

**TOWN & COUNTRY PLANNING APPEALS
(DETERMINATION BY INSPECTORS)
(INQUIRIES PROCEDURE) (ENGLAND) RULES 2000**

APPEAL BY

**Permission Homes (Thames Valley) against the decision of Worthing Borough Council
to refuse planning permission for proposed residential development at Land North
West of Goring Station, Goring-by-Sea, near Worthing**

PINS reference: APP/M3835/W/21/3281813

LPA reference: AWDM/1264/20

**PERSIMMON HOMES (THAMES VALLEY)
CLOSING STATEMENT**

**Paul Cairnes QC
Leanne Buckley-Thomson**



Birmingham · Bristol · London

1. Introduction.

1.1 This closing statement should be considered alongside the opening statement provided on behalf of the Appellant. We will address the main issues identified at the commencement of this inquiry in the order in which they were addressed.

1.2 We will address the policy context of the main issues, the reasons for refusal, the evidence that has been presented and will conclude with the planning balance.

2. Main Issue 3: The effect of the proposed development on designated heritage assets

2.1 An essential component of the landscape and visual impacts alleged in RfR1 related to alleged impacts on Highdown Hill scheduled Monument and the Conservation area. That was premised upon the consultation response from BD¹, which pre-dated the Council's SoC. There are now no significant areas of disagreement between the Council and Appellant regarding heritage matters². Accordingly, the Council's objection goes no further.

2.2 It is agreed that the analysis given in the Heritage Statement of August 2020³ is fair⁴ and that there will be only a negligible level of harm, less than substantial at the very lowermost end of the spectrum, in respect of a) the Grade II Listed Building of Jasmine and Clematis Cottages, b) the Grade II Listed Buildings of North Barn, and c) the Grade II* Registered Park and Garden and Conservation Area of Highdown Garden⁵. No harm will result to the significance of any other assets including the Scheduled Highdown Hill Camp and Grade II listed Hightiten Barn⁶. These agreed positions will inevitably overlap with the alleged harm to be considered in the context of Main Issue 4 below.

2.3 GS gave evidence⁷, uncontested by the Council, to explain the rationale behind the heritage position for the benefit of those Third Parties who continue to hold objections

¹ CD A23 section entitled Landscape Consultant

² Paragraph 3.1, Heritage SoCG, CD C5 C3

³ CD A10

⁴ Paragraph 2.1, Heritage SoCG, CD C5 C3

⁵ Paragraph 2.2, Heritage SoCG, CD C5 C3

⁶ Paragraph 2.2, Heritage SoCG, CD C5 C3

⁷ See CD C5 C1 POE of GS alongside appendices at CD C5 C2

and to place the heritage related references in RfR no.1 into their proper perspective. You will have a note of that evidence. Importantly, she emphasised that where there was harm this was “*at a level that is only just above no harm*” noting that the Council agrees that such harm would plainly be outweighed by the public benefits of the appeal scheme in the context of paragraph 202 of the NPPF⁸. Not only would the tilted balance not be dis-applied for heritage related reasons, it is now clear that any harm is at the absolute lowest level.

3. Main Issue 4: The effect of the proposed development on the landscape setting of the South Downs National Park

Issues between the Principal Parties

3.1 The Council agrees⁹ that the methodology CS applies in his assessment is acceptable and that his review is proportionate. The issue falls to one of differences in professional judgements. Those differences are succinctly set out in paragraphs 18 to 22 of the Landscape SoCG¹⁰. These comprise the baseline assessment of landscape and visual sensitivity and the level of landscape and visual effects that the appeal proposal would have on the character of the Appeal Site and the wider area; the level of effects on the landscape character of the immediate surroundings of the Appeal Site and degree of effects on the setting of the National Park.

3.2 Since CS and BD gave evidence, they have produced a combined summary which sets out their respective positions with regard to landscape and visual effects, which we hope you find useful.

Assessment of Impact

3.3 The appeal site falls within the setting of the South Downs National Park; however, both it and the retained farmland to the north do not carry any statutory or non-statutory designations for landscape, heritage or ecological value¹¹. It has no heritage designations or TPOs. It is a large arable field¹², unremarkable and with a number of

⁸ CD D1

⁹ Paragraphs 4-8, CD C5 B3

¹⁰ CD C5 B3

¹¹ See paragraphs 9 and 11, CD C5 B3

¹² Agreed by BD in XX

detracting features. These include the HV lattice pylons, railway line and the A259. It lies within the low lying coastal plain, characterised by development¹³. Indeed, there is development on three sides of the site and existing urban influences include the flats at Bluebell Way, overhead lighting for the railway crossing and the trains themselves. The site is not tranquil¹⁴; it being borne in mind that tranquillity isn't simply about noise but also visual intrusion of which there is plenty. It is agreed not to be a valued landscape in NPPF terms¹⁵.

3.4 As a matter of logic, the level of effects is necessarily affected by the baseline assessment. Whilst BD relied upon a number of assessments from HDA¹⁶ in order to inform his present assessment, it is helpful to look at an independent assessment (which is not marking one's homework) namely that conducted by Chris Blandford Associates¹⁷. That set out 15 key characteristics providing a high-level description of the whole area. The appeal site represents part of the "*Dominant urban fringe with major conurbations of Littlehampton, Worthing, Lancing and Shoreham. Settlement edges often sharply contrast with adjacent open countryside*"¹⁸. It is acknowledged that the site comprises BMV land, but this did not feature in the consultation response and is not a RfR. It is fundamentally different to the National Park – being undistinguished farmland adjacent to existing development as opposed to the rolling landscape of the South Downs which is of much higher landscape quality and sensitivity¹⁹ - which BD confirmed noting "*yes, that's why it is National Park*".

3.5 Extraordinarily, HDA have identified the lower slopes of the SDNP as having 'moderate' landscape sensitivity whereas the Appeal Site is assessed as having 'substantial' landscape sensitivity²⁰. HDA also give the Appeal Site the same 'substantial' landscape value²¹. Those judgements simply make no sense, especially when considered against the more measured and realistic assessment of CSA. Whether

¹³ Paragraph 6.43, CD C5 B1 POE of CS

¹⁴ Paragraph 5.3.3, POE of BD. Note CS gave evidence in respect of this point.

¹⁵ Paragraph 8.13, LPA SOC. Note in XX BD confirmed that "*if you take the GLVIA approach and commentary that we have on valued landscape it doesn't form a valued landscape in that sense*".

¹⁶ See 2007 Study at CD C6 B3; 2015 Study at CD C6 B4; and 2017 Study at CD C6 B5

¹⁷ CD C6 B10

¹⁸ See CD C6B10

¹⁹ Page 1 of Appendix H, CD C5 B2

²⁰ See Fig15, CD C6 B4

²¹ See Fig 17, CD C6 B4. Note also BD PoE 6.1.14 and 6.1.14 where BD gives the Appeal Site 'High landscape value' albeit the SoC recognises that it is not a valued landscape in NPPF terms.

or not HDA were involved in the designation of the SDNP²², the notion that a nationally designated landscape²³ is to be considered of lower sensitivity to development and possessing the same landscape value as a non-designated site with detracting features (and which is acknowledged as not being a ‘valued landscape’ within the meaning of the NPPF) is incredible. It could suggest a deliberately protectionist perspective to substantiate the spatial planning ‘gap’ role contended for by the Council, rather than a reasonable assessment reflective of the landscape and visual qualities of the Appeal Site.

3.6 It is agreed²⁴ that representative view 31 from Highdown Hill in the South Downs National Park Views Characterisation and Analysis 2015²⁵ is most relevant to the setting of the appeal site. This identifies potential threats to such views²⁶, “...*could result from changes that affect the iconic chalkland habitats of the downs, or form intrusive new developments within the view either by day or night that affect the sense of tranquillity within the National Park. Many of these views are across the developed coast and therefore development forms an existing part of these views (often in the background)*”. Development already forms an existing part of the views²⁷, although whether or not the proposed development will be intrusive is necessarily a matter for your judgment. CS is clear that the development would not be intrusive²⁸ and neither will it affect the sense of tranquillity within the National Park.

3.7 As to the special qualities of the National Park, the analysis sets out four bullet points at paragraph 3.27 that are important. BD agreed that the first and second will not be impacted. His issue is that the quality of views toward the sea will be adversely affected. However, this must be put into the context of how the document defines potential threats. It is clear no such threat would arise.

3.8 The absence of any objection to the appeal scheme from the South Downs National Park Authority is particularly significant (despite the Council’s attempts to downplay

²² A point BD raised in XX when responding to being confronted with this issue

²³ And the assessment postdates that designation

²⁴ Paragraph 16, CD C5 B3

²⁵ CD G6

²⁶ See paragraph 3.26 of that document

²⁷ As agreed by BD in xx.

²⁸ See paragraphs 5.12-5.13, CD C5 B1 POE of Clive Self, regarding when development would be intrusive

its importance). This is of especial note in view of the objection lodged by the National Park Authority in respect of the West Durrington scheme²⁹.

3.9 As explained more fully below in the context of WCS Policy 13, paragraph 176 of the FW does not prohibit development **in** a National Park, whereas the appeal site is only part of its setting. In these circumstances, national policy states that development should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas³⁰. And that is what this scheme does.

3.10 As explained by both CS and DH the appeal proposal is well related to the existing urban area. This is a landscape-led development and the proposed layout represents an appropriate landscape and visual response to its edge of settlement location. The DAS shows how a sensitively designed scheme would create an attractive interface with the neighbouring countryside. This Inspector can take comfort from the proposed GIS which includes generous areas of open space to augment the development with housing set back from Ferring Rife³¹. New landscaping within the open space alongside Ferring Rife will provide an appropriate setting for the development that will soften the existing abrupt urban edge, particularly in views from the north, and provide recreational and wildlife benefits. It is respectfully submitted that the RfR based on the effect upon the setting to the National Park is not justified.

4. Main Issue 2: The effect of the proposed development on local green space

4.1 As with main issue 4, the issues between the parties regarding local green space in landscape terms are confined to differences in professional judgements³².

Local Green Gap

4.2 The proposed gap policy in the eWLP is a spatial planning tool and there is presently no ‘Goring Gap’ in terms of adopted development plan policy. GP accepted³³ that the Council has always approached the ‘gap’ as comprised of two parts, Chatsmore Farm

²⁹ As described by DH in his oral evidence.

³⁰ Note that in XX BD agreed that there is not a prohibition on all development within the setting of a National Park and that paragraph 176 in effect acknowledges that some harm can be expected. It is about degree and scale.

³¹ Paragraphs 6.11-6.12, CD C5 B1 POE of CS

³² CD C5 B3

³³ In XX

to the north and Goring-Ferring to the south. In its totality it is some 104ha, the former comprising 74ha and the latter part 30ha³⁴. The proposed development area of approximately 13.5ha amounts to a loss of only 13% of the whole with 87% retained³⁵. GP was “*happy to agree Mr. Hutchison’s maths*” on this point.

4.3 No distinct difference in character between Goring and Ferring has been identified in the evidence to this inquiry. The best that GP could offer was that they are “*distinct characters almost because of the gap*”, that the ‘gap’ is a special character of itself, and that “*Goring is one place and Ferring is another*”³⁶. When it was put to BD³⁷ that when travelling from Goring to Ferring in the built-up area to the south of the appeal site there is no sense of leaving or reaching separate destinations, both being part of the same urban development, he said “*yes*” only then pointing out the amount of space between the two. You will make your own judgment, but the absence of any distinct character between Goring and Ferring is unsurprising given their longstanding coalescence.

4.4 As explained by CS, the Chatsmore Farm area of the ‘gap’ represents an *indentation* in the existing coastal development permitting incursion from the countryside, nothing more. In the words of DH, the appeal site itself is “*part of part of a gap*”. Anyone walking along FP 2121 to the south would recognise the existing link between Goring and Ferring as represented by the existing railway line and the extensive existing and established development to its south.

4.5 Even were there a designated gap (which there is not) it would not be undermined by the appeal proposal. The appeal site is an unremarkable, undesignated area of ordinary urban fringe farmland with detracting features. The proposed development would, if anything, improve the existing hard and abrupt edge along Bluebell Way. A reduced indentation (circa 14ha) would remain and the wider ‘gap’ would be retained. The appeal site would still “*provide an opportunity for the open countryside to penetrate the built-up area*”³⁸ reflecting the reality of the situation on the ground.

³⁴ As explained by DH in EIC

³⁵ Again, explained by DH in EIC

³⁶ Xx.

³⁷ In Xx

³⁸ LPI Interim Advice letter para 11.

Local Green Space

4.6 The appeal site does not justify designation as a LGS. As previously noted, it is not covered by any designations, is not intrinsically attractive³⁹, has limited public access and has little wildlife interest. It also has several detracting features⁴⁰ and whilst valued by local residents, it is not a valued landscape within the meaning of the NPPF⁴¹. It is relevant to note that the GLVIA3 criteria in Box 5.1 are not dissimilar to the criteria for LGS designation⁴².

4.7 Those criteria are set out at paragraph 102 of the NPPF⁴³, an assessment of which was carried out by CS⁴⁴. The site does not have scenic beauty, is not tranquil, does not have any historic significance⁴⁵, and its recreational value is necessarily limited to those parts to which there is public access (ie just the PROWs). Although the Council suggest that the recreational value of the appeal site is particularly important given the deficit of natural / semi-natural green space and amenity space in the borough, this is a curious conclusion to reach when the South Down National Park is on the doorstep, as are the Highdown football pitches and Highdown Gardens, and the coast⁴⁶. In terms of the richness of wildlife on site, it has no statutory or non-statutory designation - HDA acknowledge in their Landscape & Ecology Study that the majority of the site is of negligible conservation interest. The Council's Ecology Officer's consultation response to the application does not indicate otherwise. The LPI has raised concerns as to the extent of the proposed Chatsmore Farm designation⁴⁷ and whether it will ultimately be included as a LGS is unknown⁴⁸.

4.8 It is important to note that the landscape assessments relied upon in the emerging local plan were HDA studies. However, they have changed their assessment⁴⁹ despite no change in landscape or visual circumstances. Though BD wished to describe this as

³⁹ It includes a number of detracting features as mentioned already

⁴⁰ Paragraph 6.24, POE of CS, CD C5 B1

⁴¹ CD D1. Note this is acknowledged by the LPA in their SoC at paragraph 8.13, CD C3

⁴² Paragraph 6.39-6.40, POE of CS

⁴³ CD D1

⁴⁴ See paragraph 6.21, POE of CS, CD C5 B1

⁴⁵ Note the heritage assessment and heritage SoCG

⁴⁶ Paragraph 6.29, POE of CS, CD C5 B1

⁴⁷ Paragraph 10, CD E6.

⁴⁸ Paragraph 18, CD E6

⁴⁹ See CD 5A 5B 5C

“*more refined*”⁵⁰, and the exercise as them leaving “*no stone unturned*”, it does rather indicate that their assessments can flex with the application of different judgements, there being no other change to warrant any amendment.

4.9 The change is that HDA now say that there can be a degree of development within Chatsmore Farm located on the south west triangle of the appeal site, thus the Council concedes the principle of at least some development in the ‘gap’. The remaining issue is therefore the appropriate extent of that development.

4.10 It is clear from the sustainability appraisal note⁵¹ that the reason why Chatsmore Farm, within which the appeal site is located, was not more widely allocated for development was the Council’s reliance upon HDA’s landscape evidence. GP agreed⁵² that had it not been for the HDA consultation response this site would have been allocated. An essential component⁵³ of their assessment related to the heritage impacts and reference to a draft LGS designation which worked their way from the consultation response into the RfR.

4.11 There can be no certainty that the proposed designations will be confirmed⁵⁴. Even GP, when challenged⁵⁵ on his view that the gap will remain, volunteered that there is an “*element of speculation*”. These matters simply reinforce the view of DH that the emerging ‘gap’ policies should therefore be afforded limited, if any, weight.

5. Main Issue 5: The effect of the proposed development on highway safety including on the Strategic Road Network

Matters of agreement

5.1 RfR3 has been resolved largely through the Transport Assessment Addendum (TAA) and VISSIM modelling. Accordingly, RfR4 remains albeit any allegation as to impact on the strategic highway network can be removed⁵⁶. SG confirmed⁵⁷ that the Appellant

⁵⁰ In XX

⁵¹ CD K16; page 2 – see option 2.

⁵² In XX

⁵³ Mr. Peck agreed in XX it was a component

⁵⁴ Paragraph 6.41, CD C5 B1 POE of CS. Initial advice letter is at CD E6. Discussion regarding LGS is at paragraphs 9-17

⁵⁵ In XX

⁵⁶ See Highways SoCG, CD C5 D3. See also EIC of SG

⁵⁷ In XX

has now provided sufficient information in respect of the impacts such that he agreed this part of the Council's RfR could be scored through.

5.2 It will be noted that unlike other parts of its case where the Council rely heavily on the emerging local plan, none of the policies therein – nor indeed any adopted policies in the current Development Plan – are cited in support of its RfR. The Council cites paragraph 111 of the NPPF⁵⁸ (previously paragraph 109), but only in respect of residual cumulative impacts on the road network which the Council allege would be 'severe'. SG was also clear that no safety argument was being made by the HA⁵⁹.

5.3 There is no dispute as to the accessibility credentials of the appeal site. It is close to Goring Station, within walking distance to bus stops which provide access to the number 700 service which is very frequent and goes to a number of locations, and there are pedestrian and cycle links which connect it with the local network and a wide range of amenities which are likely to cater for the daily needs of future households⁶⁰.

Issue between the parties

5.4 The remaining concerns comprising the Council's continued objection may be summarised, following the evidence of SG⁶¹, as follows:

- 1) the cumulative impact of queue lengths on one arm of the southern roundabout, Goring Way, in the AM peak.
- 2) the cumulative impact of queue lengths – a difference of 102 seconds in the AM and 58 seconds in the PM peaks – on the A259 Littlehampton Road western arm of the northern roundabout, Goring Crossways⁶² – which SG described as being "*the significant concern*"⁶³ (albeit there is an increase on three of the arms⁶⁴).

⁵⁸ CD D1

⁵⁹ In EIC

⁶⁰ EIC of SG

⁶¹ EIC and XX

⁶² This is the main roundabout to the A259 north,

⁶³ Confirmed in XX

⁶⁴ Google Images were added into the core documents following SG's EIC, during which they were referred to, which show the roundabouts with which we are concerned.

5.5 When assessing whether the proposed development generated traffic would result in ‘severe’ residual cumulative impacts on the road network SG properly agreed⁶⁵ that one must look at the impacts *holistically*⁶⁶. That is important because the NPPF does not envisage that any impact will suffice. Nor indeed does ‘severe’ impact necessarily justify a refusal.

5.6 The evidence clearly and ably presented by TW demonstrated that when all things are properly considered, no severe residual cumulative impacts result.

5.7 His clear position (and that of SG⁶⁷) was that this Inspector should rely upon the VISSIM microsimulation results⁶⁸ prepared at the behest of WSCC. This followed the TA and TAA which relied upon ARCADY models and was required because that analysis was considered insufficient⁶⁹. As SG⁷⁰ confirmed, the VISSIM model has a benefit over ARCADY because it provides an assessment of interaction with other junctions comprising the local highway network. It is more robust⁷¹. Indeed, it was prepared and independently audited by consultants, WSP, working on behalf of WSCC and declared ‘fit for purpose’ following two reviews (that also being a matter of common ground⁷²).

5.8 The results are properly reflected in Tables 3.1-3.6 of TW’s PoE⁷³. SG agreed⁷⁴ that the Inspector could look at these tables for the VISSIM results, albeit with his caveat that he felt the baseline should include planned improvements to the Goring Crossways included in the local transport study⁷⁵ informing the emerging local plan. That will be addressed in due course.

5.9 First, as to the VISSIM results, Table 3.3 demonstrates that in the 2033 AM Peak with the development and mitigation there would only be three instances of increased

⁶⁵ In XX

⁶⁶ He agreed this both in terms of considering the time taken to move through the junctions and also the queues that form on various arms of the roundabouts.

⁶⁷ Xx.

⁶⁸ The most recent version is at Section 3 of TW’s POE. The original model did not include all the proposed allocations in the eWLP hence the need for additional runs.

⁶⁹ For the chronological history explained by TW in EIC see section 2 to his POE, CD C5 D1.

⁷⁰ Even in EIC

⁷¹ Agreed in XX

⁷² Highways SoCG [CD C5 D3] and xx.

⁷³ Pages 8-13

⁷⁴ In XX

⁷⁵ CD H3

queuing; namely on the A259 Littlehampton Road⁷⁶, The Strand (about which SG had no concerns⁷⁷) and Goring Way West⁷⁸. This must be considered in context. This amounts to three of the multiple approaches that feed into the local highway network under consideration, of which conditions on the remaining arms either improve or stay broadly the same. Furthermore, the potential for increased congestion only arises during the weekday AM peak hour period and is thus of a very limited duration. For the vast majority of the time the local highway network will operate better with the development traffic and planned mitigation than for the baseline⁷⁹.

5.10 As to journey times, Table 3.4⁸⁰ demonstrates that the only significant increase in travel time would be from the A259 Littlehampton approach of the Goring Crossroads to other destinations and from The Strand approach; an addition of 209 seconds in respect of the former (the latter of no concern to SG). There is a small increase on the western approach to the Goring Way roundabout of 6 seconds; but otherwise, there are decreases in travel times from all other junction approaches to all other destinations during the AM peak⁸¹.

5.11 With regard to the PM peak, Tables 3.5 and 3.6⁸² demonstrate that during the PM peak hour the queues deteriorate on the A259 Littlehampton Road western arm of the Goring Crossroads roundabout, but for all other arms the queue conditions will substantially improve. With that same western arm, there will also be significant reductions in travel times from all selected junction approaches and an increase in average speeds for the local highway network from 26-kph to 30-kph during the PM peak hour period. The evidence of TW is clear that these improvements are likely to also hold true throughout the off-peak periods.

5.12 There is no good reason to ignore those findings. As explained earlier, the VISSIM microsimulation model is agreed to be fit for purpose⁸³ and robust⁸⁴. It shows a *worst case*, as SG agreed in XX it is a model with a number of limitations resulting

⁷⁶ During the AM peak the average queue increases by 36 vehicles

⁷⁷ XX

⁷⁸ An average queue increase of 23 vehicles

⁷⁹ See paragraph 4.3, POE of TW, CD C5 D1

⁸⁰ Page 11, POE of TW, CD C5 D1

⁸¹ See paragraph 3.14 final bullet point summary, POE of TW, CD C5 D1

⁸² Pages 12-13, POE of TW, CD C5 D1

⁸³ Highways SoCG, CD C5 D3

⁸⁴ Paragraph 4.2.5, SG PoE

in an overly pessimistic view. Traffic flows are added to the model on a fixed routing basis rather than allowing for dynamic reassignment. This means that it does not allow for drivers' behaviour such as seeking alternative routes or choosing different travel times in light of known congestion. It also fails to factor in the highly accessible location of the Appeal Site and access to travel modes other than the private motor car. The proposed development will bring with it a new station car park where presently there is no dedicated car parking, enhancements to pedestrian and cycle infrastructure and a Residential Travel Plan (RTP) none of which are factored into the modelling. Neither does it take into account societal trends. This is particularly relevant given WSP's eWLP Transport Assessment Addendum (TAA) report (January 2021) applies a 10% reduction in vehicular trips associated with the eWLP development sites has been applied to the forecast traffic flows within the SATURN model, as well as an additional 5% reduction in general vehicular trip to reflect the impact of broader policy changes and societal trends associated with active travel and home working. The VISSIM model does not include these assumptions. Accordingly, it is more likely than not that the results will be even better than indicated in reality.

5.13 The Council seeks to suggest that these results are impacted by the baseline failing to include improvements proposed through the local transport plan (referenced above), which are very similar to those proposed in this appeal. However, there is simply no certainty that the same will come forward let alone when. Firstly, the emerging local plan would need to be adopted. Secondly, such improvements have not advanced beyond a 'concept' as illustrated by the concept plans which relate to them. There has been no auditing or further design work. Thirdly, the intention is plainly for such improvements to be funded by CIL contributions which will only be forthcoming as and when development is consented. That takes time. The necessary works could only commence when a sufficient amount of CIL payments have been received. It is wholly unclear when that would be, or indeed if it would happen at any point at all. Such improvements have been a long-term aspiration for the Council and, as TW explained in XX, nothing has happened about them over the substantial period of time since they were first talked about. In contrast, the appeal proposals can deliver all of the improvements including improvements to the southern roundabout (which are additional to the Council's own aspirations). Work can commence as soon as the planning permission is implemented rather than waiting for the collection of monies

from other schemes and delivery can be secured through the s.106 / conditions to ensure the works are completed prior to occupation.

5.14 In XX TW was asked to go through a somewhat tedious and tortuous exercise of transposing figures from the ARCADY results⁸⁵. This was particularly bizarre as it was not an exercise carried out by SG in his PoE, Rebuttal or even in EiC! Indeed, he didn't even propose the exercise in answer to questions in XX. In EiC SG expressly noted that whilst the ARCADY models in the TA and TAA have "*some weight*" he placed it no higher than that. The exercise, with respect, smacked of desperation. Recognising the reality of the highways objection, the Council (in a rather unorthodox manner) decided to introduce this on the hoof for the first time at a very late stage in XX.

5.15 But it goes nowhere. SG agreed⁸⁶ that the ARCADY modelling is done in isolation, that it doesn't factor in anything else other than assumptions made in respect of the single junction being considered and that its limited scope was one of the very reasons why WSCC suggested that the VISSIM micro simulation model was utilised for the purposes of the appeal application. He agreed⁸⁷ that the VISSIM model has to be audited to ensure that the appropriate figures and data are put in so that the outcome is appropriate and one upon which reliance can be placed, and noted that the ARCADY model is "*based on more mathematical equations*". His clearly expressed view⁸⁸ was that you can consider the VISSIM model as the more robust assessment of likely impacts and that one of the of reasons it was adopted was because of its limitations.

5.16 The Council will undoubtedly say that you still need to look at the ARCADY outputs if you wish to understand the comparative RFCs and the comparative delays on the arm, but it is unnecessary and of little weight. This is because the ARCADY results are irrelevant and superceded by the VISSIM modelling, as was ably explained by TW⁸⁹. The VISSIM model shows times between selected routes on the network (the routes having been previously agreed with WSCC). The VISSIM model outputs are,

⁸⁵ The exercise Ms Tafur did using tables 2.16 and 2.17 in the TAA addendum at CD A12iv

⁸⁶ In XX

⁸⁷ In XX

⁸⁸ Being in agreement in XX

⁸⁹ In XX

in the words of TW⁹⁰ “*more realistic*” and “*show interconnectivity and interaction with other junctions*” whereas the ARCADY is only used for isolated junctions and depicts an “*exaggerated queue length*”, which is evident when one compares the results from ARCADY to VISSIM, particularly in the PM peak. Reliance solely upon ARCADY would be unreliable because the queues predicted are “*wildly out*” from what is predicted in the VISSIM model. To rely upon ARCADY is wholly contrary to the advice and evidence presented by WSCC. The ARCADY results are acknowledged by WSCC to be unrepresentative. Furthermore, to rely upon ARCADY would not be utilising the very model WSCC preferred and SG has accepted to be more robust.

5.17 It should also be borne in mind when considering the VISSIM results that the Council seeks to compare the difference in queue lengths indicated in WSCC’s SATURN model with the Appellant’s VISSIM model on the A259W⁹¹ (equating to an increase of 154 seconds in the AM and 264 in the PM⁹²). However, the two models have completely different trip assignment methodologies and hence results (as recognised by SG in his PoE⁹³). As TW explained in EiC, you cannot directly compare the two because SATURN is a strategic model whereas the VISSIM model is based on a fixed route assignment such that one cannot draw a “*meaningful comparison*”. The SATURN model pushes traffic into the network and junctions, but at the same time constantly monitors journey times on alternative routes and when these become more favourable, then traffic switches. However, the VISSIM model cannot factor in alternative routing and will necessarily present a pessimistic picture, overstating the queue length. In addition to those alternative routes, there is an alternative route for eastbound traffic movements to use the A20 bypass road to join the A27 to gain access to the western part of Worthing.

5.18 The Council contend that there wouldn’t be any substantial reassignment because the A27 is not an attractive alternative, it being suggested that there are issues with the A27 already⁹⁴. However, TW fairly noted that National Highways had removed their RfR, presumably because they were convinced that there wouldn’t be

⁹⁰ EIC

⁹¹ Paragraph 5.3.7, SG PoE

⁹² Paragraph 5.3.10, SG PoE

⁹³ PoE at 5.3.7. [CD C6 C1]

⁹⁴ Discussed with TW in XX

any severe cumulative impact in respect of the A27. (they have been provided with exactly the same information as WSCC).

5.19 Set against the impacts are the many significant and tangible benefits this scheme would bring. The creation of a new roundabout junction to serve the Appeal site and Goring-by-Sea railway station, the upgraded and safety audited revisions to the Goring Crossroads and Goring Way roundabout junctions, the elimination of conflicting right-turn manoeuvres at the A259 Goring Street / The Strand junction, and the provision of improved and new crossing facilities for pedestrian and cycle facilities which will all contribute to an improvement in overall safety conditions⁹⁵. This is all in line with emerging policy DM15⁹⁶ and deals with the serious issue of a “*lack of safe crossing points causes community severance*” highlighted in the West Sussex Transport Plan⁹⁷.

Conclusion

5.20 Drawing all of this together, when considering matters holistically as it is agreed one should, it is clear that the appeal proposal will not give rise to residual cumulative impacts on the road network which would be ‘severe’ in the context of paragraph 111 of the NPPF⁹⁸. Rather, the proposed appeal scheme would offer an overall benefit such that no highways RFR can be reasonably maintained.

6. Main Issue 1: Acceptable location for the development having regard to local and national planning policy, the need for housing and the Council’s emerging local plan

6.1 The development plan comprises the Worthing Core Strategy (2011) (‘WCS’)⁹⁹ and saved policies of the Worthing Local Plan (2003)¹⁰⁰. The only adopted development plan policy conflict identified by the Council is WCS Policy 13. As explained by DH¹⁰¹, WCS Policy 13 restricts housing development outside the built-up area. It is only permitted if it is within the BUAB and pdl (with the exception of the West Durrington

⁹⁵ Paragraph 4.3, CD C5 D1 POE of TW

⁹⁶ As set out at paragraph 2.3.3 of the POE of SG

⁹⁷ 2011-2026; CD H1. Note at present there is only a footbridge. The improvements proposed by the appeal scheme can be seen at Appendix 7 to the POE of TW

⁹⁸ CD D1

⁹⁹ CD E1

¹⁰⁰ CD E8

¹⁰¹ EiC and xx.

allocation). It is otherwise a policy that just says ‘no’. Moreover, the restrictive nature of the WCS spatial strategy underpinning Policy 13 was expressly premised upon the understanding that WBC could meet its housing needs with those restrictions. It is a matter of agreement that Policy 13 is to be regarded as out of date due to the 5YRHLS position and / or the HDT positions, and the tilted balance applies for the determination of the appeal¹⁰².

6.2 Despite that, it is also necessary to assess the consistency of Policy 13 against the policies of the current NPPF. The WCS was prepared in the different national policy context (including PPS 3) of the now revoked South East Plan. The national policy upon which the WCS was based (including PPS 3) has long since been replaced by (three iterations of) the NPPF. The NPPF also introduced a more nuanced and balanced approach towards housing on greenfield land/in the countryside as opposed to the strictly controlled approach to protect the countryside for its own sake¹⁰³.

6.3 The consistent national policy imperative introduced by the NPPF is to significantly boost the supply of housing to meet the currently assessed need for housing¹⁰⁴. The degree of need in Worthing Borough is calculated by the standard method¹⁰⁵ and is exceptionally high. Whereas the WCS housing requirement was only 200 dpa, paragraph 3.13 of the eWLP¹⁰⁶ identifies a minimum local housing need for 885 dpa (a 443% increase). This equates to 14,160 homes over a 16 yr period¹⁰⁷ although the eWLP proposes to deliver only 3,672 homes over 16-year period (now less) at a proposed 230 dpa¹⁰⁸. In addition, there are substantial unmet housing needs in the LPAs within the sub-region and the 2020 SHMA identified a need for 490 affordable dpa (more than twice the total 230 dpa proposed in the eWLP)¹⁰⁹. Furthermore, to date no solution has been identified to address the unmet housing needs of WBC and those of the other LPAs within the sub-region¹¹⁰.

¹⁰² CD C4 (Planning SoCG) paras 8.13 and 8.21.

¹⁰³ As agreed by GP in xx and explained by DH in EiX and xx.

¹⁰⁴ Recognised as a “major” policy shift by Hickinbottom J in *Gallagher Homes* [CD.J25]. This is now contained in **para 60** of the NPPF (July 2021).

¹⁰⁵ NPPF paragraph 74.

¹⁰⁶ CD E2.

¹⁰⁷ HSoCG paragraph 2.11.

¹⁰⁸ HSoCG paragraph 2.15.

¹⁰⁹ Paragraphs 2.20-2.22 CD C5 E2 (Housing SoCG).

¹¹⁰ Paragraph 2.23 CD C5 E2 (HSoCG) and IM xx (who agreed that “no short or medium term solution” to addressing this unmet need had been identified).

6.4 It is a matter of agreement that WBC cannot meet its current identified needs within the confines of the existing BUAB¹¹¹ and that Policy 13 is not consistent with this national policy imperative to significantly boost the supply of housing. This is further confirmed by the necessity for the existing BUAB to flex in order to accommodate an increased need for housing (although that will still leave a minimum unmet need of 10,500 over the plan period). This unmet need is separate to the identified affordable housing need of 490 dpa, which is acute and worsening¹¹².

6.5 These exceptional needs are to be considered against a 5YRHLS that is simply woeful. The agreed bracket is that the Council can demonstrate a HLS of between 1.49 or 1.81 yrs. These are miserably tragic numbers both in objective and human terms and cannot simply be put down to location. The latest HDT return also demonstrates that WBC is now the 3rd worst in the whole of the country (306 LPAs), such that were the eWLP adopted tomorrow then the tilted balance would still apply¹¹³. As explained by both NT and JS, there are (unchallenged) significant real world implications as a consequence of not addressing these exceptional unmet needs for both market and affordable housing. The demographic implications include fewer children and potential effects upon schools; fewer people of working age; less disposable income with the concomitant economic implications; an increased need for carers; the aging demographic profile will have adverse healthcare provision impacts; increased commuting; and worsening affordability (to just name a few!)¹¹⁴.

6.6 The Council contend that Policy 13 should be given significant weight because of the role it plays in protecting the countryside and / or the historically important ‘gap’ between Goring and Ferring. We will address the visual components of that argument later but from a policy perspective it is fundamentally flawed. You will read the (aged) DLs to which the Council have referred but it is perhaps more useful to consider the more recent policy contexts. In particular, the SP (2001-2016)¹¹⁵ did make provision for development to be permitted in the countryside which would not normally be acceptable outside BUABs where it is necessary to maintain the social and economic well-being of the County. Furthermore, major development could take place (or even

¹¹¹ See generally CD C5 E2 (Housing Need SoCG).

¹¹² See unchallenged evidence of JS and xx of IM.

¹¹³ As acknowledged by IM in xx.

¹¹⁴ Note also the Shelter reports referenced in NT and JS’ evidence, CD I2 and CD 14

¹¹⁵ K12, SP Policy LO2(c) on p.25

fill) identified strategic gaps in exceptional circumstances, noting that “*a lack of alternative sites and the fact that the need cannot be met in any other way could justify an exception*”¹¹⁶ - a more fitting description of the currently prevailing circumstances would be difficult to find. Consequently, the policy context subsequent to the old DLs expressly permitted major development within the ‘gaps’ in exceptional circumstances, such as those which are now agreed to apply.

6.7 The Council’s determination of the West Durrington application is also pertinent in terms of consistency¹¹⁷. The proposal was in conflict with Policy 13 because it was not pdl but a greenfield site outwith the West Durrington allocation. When granting permission the Council recognised its housing need and the “*chronic lack of alternative sites*” and did not even mention the Policy 13 conflict upon which it now sets such store. Despite identified adverse impacts concerning heritage, the NP (who objected) and GCN, the Council granted permission even without application of the tilted balance.

6.8 Further contextual examples provided by DH¹¹⁸ included development in AONBs which have the highest status of protection (NPPF paragraph 177) and VSC within GBs. In the former, the need for housing and national policy imperatives are component elements of the exceptional circumstances necessary to justify development within a NP. Similarly, even a healthier HLS (with no indication of any failure to even try and accommodate identified unmet needs elsewhere) has justified major development in GB¹¹⁹ against the even higher test of VSC.

6.9 Adopted WCS Policy 13 necessarily precludes any meaningful housing delivery. Furthermore, it conflicts with the national policy imperative to significantly boost the supply of housing¹²⁰ and manifestly fails to address the increasingly acute housing problem. Consequently, Policy 13 is out of date on its own terms when assessed against the NPPF irrespective of the HLS and HDT positions and should be given only limited weight¹²¹.

¹¹⁶ K12, paras 328-329 at pp.73-74.

¹¹⁷ Also used as a benchmark by JS in his EIC in respect of the acute AH position in 2017 and his comparison with a number of affordability indicators

¹¹⁸ EIC and xx; also agreed with GP in xx.

¹¹⁹ Decision of SoS following recommendation of Inspector Jessica Graham in *Colney Heath* [J45]

¹²⁰ See paragraph 60 of the NPPF which makes reference to that Government objective

¹²¹ DH EIC and xx.

6.10 In its RfR no.1 the Council reference conflict with draft policies SS4-SS6 and they invite you to afford them significant weight. The Council now have an ‘initial advice letter’ dated 9 December 2021¹²², but the LPI 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 report¹²³. The LPI raises concerns about legal compliance and makes various comments which suggest that the SA is inadequate, including “*why certain options were selected and others rejected.*”¹²⁴ The agreed position is also to be noted¹²⁵, namely: “*It is agreed that the LPA has submitted the Worthing Local Plan (WLP) for examination, that hearing sessions sat in November 2021 and the Inspector published Initial Advice on 9th December 2021. This sets out that **the Inspectors final conclusions regarding soundness and legal compliance will be provided in a subsequent report following consultation on the main modifications.** Nevertheless, the Inspector has provided advice that whilst the WLP, as submitted, is not sound or legally compliant, with additional work and further modifications these soundness and legal compliance issues may be addressed.*” It is also agreed that additional modifications have yet to be finalised and “*...all of which have yet to be consulted upon.*”¹²⁶

6.11 The LPI does not rule out the possibility of the need for changes to the plan in view of the above¹²⁷. As agreed with IM and GP¹²⁸ there are a number of steps that need to be undertaken, including preparation of, and consultation upon, as yet unpublished MMs (which have to be first submitted to the LPI), potentially a further hearing session(s) thereon, the determination of presently unresolved objections and production of the IR before adoption can even be considered. IM agreed¹²⁹ that those steps that had yet to be undertaken must influence the weight to be afforded to the eWLP. As explained by NT, it is also important to consider that the LPI has not yet considered how the eWLP can be found “effective” in the context of NPPF paragraph 35(c) when the LPA is plainly deferring its unmet needs indefinitely.

¹²² CD E6.

¹²³ See paragraph 2.

¹²⁴ See paragraphs 3-8.

¹²⁵ See HSoCG, paragraph 2.13, CD C5 E2.

¹²⁶ HSoCG paragraph 2.14.

¹²⁷ See paragraph 8.

¹²⁸ Xx.

¹²⁹ Xx.

6.12 Irrespective of the weight you afford to the eWLP in general, DH urges that the emerging policies referenced in RfR no.1 should attract little to no weight. As demonstrated in Topic Paper 2 ‘Note on overlap and inter-relationship between Policies SS4, SS5 and SS6’, the LPI did not consider them sound in their present form¹³⁰, and they are all likely to change. For the purposes of this s.78 appeal these policies are still the same versions that attracted ‘limited weight’ at the determination of the appeal application¹³¹, which ordinarily would not justify a refusal when the tilted balance is engaged. Moreover, the proposed changes to the wording of those policies are as yet unknown and do not yet even form part of the eWLP, irrespective of the further stages that will have to be undertaken. There is considerable force in the view taken by DH¹³² that these emerging policies should perhaps attract even less weight now than at the time of determination.

6.13 Whilst you will make your own judgement as to the weight to be afforded to the eWLP we would commend the approach of Inspector Nunn in the *Enstone DL*¹³³, as subsequently endorsed by the High Court¹³⁴, i.e. that its weight is limited by the steps that have yet to be undertaken prior to adoption.

6.14 For the avoidance of doubt, this is a s78 appeal. The evidence that is now before you is site specific (rather than the wider Chatsmore Farm) and it is very different to that which was before the LPI. Irrespective of the LPI not considering omission sites, the exercise undertaken by DH in reviewing the RAG indicators in the DIIA¹³⁵ demonstrate how matters have changed. In particular, many of those identified constraints assessed as ‘R’ would now be either ‘G’ or ‘Y’. Furthermore, the overall assessment of Chatsmore Farm in the DIIA failed to identify the considerable benefits and / or the necessary considerations for the purposes of a paragraph 11 d) exercise.

¹³⁰ CD E18.

¹³¹ See Case Officers Report, CD A3 paragraphs 418 and 463 (the paragraphs are numbered in the Appendix to Dh PoE – CD).

¹³² Xx.

¹³³ J47.

¹³⁴ Judgment of David Elvin QC (sitting as a High Court Judge) in *Roscon Strategic Land* [CD J50]

¹³⁵ Pages 56-58, CD K14

Conclusion

6.15 Though the appeal site plainly lies outwith the BUAB, and DH accepts that there is conflict with Policy 13, the context within which those concessions sit cannot be ignored. The Council's simply woeful 5YHLS and HDT positions, which it does not even plan to meet in the eWLP, does not accord with the Government's clear message that housing supply must be significantly boosted. For all of the reasons above, RFR no.1 goes nowhere.

7. Prematurity

7.1 For the appeal to be premature in the context of the NPPF one must consider the test at paragraph 49. It is clear that such arguments are "*unlikely to justify a refusal of planning permission*" other than in "*the limited circumstances*" where both a) and b) of that paragraph apply. Paragraph 50 of the NPPF goes on to explain, amongst other things, that where permission is refused on the grounds of prematurity the LPA – here the Inspector – will need to indicate clearly how granting permission would "*prejudice the outcome of the plan-making process*".

7.2 First, limb a) requires that the development proposed must be "*so substantial*" or its cumulative effect "*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. That is simply not the case.

7.3 As discussed above, the local housing need figure for the eLP is 14,160 homes; the minimum scale of development that should be planned for. At up to 475 dwellings, the appeal proposal would only provide 3% of that number. As DH explained in evidence¹³⁶ that comes nowhere near to 'substantial' considering the plan as a whole. Further, as the eLP only proposes to meet 26% of the need (3,672 households), even if all of that which is planned for were to come forward, only 29% of the need would be delivered with the appeal site. If one confines the calculation to what is planned, not what is needed, delivering the appeal site would only represent an additional 13%. There would remain a substantial shortfall and thus the cumulative effect could never be described as significant.

¹³⁶ Paragraph 7.136 of his PoE but also orally

7.4 Limb b) requires that the emerging plan be at “*an advanced stage*”. Again, this is not met. As explained previously, there remain a number of steps to overcome. The picture is not as clear as the Council paints. They remain hopeful in their speculation. But whether or not you agree with DH that it is only when one reaches the point of a final inspector’s report that an eLP can be considered advanced or not, given the uncertainty and manner of unresolved objections (in respect of which it is the level of objection not the number that is key) it is clear that the Council simply isn’t there.

7.5 This is all in the context of the Council having thus far failed to demonstrate to the LPI how it has applied paragraph 11 b) of the NPPF to justify its reduced housing requirement. That is a fundamental flaw in the eWLP and one which places you in considerable difficulty in concluding, as the Council wishes you to, that the development would undermine the plan-making process. It isn’t possible to know, as yet, what the resultant housing requirement in the eWLP will be and thus the extent to which approving the appeal scheme will make a difference.

7.6 Furthermore, even if policies SS4-SS6 were to be accepted as per the proposed amendments, the Council accepts that development can take place within the ‘gap’ and it is just a matter of the extent. The evidence indicates that this is an appropriate development in all the circumstances.

8. **Planning Balance**

8.1 It is accepted that the tilted balance at paragraph 11 d) of the NPPF is engaged. The hurdle to overcome, already a very high threshold, is stacked with benefits at the very highest level. The weight to be applied to market housing and to affordable housing individually is, unsurprisingly, agreed to be placed at the top end of the scale. Further, in XX GP agreed that the NPPF directs significant weight to economic growth rather than the moderate weight he initially applied. Standing with those benefits are numerous others which are summarised within Mr Hutchison’s overall planning balance¹³⁷ not repeated here but which you will recall.

¹³⁷ Paragraphs 37 to 44, pages 72-73, CD C5 A1.

- 8.2 In order to oust the tilted balance, the Council needs to not only exceed those considerable benefits with competing harms, but *significantly and demonstrably* so. And the onus is on them to do so. This process is not simply a numbers game. One does not add up the total benefits and total harms in a mathematical manner. It is a holistic approach. Moreover, it is an exercise which the Council simply cannot carry out in their favour.
- 8.3 The extraordinary suggestion from GP is that Policy 13 and the policies of the emerging plan should be given significant weight (the very top of his scale and thus akin to ‘full’). The notion that conflict with these policies should significantly and demonstrably outweigh the benefits attached to just the provision of housing, both market and affordable, in the context of the exceptionally high need and pitiful supply is simply incredulous.
- 8.4 In the real world, the policy conflict harm cannot rationally be placed at the level the Council contends for. To give Policy 13 a weighting at the very top of the scale is nonsense. For the reasons given earlier it is out-of-date (as acknowledged as such) due to the lack of a 5YHLS and / or the HDT, it is also pre-NPPF and based upon an out-of-date housing requirement. GP agreed during XX that Policy 13 is “*out of date with regards to the Framework that there is now*”; Worthing’s needs cannot now be met; Policy 13 cannot deliver what it purports to¹³⁸; it places a “restriction on development” outside the built-up area and on PDL; and that there is no provision for balancing the potential benefits of development against harm. DH’s application of limited weight is both rational and reasonable.
- 8.5 As for the eWLP policies, the eWLP is not at the advanced stage the Council so wishes it to be for all of the reasons already stated. To afford weight to the emerging policies at the very top of the scale (akin to full weight) would be similarly nonsensical. Once again, DH’s suggested limited weight is both rational and appropriate.
- 8.6 The highways case is a road to nowhere, heritage is agreed to be less than substantial harm GS being clear it is at the very lowest end bar none, and whilst there will be some landscape harm it is nowhere near that suggested by the Council. Taking all this

¹³⁸ With the qualifier that this was “*because of when the policy was written*”.

together with the extensive benefits the appeal scheme will bring we respectfully request you to allow the appeal.

28 January 2022

Paul Cairnes QC

Leanne Buckley-Thomson

No5 Chambers

GLOSSARY

5YHLS	Five year housing land supply
AONB	Area of outstanding natural beauty
BD	Brian Duckett
BMV	Best and most versatile
BUAB	Built up area boundary
CD	Core document
CS	Clive Self
DAS	Design and access statement
DH	David Hutchison
DL	Decision Letter
EIC	Examination in chief
eWLP	Emerging Worthing Local Plan
FW	Framework
GB	Green Belt
GCN	Great crested newts
GIS	Green infrastructure strategy
GP	Gary Peck
GS	Gail Stoten
HDT	Housing delivery test
HLS	Housing land supply
IM	Ian Moody
IR	Inspector's Report
JS	James Stacey
LGS	Local Green Space
LP	Local Plan
LPA	Local Planning Authority
LPI	Local plan inspector
MMs	Main modifications
NP	National Park
NPPF	National Planning Policy Framework
NT	Neil Tiley
Pdl	Previously developed land
PoE	Proof of evidence

PROWs	Public rights of way
RAG indicators	Red, Amber and Green indicators
RfR	Reason for refusal
TPOs	Tree preservation orders
TW	Tony Wares
SA	Sustainability appraisal
SDNP	South Downs National Park
SG	Stephen Gee
SHMA	Strategic Housing Market Assessment
SoC	Statement of Case
SoCG	Statement of Common Ground
SP	Structure Plan
VSC	Very special circumstances
WCS	Worthing Core Strategy
Xx	Cross examination