is located, he notes that the lower quartile house price has risen from £151,000 in 2006/07 to £266,750 in 2020/21; an increase of 50%.
- 8.17 As well as increasing the availability of open market housing, the proposals would also make provision for a meaningful number of **new affordable homes**. As noted earlier, the LPA acknowledges that there is an acute need for affordable housing in the town [CD.J49].
- 8.18 It is generally true that the planning system has a technocratic character which requires abstract policy to be applied to objective evidence usually expressed in statistical terms. Occasionally, however, a human face emerges, and this is particularly true when considering the real problems facing real people in need of affordable housing. With a planned shortfall across the plan period, affordable housing needs will simply go unmet meaning that more people will be forced to live in unsatisfactory housing with all the social, and economic consequences that flow from that.
- 8.19 It is not just any other material consideration and Mr Stacey explains why it warrants very substantial weight in the overall planning balance. The appeal proposals would deliver a meaningful number of affordable homes for real people that are in need of those homes now.
- 8.20 The adopted WCS would normally require 30% affordable housing but the Appellant is prepared to deliver 40% affordable housing in accordance with the eLP. That is 190no affordable homes for households that are in need now.

- 8.21 I should also highlight at this juncture that the site is owned by the Appellant, a national housebuilder and there are no impediments to its delivery. It is immediately available for development and capable of implementation following the necessary approvals. In other words, it is capable of assisting with the LPA's housing needs and obligations now.
- 8.22 The scheme would also deliver a mix of housing including much need open market family housing at a time where the LPA's current sites are heavily weighted towards flats.
- 8.23 To put the housing benefits into context, judging by the way that the LPA has been responding to the EIP, if this appeal is dismissed then it is difficult to see what housing can ever be provided in Worthing in the future on any meaningful scale. It closes the door on the borough. The LPA has sought to designate most of the remaining undeveloped land as Local Green Gap or LGS in order to preclude or restrict further development. Future housing is only likely to come from windfall sites within the built-up area, which typically will be smaller schemes and often with their own viability issues that in turn diminish the opportunities to provide affordable housing. It could very well be the last strategic scale opportunity in the Borough.
- 8.24 I would also draw the Inspector's attention the Colney Heath appeal decision [CD.J45] to put the circumstances of this appeal into perspective. In that case the housing land supply position was not as acute as Worthing but still only between 2.4 and 2.58 years [para 48]. The Inspector concluded that the provision of 100 dwellings amounted to Very Special Circumstances clearly outweighing harm to the Green Belt and other harms (including heritage harm) [para 78]. In that case the Inspector similarly afforded very substantial weight to the provision of both open market and affordable housing [para 78].
- 8.25 If 100 homes can amount to VSC in the GB and in context of a lesser shortfall then it must follow that 475 homes is capable of outweighing lesser harms arising from development on undesigned land at Worthing where the supply position is significantly worse, not just for the next 5 years but as far ahead as we can see.

#### Economic Benefits

- 8.26 The NPPF at paragraph 81 specifies that "significant weight" should be placed on the need to support economic growth and productivity, taking into account both

local business needs and wider opportunities for development. Consistent with national policy I attach Significant weight to **expenditure on construction and investment**.

- 8.27 Housing development has a significant role to play in supporting economic growth. Following the recent recession, the Government placed a major emphasis on the construction industry to 'kick start' the economy. There has been a clear push on planning for growth through national policy initiatives, including the NPPF, which was intended to stimulate growth in the economy. More recently we have been faced with the severe economic impact of the Covid 19 pandemic.
- 8.28 It is widely recognised that house building has knock on effects on other sectors which leads to increased demand for building materials and equipment at the building phase as well as domestic furniture and carpets etc following completion. This generates/sustains employment in other sectors.
- 8.29 The construction industry also stimulates lending in financial markets, another important sector in the UK economy. The Secretary of State in his foreword to the White Paper, 'Planning for the Future', emphasises the importance of the construction sector. He states that:-
- "Millions of jobs depend on the construction sector and in every economic recovery, it has played a crucial role"** (my emphasis)
- 8.30 The construction sector is a major part of the UK economy, supporting almost 2.2 million jobs in September 2020.
- 8.31 The White Paper talks about increasing housing delivery nationally to 300,000pa. This is likely to lead to increased output and employment in the construction sector over the coming years. New job opportunities in construction could help to offset losses in other sectors impacted by the Covid-19 pandemic.
- 8.32 The Prime Minister also unveiled his 'Build, Build, Build' strategy at the end of June 2020, with the aim of making it easier to build better homes where people want to live<sup>16</sup> and to aid economic recovery.
- 8.33 The construction industry is reliant upon a constant stream of new sites to keep people employed and to maintain delivery rates. This indicates that new

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<sup>16</sup> <https://www.gov.uk/government/news/pm-build-build-build>

construction jobs could be created locally unless delivery is frustrated by the planning system. I would attach moderate weight to the newly created **construction jobs**.

8.34 Moderate weight should be attributed to the provision of **homes for economically active people** that can support the economic role of Worthing. New residents can also help to sustain local facilities and services including public transport, by bringing additional expenditure to the area on a day-to-day basis.

8.35 The likely economic benefits of residential element of the scheme alone can be summarised as follows:-

- a. Development costs - £53.3m
- b. Direct job creation – 62 to 140 jobs
- c. Indirect and induced job creation – 123 to 279 jobs
- d. GVA – £33.6m to £58.1m pa during the construction phase
- e. Annual Household expenditure £16m pa

### **APPENDIX 3 – ECONOMIC BENEFITS SPREADSHEET**

8.36 Mr Tiley also presents evidence which highlights the importance of providing homes to house the workers that the LPA relies upon to drive and sustain the local economy. He explains how the LPA has failed to appreciate that its economic strategy for the area is seriously undermined by its failure to provide for a sufficient number of homes.

8.37 The proposals would deliver a new **local centre** which will serve the day to day needs of the development and existing residents nearby. It would also provide an element of permanent employment. This should be afforded limited/moderate weight.

8.38 The appeal proposals will also provide **financial contributions towards off-site infrastructure**. I recognise that these payments are essentially required to mitigate the impact of the development, however they do still represent new investment in infrastructure which will also be used by existing residents living in the surrounding area. In this case the Appellant will, amongst other things, bring

forward highway improvements that will benefit existing road users, pedestrians and cyclists as well. This should be afforded limited/moderate weight as a benefit.

- 8.39 Overall, it can be seen that the proposal derives significant weight in support of the economic role of sustainable development.

#### Environmental Benefits

- 8.40 The proposals would provide **additional car parking next to the railway station**. It addresses existing problems of on-street car parking in the area and makes travel by rail a more attractive proposition, with all the related benefits that this would have in terms of reducing car use. This should be afforded moderate weight.
- 8.41 The scheme would also deliver significant amounts of public open space, green infrastructure and biodiversity enhancements particularly on the northern edge of the development. **Public open space** on residential schemes is often only that which is required to serve the new resident population, but in this case the proposals go well beyond this and provide a new publicly accessible resource on the edge of the built-up area. This, in conjunction with the **additional native planting and demonstrable biodiversity enhancements**, should be afforded moderate weight in the planning balance.
- 8.42 The proposals also provide for the **undergrounding of the high voltage cables and removal of pylons** which currently impact on the character and appearance of the site. This should be afforded limited/moderate weight.
- 8.43 Overall, it can be seen that the proposals would deliver a range of social, economic and environmental benefits which taken together, weigh heavily in its favour.

#### **The adverse effects to be weighed in the balance**

- 8.44 I accept that there would be a **partial conflict with the Development Plan**, in that the proposals would not accord with WCS Policy 13. However, Policy 13 is out of date and should be afforded reduced weight for the reasons that I have already identified. This combination of factors leads me to conclude that no more than limited weight should be afforded to the conflict with WCS Policy 13.

- 8.45 I also accept that there would be **conflict with the emerging Local Plan**. However, the eLP still has a number of hurdles to get over and for the reasons that I have set out in detail earlier I would afford this no more than limited weight for the purposes of this appeal.
- 8.46 The evidence of Mr Self deals with the likely **effects of the development on the character and appearance of the area**. He accepts that that the Appeal Scheme will give rise to a certain level of landscape harm, as a greenfield site will be released for development.
- 8.47 However, even the LPA itself contends that there are no alternative locations on PDL or within the built-up areas which means that such losses are unavoidable if we are to see any meaningful reduction in the scale of unmet need in Worthing.
- 8.48 Mr Self explains that the appeal proposals have been carefully crafted to respond to both its landscape and townscape setting in a sensitive manner and creates a more appropriate boundary to the urban area than presently exists. It will also deliver ecological and recreational benefits. He explains that it will not introduce a form of development that is at odds with the prevailing character of the coastal plain and will not materially impact on the setting of the South Downs National Park.
- 8.49 Importantly, there is no objection from the National Park Authority [CD.B17] and this lends support to the evidence and conclusions of Mr Self. The position of the National Park Authority contrasts with its position on the West Durrington site [see CD.J49] which was released for development by the LPA in December 2019 despite there being unresolved objections and recognition of harm to the setting of the National Park.
- 8.50 In terms of weight, I would afford limited weight to the **loss of countryside and the initial localised impact of development on the site**, which would reduce over time as mitigation planting becomes established.
- 8.51 As required, I attach great weight to conserving and enhancing landscape and scenic beauty in National Park, but in the present case the proposed scheme could be carried out without any significant harm. The development would not therefore conflict with the relevant NPPF policies relating to the setting of the National Park.

8.52 It is important to note that national policy in NPPF paragraph 176 does not establish a requirement for nil detriment in all cases. Instead, schemes should be designed to avoid or minimise adverse impacts. It states that:-

**“176..... The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.”**

8.53 The evidence explains how a landscape led approach has been taken in the masterplanning of the site in order that any necessary mitigation is embedded into the proposals.

8.54 Even though Mr Self concludes that the proposals would not materially impact on the setting of the South Downs I have adopted a precautionary approach in light of NPPF paragraph 176 and would be prepared to afford up to moderate weight to the **adverse effects of the development on the wider area including the setting of the National Park** given its status.

8.55 Some parts of the site are understood to include **Best and Most Versatile agricultural land** and this would be lost through development. The remainder of the site is not BMV. The BMV areas that would be lost would not be “significant” for the purposes of NPPF Footnote 58 and there has been no objection from Natural England in this regard.<sup>17</sup> The LPA is obviously unable to identify any areas of lesser agricultural quality where the development could take place on areas of poorer quality because it has no alternative sites at all. I would also highlight that the land released at West Durrington included BMV. The LPA is also proposing to allocate land at Beeches Avenue (Allocation A1) and Upper Brighton Road (Allocation A15) on BMV.

8.56 It should be noted that the issue of BMV is not a RfR and it is not referred to in the LPA SoC. In fact the issue did not register at all in the Officer Report. In view of

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<sup>17</sup> Town and Country Planning (Development Management Procedure (England) Order) (DMPO) 2015 - Planning authorities must consult Natural England on all non-agricultural applications that result in the loss of more than 20 hectares (ha) of BMV land if the land is not included in a development plan. The areas of built development on BMV do not come close to 20ha in this case.

the above I would afford the partial loss of agricultural land (BMV) only limited weight.

8.57 The evidence of Mrs Stoten deals with the **impact of the development on the heritage significance of nearby designated heritage assets**. It concludes that the proposals would give rise to “less than substantial harm” to the heritage significance of the following assets:-

- a. Clematis and Jasmine Cottages (Grade II Listed building) – negligible less than substantial harm at the very lowermost end of the spectrum.
- b. Highdown Gardens RPG/Conservation Area – negligible less than substantial harm at the very lowermost end of the spectrum.
- c. North Barn two Grade II Listed buildings – negligible less than substantial harm at the very lowermost end of the spectrum.

8.58 There would be no harm to the significance of any other assets through changes to setting, including the Scheduled Highdown Hill Camp, is anticipated.

8.59 I recognise the imperative to give considerable weight and importance to harm to the significance of designated heritage assets, but as was held in *Palmer* [CD.J6] and reiterated and quoted in *Bramshill* [CD.J68 paragraph 75]:-

**“75 .....that the imperative of giving “considerable weight” to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it or its setting is “uniform”. That will depend on the “extent of the assessed harm and the heritage value of the asset in question”. These are questions for the decision-maker, heeding the basic principles in the case law.”** (my emphasis)

8.60 Even though the “less than substantial harm” that has been identified is at the very lowermost end of the spectrum in all cases, I have adopted a precautionary approach (recognising that the courts have made it clear that heritage assets are not to be treated as just another material consideration). Having regard to the number assets, their significance and the level of impact in each case, I would afford these harms moderate weight overall in the planning balance.

8.61 The evidence of Mr Wares considers matters relating to **traffic and transportation**. He concludes as a matter of judgement that the residual effect

of the proposals taking into account proposed mitigation would not be “severe” for the purposes of NPPF paragraph 111.

8.62 I agree with Mr Wares and rely upon his evidence. I would afford only limited weight to the residual increase in traffic as an adverse impact.

8.63 Even if a judgement is made that a trigger for “severe” is reached (and we obviously say that it isn’t), paragraph 111 of the NPPF does not require that planning permission must be refused, but rather, it is simply a test for whether the development could be refused on highways grounds. In such circumstances the degree of harm is a matter for the overall planning balance.

8.64 It is an acknowledged fact that roads in the area can be busy but that is not to say that any increase in traffic is unacceptable or that it must attract significant and determinative weight in the planning balance. In the case of Grange Farm, Hartford [CD.J43] Inspector Roscoe noted that there may be some additional queuing and delays but he made the important comment that:-

**“14.45 ..... it is not the aim of policy to protect the convenience of commuting car drivers.”** (my emphasis)

8.65 This finding was endorsed by the Secretary of State [SoS paragraph 24].

8.66 In a later appeal decision on the same site in 2019 [CD.J44] Inspector Dawe made a similar observation about congestion at paragraph 13:-

**“13.....Like my colleague in respect of the previous outline appeal scheme for up to 350 dwellings referred to previously, I acknowledge that this is a matter of driver convenience, where relevant local and national policy concerns the impacts on the highway network.....”** (my emphasis)

8.67 Inspector Dawe commented that even where the existing situation is severe in terms of traffic congestion this is not to say that no more development can happen. He states at paragraph 22 that:-

**“22 An objective of the HNP is to prevent the traffic congestion on the highway network becoming significantly more severe where it is currently already identified as severe. That does not mean that no other traffic generating development can be built. Furthermore, policy STRAT 10 of the Cheshire West & Chester Council Local Plan (Part One) Strategic Policies (Local Plan Part One) requires, amongst other things, new development to demonstrate that additional traffic can be accommodated**

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**safely and satisfactorily within the existing highway network.”** (my emphasis)

8.68 As always, each case must be treated on its own merits but the principles outlined above are transferable.

Other considerations

8.69 There are no other grounds to resist development on this site which cannot be avoided, mitigated, or controlled through planning conditions and/or planning obligations. Matters of detailed design can be addressed at the Reserved Matters stage.

**Compliance with the Development Plan**

8.70 I accept that the appeal proposals do not accord with the Development Plan when it is read as a whole. However, the most important policies are out of date and it will be necessary to afford reduced weight to certain policies in order achieve the national imperative to significantly boost the supply of housing.

8.71 It is noteworthy that Policy 13 is the only Development Plan Policy that the LPA identifies in its Reasons for Refusal.

8.72 I accept that the proposals involve development on greenfield land beyond the built up area which is not allocated for housing. As such it does not accord with **Policy 13**. However, the conflict with this policy should be afforded much reduced weight for the reasons that I have already identified. It is not necessary for me to rehearse them again here.

8.73 The proposals would however accord with the general urban focus approach of Policy 13 and the WCS more generally. They would also accord with the part of the policy that requires that all new development will respect the biodiversity and natural environment that surrounds the development and the need to contribute to the protection and, where applicable the enhancement of the area.

8.74 Before I deal with the other individual policies I highlight that the proposals would also contribute towards the achievement of the vision of the WCS and its objectives. Whilst time has moved on, the following considerations still resonate today:-

- There will be an adequate supply of housing that meets the needs of all residents [WCS p.32].

- A range of dwellings (mix, type and affordability) will be supplied that seeks to match the income and locational needs of residents [WCS p.32].
  - Reduce social and economic disparities within the borough [WCS p.32].
  - It is a key objective of the Core Strategy is to build sustainable communities where the overall quality of life for all is improved [WCS p.37].
  - The development strategy places a significant emphasis upon the town centre and other accessible locations in accommodating new, often mixed, development and this will help to reduce the need to travel by car [WCS p.33 and 39].
- 8.75 The proposals include a local centre and would accord with **Policy 6 (Retail)** which encourages convenient and accessible district and local shopping facilities to meet day to day needs of residents, and contribute to social inclusion.
- 8.76 The proposals would meet an identified need for housing consistent with the objectives of **Policy 7** albeit the housing need figures have been superseded by more up to date evidence.
- 8.77 An appropriate mix of housing can be achieved at the detailed design stage to accord with **Policy 8** (Mix of housing).
- 8.78 The Appellant has made provision for affordable housing (40%) through s.106 planning obligations which will meet and exceed the requirements of **Policy 10** (Affordable Housing).
- 8.79 The proposals will make provision for public open space that will serve the development and also be available for existing residents consistent with **Policy 11** (Protecting and Enhancing Recreation and Community Uses).
- 8.80 Any other necessary infrastructure that is necessary to make the development acceptable can be secured through s.106 planning obligations consistent with **Policy 12** (Infrastructure).
- 8.81 The master planning of the site will include substantial areas of new planting and public open space. The proposals would therefore enhance the Green Infrastructure resource of the site consistent with **Policy 14** (Green Infrastructure).

- 8.82 The proposals are acceptable in terms of flood risk and drainage and would therefore accord with **Policy 15** (Flood Risk and Sustainable Water Management).
- 8.83 This is an outline planning application and I do not consider that the proposals would offend **Policy 16** (Built Environment and Design). The LPA does not raise any design related objection and in any event matters of detailed design and layout would be considered at the RM stage and nothing at this outline stage would prejudice policy compliance when that happens.
- 8.84 I note that the LPA does not rely upon **Policy 16** as part of its heritage objection. Presumably that is because it is inconsistent with the NPPF in that it requires heritage assets to be preserved and enhanced. The NPPF does not require nil detriment nor positive enhancement in all cases. The policy also does not reflect NPPF paragraph 202 which allows for a balance of harm against public benefits.
- 8.85 Matters relating to sustainable construction and energy are generally dealt with through building regulations and there is no suggestion from the LPA of any policy conflict such that there would be any conflict with **Policy 17** (Sustainable Construction) or **Policy 18** (Sustainable Energy).
- 8.86 **Policy 19** deals with sustainable travel. The location of the site offers excellent opportunities to travel by alternative means including walking, cycling and public transport. The evidence of Mr Wares demonstrates that with appropriate mitigation the traffic generated by the development can be accommodated within the local and strategic road network.
- 8.87 Following this analysis, my conclusion is that whilst the proposals would (unavoidably) conflict with some parts of the Development Plan, they would otherwise be in general accordance with the spatial strategy and the relevant development management policies.

**My comments on the LPA's Planning Balance at the Application Stage**

- 8.88 The Inspector will obviously need to reach his own conclusions on the planning balance but I would make the following observations on the approach that the LPA adopted in the Officer Report to Committee (my Appendix 2):-
- a. It would appear from the Officer Report and RfR 1 that the LPA agrees that the tilted balance applies in this case.

- b. At no point is there any suggestion that any NPPF footnote 7 policies cause the tilted balance to be disapplied.
- c. It is however most concerning that the Officer Report provides no assessment whatsoever of the overall planning balance.
- d. The LPA fails to identify what it considers to be the benefits of the development.
- e. It follows that it also therefore fails to attribute any weightings to those individual benefits.
- f. The LPA fails to identify the weightings that it has attributed to the alleged adverse effects.
- g. Without this analysis it is simply impossible to understand how the LPA reached the conclusion that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefit in the context of NPPF 11d.

8.89 The LPA's SoC is similarly silent on how the LPA will approach the overall planning balance in its evidence.

### **My Overall Conclusion on the Planning Balance**

8.90 I accept that the appeal proposals do not accord with the Development Plan when it is read as a whole. However, the most important policies are out of date. and it can in any event be demonstrated that the proposals are still in general accordance with the overarching strategy of the Development Plan which seeks to focus growth at the built-up areas where there are opportunities to reduce the need to travel.

8.91 There are no NPPF Footnote 7 policies that provide clear reasons for refusal and which would cause the tilted balance to be disapplied.

8.92 With regards to the impact of the development on the significance of designated heritage assets for the purposes of NPPF paragraph 202:-

- a. The extent of harm in all cases is less than substantial (at the lowermost end of the spectrum).

- b. I find that the public benefits would outweigh the heritage harms such that the appeal proposals accord with the NPPF. The LPA does not dispute this [LPA SoC paragraph 8.4].
- 8.93 With regards to the setting of the National Park there is no objection from the South Downs National Park Authority [CD.B17] and Mr Self concludes that the proposals would not materially impact on the setting of the South Downs consistent with NPPF paragraph 176.
- 8.94 When the tilted balance in NPPF Paragraph 11d(ii) is applied to the appeal proposals I find that the residual adverse impacts of granting planning permission would not significantly and demonstrably outweigh the identified benefits of the development. This represents a very important material consideration which should override the conflict with the Development Plan.
- 8.95 To summarise on the overall planning balance:-
1. Although there would be a partial conflict with the Development Plan the most important policies are out of date and the proposals would still be in in general accordance with the spatial strategy of the WCS.
  2. The Public Benefits would outweigh the less than substantial harm to heritage assets in the context of NPPF paragraph 202 and the very limited impact on the National Park would not justify the refusal of planning permission in the context of NPPF paragraph 176.
  3. It follows that the tilted balance is not dis-applied in this case.
  4. The proposals would deliver a range of social, economic and environmental **benefits** which can be afforded varying levels of weight as identified below:-
    - a. Provision of Open Market Housing – Very Substantial
    - b. Provision of Affordable Housing – Very Substantial
    - c. Expenditure on construction/investment – Significant
    - d. Creation of construction jobs - Moderate
    - e. Providing homes for economically active people – Moderate
    - f. Provision of a new Local Centre (incl. jobs) – Limited/Moderate
    - g. Provision of car parking for the railway station - Moderate
    - h. Financial contributions towards off site infrastructure – Limited/Moderate

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- i. Undergrounding of HV cables – Limited/Moderate
    - j. Public open space, Planting and Biodiversity enhancements – Moderate
  5. The potential residual **adverse impacts** have been identified and these should also be afforded varying degrees of weight as follows:
    - a. Conflict with the Development Plan [WCS Policy 13] – Limited
    - b. Conflict with the emerging Local Plan – Limited
    - c. Landscape and visual impact on the character and appearance of the area comprising:-
      - i. Loss of countryside and localised impact on the site – Limited
      - ii. Wider landscape and visual impact incl. very limited harm to the setting of the National Park – Moderate
    - d. Partial loss of BMV agricultural land - Limited
    - e. Less than substantial harm (at the lowermost end of the spectrum) to the significance of designated heritage assets – Moderate
    - f. A marginal increase in traffic on the existing road network – Limited
  6. All other identified impacts can be mitigated through Planning conditions, obligations or through reserved matter applications.
  7. Overall, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits and this is a material consideration that outweighs the conflict with the Development Plan.
  8. As such the proposals represent sustainable development in the context of NPPF paragraph 11d and the appeal should be allowed.

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## **9. PLANNING OBLIGATIONS**

- 9.1 The Appellants will present deeds pursuant to Section 106 of the Town & County Planning Act 1990, before the close of the public inquiry to deal with amongst other things:-
- a. Provision of affordable housing (40%);
  - b. Laying out and maintenance of public open space;
  - c. Highways improvements; and
  - d. Off-site mitigation measures for nesting birds.
  - e. Offer to transfer the land north of the Ferring Rife to the LPA
- 9.2 Grampian conditions and other suitably worded conditions will also be used to as necessary and an agreed list of conditions will be provided before the start of the inquiry.

## 10. SUMMARY AND CONCLUSIONS

10.1 This Proof of Evidence has been prepared on behalf of Persimmon Homes Thames Valley (the Appellant). It relates to a Planning Appeal made pursuant to Section 78 of the Town and Country Planning Act 1990, in respect of land north west of Goring Station, Goring-by-Sea, near Worthing (the Appeal Site).

10.2 The appeal was lodged following the decision of Worthing Borough Council to refuse a planning application which sought outline planning permission for a proposed development comprising:-

**“Mixed use development comprising up to 475 dwellings along with associated access, internal roads and footpaths, car parking, public open space, landscaping, local centre (uses including A1, A2, A3, A4, A5, D1, D2, as proposed to be amended to use classes E, F and Sui Generis) with associated car parking, car parking for the adjacent railway station, undergrounding of overhead HV cables and other supporting infrastructure and utilities.”**

10.3 My evidence concentrates on the following issues:-

**Issue 1      Whether the appeal site offers an appropriate location for development having regard to local and national planning policy [RfR 1 and Inspector Issue i]**

**Issue 2      Whether the appeal site offers an appropriate location for development having regard to the emerging Local Plan [RfR 1 and Inspector Issues i and ii]**

**Issue 3      Prematurity [RfR 2 and Inspector Issue i]**

**Issue 4      Other matters raised by third parties**

**The Overall Planning Balance**

10.4 My main findings can be summarised as follows:-

**Issue 1      Whether the appeal site offers an appropriate location for development having regard to local and national planning policy [RfR 1 and Inspector Issue i]**

1. This is the right development in the right location, at the right time.
2. I accept that the proposals do not accord with Policy 13 which seeks to restrict new housing to PDL sites within the built-up area or land at West Durrington.

However, Policy 13 is out of date by virtue of the 5YRHLS position and it is also inconsistent with the NPPF. I attach only limited weight to this policy conflict.

3. The housing requirement of the WCS is also out of date because it is based on the revoked South East Plan. It pre-dates the NPPF and does not (and could not) reflect more recent changes in national policy.
4. The WCS housing requirement has been overtaken by the standard method because the WCS is now more than 5 years old. The WCS only required 200dpa whereas the Standard Method now requires a very significant increase of 885 dpa.
5. Any policy which seeks to constrain housing development to PDL within a defined built-up area, which is predicated upon revoked policy and guidance and an out of date housing requirement is the antithesis of the NPPF policy imperative to boost significantly the supply of housing.
6. The LPA has been inconsistent in its application of Policy 13 as illustrated by the fact that it was not a barrier to the grant of planning permission for 240 dwellings on unallocated greenfield land at West Durrington [CD.J.49].
7. The merits of the appeal site are self-evident. It is well related to the built-up area and in that regard, it would be consistent with the general thrust of the spatial strategy which seeks to reduce the need to travel by locating homes in the most accessible places.
8. There are excellent opportunities to walk, cycle and use public transport. The site even lies immediately adjacent to a mainline railway station.
9. The proposals represent a logical rounding off for this part of the settlement. They would not represent a new outward incursion into the open countryside and would not encroach closer on the National Park than the existing pattern of development in the area. It would in fact be set back behind the Ferring Rife.
10. The site itself is not subject to any designations and is relatively unconstrained in planning policy terms. It is not identified (and protected) as a strategic/local gap, or Local Green Space in the adopted Development Plan.

**Issue 2 Whether the appeal site offers an appropriate location for development having regard to the emerging Local Plan [RfR 1 and Inspector Issues i and ii]**

11. The eLP can be afforded no more than limited weight at this time, having regard to NPPF paragraph 48.
12. The emerging Local Plan is not at an advanced stage, it is subject to unresolved objections and it is not consistent with the NPPF.
13. The Inspector's Initial Advice letter has not concluded that the plan is sound or that it meets the tests for legal compliance. The letter is also silent on some fundamental matters. Further work is required and the plan will no doubt be subject to further change and consultation.

14. It would be inappropriate to resist the appeal proposals on the basis of any perceived conflict with the emerging Local Plan for both procedural and evidential reasons.
15. The LPA's RfR 1 relies upon eLP policies SS4, SS5 and SS6 which are all likely to change even according to the LPA.
16. In particular, the Inspector suggests that the Chatsmore Farm LGS designation does not meet the tests in the NPPF. The evidence of Mr Self reaches a similar conclusion.
17. I expect the exceptional circumstances test to be deleted from the draft Local Green Gap Policy SS5 as suggested by the EIP Inspector but I am no doubt that there are exceptional circumstances that justify the appeal proposals in any event.
18. The fact that the site is not allocated and does not accord with the eLP policies as currently drafted means very little when viewed through these optics.
19. Even if the Local Green Gap policy was to survive in some form (and we don't know whether it will), the evidence demonstrates that the appeal proposals would maintain the integrity of what the LPA refers to as the Goring Gap.
20. 87% of the undeveloped gap would remain. There would be functional separation in physical and visual terms. The proposals would therefore accord with the objective of the policy in any event.
21. There has been material changes in circumstances which distinguish this appeal from the 1974 appeal decision which dealt with matters of separation. It should be afforded very limited weight in the determination of the current appeal.

### **Issue 3 Prematurity [RfR 2 and Inspector Issue i]**

22. Arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances [NPPF para 49].
23. Both of the tests in NPPF paragraph 49 for when prematurity might justify refusal are simply not met in this case.
24. The appeal proposals involve amount to 475 dwellings. That is only 3% of the minimum number of homes that the LPA should be providing for anyway.
25. 475 homes is still only a 13% increase on top of the 3,672 dwellings the LPA is planning for. This is not "so substantial" and in any event there are major questions about how the LPA arrived at its constrained housing figure.
26. The location of the site is consistent with the urban focus strategy of the eLP and puts development in an accessible location which reduces the need to travel. The proposals do not give rise to a material and harmful distortion of the spatial strategy in locational terms.
27. There is no suggestion that allowing this appeal will cause the LPA to abandon the eLP or for there to be a fundamental rethinking of the plan.

28. The Local Green Gap and Local Green Space policies are of local significance rather than something which is central to the strategy of the eLP
29. The LGS at Chatsmore Farm looks likely to fail regardless of this appeal. The LPA has not suggested that it will cause them to tear up the plan.
30. I have already demonstrated that the appeal scheme could accord with the LPA's latest thinking on the Local Green Gap policy in any event.
31. The NPPF does not define what is meant by "at an advanced stage." It is a matter of judgement and this plan still has many hurdles to overcome before it can be found sound and legally compliant.
32. I do not believe that the eLP is at a sufficiently advanced stage to warrant refusal on ground of prematurity.
33. The eLP is planning to fail. If an Appellant is able to demonstrate that the LPA has underestimated the capacity for sustainable development at a time when the needs of circa 10,500 households are going to go unmet, then that is a positive outcome for the planning system. It is clearly in the public interest rather than something that should be criticised as undermining the plan led process.

#### **Issue 4 Other matters raised in third party objections**

34. The planning application provided the necessary information to confirm that there is no evidential basis for objection on any of these grounds.
35. There are no outstanding objections from statutory consultees relating to these matters.
36. In view of the above and in the absence of any robust technical evidence to the contrary, there is no reason why planning permission should be withheld on these grounds.

#### **The Overall Planning Balance**

37. Although there would be a partial conflict with the Development Plan the most important policies are out of date and the proposals would still be in in general accordance with the spatial strategy of the WCS.
38. The Public Benefits would outweigh the less than substantial harm to heritage assets in the context of NPPF paragraph 202 and the very limited impact on the National Park would not justify the refusal of planning permission in the context of NPPF paragraph 176.
39. It follows that the tilted balance is not dis-applied in this case.
40. The proposals would deliver a range of social, economic and environmental **benefits** which can be afforded varying levels of weight as identified below:-
  - a. Provision of Open Market Housing – Very Substantial
  - b. Provision of Affordable Housing – Very Substantial

- c. Expenditure on construction/investment – Significant
  - d. Creation of construction jobs - Moderate
  - e. Providing homes for economically active people – Moderate
  - f. Provision of a new Local Centre (incl. jobs) – Limited/Moderate
  - g. Provision of car parking for the railway station - Moderate
  - h. Financial contributions towards off site infrastructure – Limited/Moderate
  - i. Undergrounding of HV cables – Limited/Moderate
  - j. Public open space, Planting and Biodiversity enhancements – Moderate
41. The potential residual **adverse impacts** have been identified and these should also be afforded varying degrees of weight as follows:
- a. Conflict with the Development Plan [WCS Policy 13] – Limited
  - b. Conflict with the emerging Local Plan – Limited
  - c. Landscape and visual impact on the character and appearance of the area comprising:-
    - i. Loss of countryside and localised impact on the site – Limited
    - ii. Wider landscape and visual impact incl. very limited harm to the setting of the National Park – Moderate
  - k. Partial loss of BMV agricultural land - Limited
  - d. Less than substantial harm (at the lowermost end of the spectrum) to the significance of designated heritage assets – Moderate
  - e. A marginal increase in traffic on the existing road network – Limited
42. All other identified impacts can be mitigated through Planning conditions, obligations or through reserved matter applications.
43. Overall, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits and this is a material consideration that outweighs the conflict with the Development Plan.
44. As such the proposals represent sustainable development in the context of NPPF paragraph 11d and the appeal should be allowed.

### **Concluding Comments**

- 10.5 Having undertaken a planning balance in the way that I have outlined, I reach the conclusion that the proposals represent a suitable and sustainable form of

development in this location and that there are compelling reasons that justify the grant of planning permission.

- 10.6 In view of the foregoing, the Inspector is respectfully requested to uphold this appeal and to grant outline planning permission, subject to any necessary conditions and planning obligations.