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## Appeal Decision

Hearing Held on 14-15 April 2021 and 9 June 2021

Site visit made on 16 April 2021

**by Christopher Miell MPlan MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 2 August 2021**

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**Appeal Ref: APP/Z3825/W/20/3257700**

**Rascals Farm, Shipley Road, Southwater RH13 9BG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Catesby Strategic Land Limited against the decision of Horsham District Council.
  - The application Ref DC/20/0695, dated 30 March 2020, was refused by notice dated 7 July 2020.
  - The development proposed is an outline application with all matters reserved except for access (excluding internal estates roads), for the erection of up to 100 residential units, with the associated vehicular and pedestrian access.
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### Decision

1. The appeal is allowed and outline planning permission with all matters reserved except for access (excluding internal estates roads) is granted for the erection of up to 100 residential units, with the associated vehicular and pedestrian access at Rascals Farm, Shipley Road, Southwater RH13 9BG in accordance with the terms of application, Ref: DC/20/0695, dated 30 March 2020, subject to the schedule of conditions attached to this decision.

### Procedural Matters

2. Outline planning permission is sought with all matters reserved except for access. In determining this appeal, I have had regard to the proposed site plans and the landscape masterplan but have regarded all elements of these drawings as indicative apart from the details of the proposed access.
3. At the hearing, the appellant submitted a completed section 106 legal agreement. The Council advised that the legal agreement overcomes the third reason for refusal, which relates to planning obligations. I do not disagree with the views of the Council in respect of this matter and hence it does not fall to be considered as a main issue. Nevertheless, I return to planning obligations later in my Decision.
4. As part of the appeal, the appellant has provided an amended masterplan<sup>1</sup>, which shows an alternative way in which the appeal site could be developed. As the amended plan does not evolve the extent of residential development proposed, nor does it change the proposed access arrangements, and the nature of the concerns of those who would normally have been consulted are

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<sup>1</sup> Drawing no: MP-01 REV:P7

clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I determine the appeal taking account of the amended masterplan. Nevertheless, given that outline planning permission is sought with all matters reserved except for access, in determining this appeal, I will have had regard to all elements of this drawing as indicative apart from the details of the proposed access.

5. The first and second reason for refusal includes reference to Policy 27 of the Horsham District Planning Framework 2015-2031 (the 'HDPF'). However, Policy 27 is a strategic policy which relates to settlement coalescence. At the hearing, the Council explained that the inclusion of this policy was a typographical error and that it should be struck from the respective reasons for refusal. I have dealt with the appeal on this basis.

### **Planning Policy**

6. The National Planning Policy Framework (the 'Framework') was revised in July 2021. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis. The main parties have had an opportunity to address this matter as part of the appeal process.
7. The Council have commenced a review of HDPF and the draft plan prepared sets out the Council's planning policies and proposals to guide development up to 2038. At the hearing, the Council explained that the examination of the plan was expected to take place in Spring 2022. However, following the recent revisions to the Framework, the Council have advised that the local plan review has been postponed<sup>2</sup>. Accordingly, it is unclear when the local plan review will occur.
8. On 6 May 2021 local referendums were held in respect of the Shipley Neighbourhood Plan (the 'Shipley NP') and the Southwater Neighbourhood Plan (the 'Southwater NP'). In both referendums, the majority of those who voted were in favour of the draft neighbourhood plan.
9. The Planning Practice Guidance (the 'PPG') explains that a neighbourhood plan comes into force as part of the statutory development plan once it has been approved at referendum. An Order must be made by the local authority before it has effect<sup>3</sup>. In this instance, both neighbourhood plans were formally made at Full Council on 23 June 2021.
10. Despite the location of Rascals Farm on the edge of Southwater, the appeal site falls within the neighbourhood area of the Shipley NP. Accordingly, the Shipley NP forms part of the development plan.
11. For the avoidance of doubt, the appeal site falls outside of the neighbourhood area of the Southwater NP. Consequently, it is a matter of fact that the Southwater NP does not form part of the development plan for the appeal site.

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<sup>2</sup> Press Release from Horsham District Council dated 28 July 2021

<sup>3</sup> PPG Paragraph: 064 – Reference ID: 41-064-20170728 (Revision date: 28 July 2017)

## **Main Issues**

12. The main issues are:

- whether the proposed development would provide a suitable location for housing with particular reference to the spatial and locational strategies in the development plan;
- the effect of the development upon the character and appearance of the area; and
- if harm arises, whether this is outweighed by other material considerations, including whether the Council is able to demonstrate a five-year supply of deliverable housing sites.

## **Reasons**

### *The spatial and locational strategy*

13. The appeal site is located to the west of Shipley Road, on the south western edge of the settlement of Southwater. However, the site falls within the administrative boundary of Shipley Parish.
14. It is proposed to erect up to 100 dwellings at the appeal site, which would include 35% affordable housing. The development would be served by a new two-lane access on to Shipley Road, which would be positioned in a similar location to the existing access track. As part of the development off-site highway improvements would be undertaken, which would be secured as part of the legal agreement.
15. Policy 2 of the HDPF is a strategic policy which seeks to maintain the District's unique rural character whilst ensuring that the needs of the community are met through sustainable growth and suitable access to services and local employment. Amongst other things, the spatial strategy focuses development in and around the key settlement of Horsham and allows for growth in the rest of the district in accordance with the identified settlement hierarchy, this includes around 600 dwellings West of Southwater to meet the strategic requirement for new homes.
16. Policy 3 of the HDPF is a strategic policy which sets out the development hierarchy across the District. The settlement of Southwater is identified as one of the District's Small Towns and Large Villages. The policy states that development will be permitted within towns and villages which have defined built-up areas.
17. The supporting text to Policies 3 and 4 explains that the HDPF seeks to ensure development takes place in a manner that ensures that the settlement pattern and the rural landscape character of the District is retained and enhanced, but still enables settlements to develop in order for them to continue to grow and thrive. The mechanism by which this will be achieved is through the designation of built-up area boundaries and the planned expansion of existing settlements through the Local Plan or Neighbourhood Planning. Within built-up area boundaries development is accepted in principle, whereas land outside these boundaries is considered to be in the countryside and development will be more strictly controlled.

18. Policy 4 of the HDPF is a strategic policy which relates to settlement expansion. It states that the growth of settlements across the District will continue to be supported in order to meet identified local housing, employment and community needs. Outside built-up area boundaries, the expansion of settlements will be supported where it meets five criteria. Amongst other things, they state (1) the expansion of settlements will be supported where; the site is allocated in the Local Plan or in a Neighbourhood Plan and adjoins an existing settlement edge.
19. The appeal site adjoins the existing settlement edge of Southwater. However, the site falls outside of the built-up area boundary of Southwater and is therefore not allocated for housing in the Local Plan. In terms of a Neighbourhood Plan, the appeal site falls within the neighbourhood area of the Shipley NP. However, the Shipley NP does not allocate housing sites, nor does it establish a housing target for the Parish. Instead, Policy Ship HD1 directs new housing development within existing settlements through infill or the use of previously developed land. The policy does not support the outward extension of the Parish's villages or hamlets onto greenfield land.
20. Policy 15 of the HDPF sets out the Council's housing requirement for the period up to 2031. In addition to strategic sites, it requires that at least 1500 homes will be achieved through neighbourhood planning allocations and a further 750 homes through windfall units.
21. Policy 26 of the HDPF is a strategic policy which relates to countryside protection. It states that built-up area boundaries, the rural character and undeveloped nature of the countryside will be protected against inappropriate development. It sets out a list of four criteria where development outside of development boundaries may be permitted. At the hearing, the parties agreed that the proposal does not meet any of the exceptions listed.
22. The appeal site is located outside of built-up area boundary for Southwater and it is not allocated for housing within HDPF or the Shipley NP. Accordingly, the proposal would conflict with the Council's spatial strategy for new housing development as set out by Policies 2, 3 and 4 of the HDPF. Moreover, the proposal does not meet any of the exceptions for new development in the countryside set out by Policy 26 of the HDPF. Consequently, the proposal would not accord with this policy.
23. In conclusion, the proposals would be at odds with the spatial and locational strategies for housing in the development plan, which includes the recently adopted Shipley NP. Consequently, the proposal would harmfully undermine the public interest in having a planning system that is genuinely plan led. In this respect, the proposed development would not provide a suitable location for housing with particular reference to the spatial and locational strategies in the development plan.

#### *Character and appearance*

24. The appeal site is located within the countryside on the edge of Southwater. It has an area of approximately 6 hectares and a private track off Shipley Road provides access to an existing dwelling and outbuildings which are located at the site. The private track and a green corridor, comprising of a tree belt and mature hedgerows, acts to separate the appeal site into two distinctive fields, which have different characteristics.

25. The smaller field at the northern part of the site is enclosed by ancient woodland to the north and western boundaries with the tree belt to the south. Whilst the larger southern field, which includes the existing dwelling and outbuildings, is predominately used as a series of paddocks that are defined by post and rail fencing. The paddocks are enclosed by mature trees and established soft landscaping to the south and both sides, which includes the ancient woodland to the west of the appeal site.
26. The Council explain that Public Right of Way (PRoW) 1889 enters the site from Shipley Road and runs east-west at the edge of Rascals Woods and the northern boundary of the site. It leads into a network of public rights of way including PRoW 1888 and other well used informal paths within the woods.
27. The appeal site falls within the Landscape Character Area G4: Southwater and Shipley Woodland Farmlands, as identified by the Horsham District Landscape Character Assessment (the 'LCA'). The LCA explains that the landscape character area is gently undulating with a strongly wooded landscape with many small to medium sized woodland blocks enclosing an irregular pattern of pasture fields. It notes that due to the enclosing presence of woodlands, views are confined.
28. The LCA identifies several 'key issues' in respect of the landscape character area, which includes the potential pressure for urban development around Southwater. In terms of the landscape character area's sensitivity to change, the LCA states that the area's sensitivity to change is high reflecting the area's many intrinsic landscape qualities.
29. The appeal site is not within a designated landscape<sup>4</sup>, nor does it border such an area. Nevertheless, given its openness and large number of landscape features, such as the green corridor through the site, the appeal site contributes positively and distinctively to the semi-rural character at the settlement edge of Southwater.
30. Paragraph 174(b) of the Framework recognises the important value of the countryside and states that "planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside."
31. The Council's spatial strategy is consistent with the aims of paragraph 174(b) and this is reflected by Policy 25(1) of the HDPF which states that "The Council will support development proposals which: (1) Protects, conserves and enhances the landscape and townscape character, taking into account areas identified as being of landscape importance, the individual settlement characteristics, and maintains settlement separation".
32. On my site visit, I walked along the respective PRoWs as requested by the Council and other local residents. When walking along PRoW 1889, there were uninterrupted views of the appeal site's northern field, which for the most part is an area of unmanaged species rich mesotrophic grassland, in addition, the existing tree belt and surrounding ancient woodland formed strong landscape features, which enclosed the space. Moreover, as I walked through the ancient woodland, I observed that the views of the appeal site could be observed

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<sup>4</sup> See Paragraph 176 of the Framework

- through the trees. Accordingly, the proposed development would be readily perceived by users of the PRow, including from within the ancient woodland.
33. The proposed development would introduce residential development within a countryside location which forms part of the south western settlement edge of Southwater. The overall extent of the development would be significant and it would substantially erode the semi-rural character of the immediate area.
34. However, the appeal site is visually well contained due to its topography and the extent of existing landscape features, including the areas of ancient woodland to the north and western boundary and mature trees and extensive soft landscaping to the south and eastern boundaries of the site. Accordingly, views of the proposed development would be localised. Nevertheless, when viewed from local receptors, including from the network of PRows and from the southern approach into Southwater via Shipley Road, the proposal would result in harm through the urbanisation of this part of the settlement edge.
35. In conclusion, the proposed development would significantly erode the semi-rural character of the immediate area by developing the countryside on the south western edge of Southwater. This loss of countryside would be particularly apparent to users of the local PRow network and from the southern approach into the settlement. Therefore, the proposed development would result in harm to the character and appearance of the area. As such, the proposal would conflict with Policy 25 of the HDPF, which requires development proposals to protect, conserve and enhance the landscape and townscape character of the District. In addition, the proposal would not accord with Policy 26 of the HDPF which aims to protect the rural character and undeveloped nature of the countryside against inappropriate development outside of built-up area boundaries.
36. For these reasons, the proposal would also be inconsistent with paragraph 174(b) of the Framework.
37. At the hearing, the Council argued that the proposal would conflict with Policy Ship HD3 of the Shipley NP. However, policy relates to high quality design, as opposed to development within the countryside. Accordingly, this policy is not relevant to this main issue. Detailed details matters could be dealt with at reserved matters stage.

### **Other Considerations**

*Whether the Council can currently demonstrate a five-year housing land supply*

38. At the hearing, the main parties agreed that the correct five-year period to be used for the purpose of calculating the Council's five-year housing land supply position was 1 April 2020 – 31 March 2025.
39. Paragraph 74 of the Framework states that "Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer".
40. The HDPF was adopted in November 2015. The plan became five years old on 27 November 2020. Therefore, the strategic policies are more than five years

old. Consequently, having regard to paragraph 74 of the Framework, the Council's housing requirement should be calculated according to local housing need.

41. Footnote 39 of the Framework clarifies that "Where local housing need is used as the basis for assessing whether a five-year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance."
42. At the hearing, the main parties agreed that the local housing need should be 897 dwellings per annum ('dpa')<sup>5</sup> for the entire five-year period with a buffer of 5%, which would ensure choice and competition in the market for land. This gives a total requirement including the buffer of 4709 dwellings over the five-year period from 1 April 2020 – 31 March 2025.
43. Following the hearing, the appellant has drawn my attention to a statement of common ground, dated 24 June 2021, which was submitted to the Planning Inspectorate by the Council in respect of an appeal<sup>6</sup> at a different site within the District. The document states that the local housing need should be 902 dpa for the entire five-year period, which including a 5% buffer, gives a total requirement of 4735 dwellings over the five-year period from 1 April 2020 – 31 March 2025.
44. However, I am not aware of the full circumstances of that case and why the Council agreed to a slight increase to the local housing need from 897 dpa to 902 dpa. Accordingly, for the purposes of this appeal, I will use the local housing need of 897 dpa, which gives a total requirement including the 5% buffer of 4709 dwellings over the five-year period.
45. Before the hearing, the Council's position was that they could demonstrate a supply of 4874 dwellings, which equated to a housing land supply of 5.24 years. However, the Council's latest position<sup>7</sup> is that it can demonstrate a supply of 4714 dwellings. This is a surplus of 5 dwellings for the five-year period and equates to a supply of approximately 5.01 years.
46. The appellant argues that the Council is unable to demonstrate a five-year supply of deliverable housing sites. It is his position that the Council have a supply of 3340 dwellings, which equates to a supply of approximately 3.5 years.
47. The areas of dispute between the main parties cover strategic allocations, a large site, neighbourhood plan allocations and windfall development. I have considered these matters on the basis of the 1 April 2020 base date.
48. Annex 2: Glossary of the Framework states that "To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:
  - a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence

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<sup>5</sup> Horsham District Council: Five-year housing land supply Statement of the Local Planning Authority – Appendix 1

<sup>6</sup> Appeal Ref: APP/Z3825/W/20/3261401

<sup>7</sup>

that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).

b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”

49. The PPG goes on to state that “Such evidence, to demonstrate deliverability, may include: current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions; firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates; firm progress with site assessment work; or clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.”<sup>8</sup>”

#### Strategic Allocation: Land at North Horsham

50. The Land at North Horsham is a strategic allocation which has outline planning permission<sup>9</sup> for up to 2750 dwellings. The reserved matters area plan<sup>10</sup> shows that development will be delivered in ten phases, which are shown on the plan as ‘RM Area 1’ through to ‘RM Area 10’. As part of the development significant infrastructure will be delivered, which includes a footbridge/cycle bridge across the A264, which is expected to be installed this year, and a secondary school, which is expected to be completed in January 2022.
51. The main parties disagree on whether 700 dwellings at this site would be completed by 31 March 2025. The appellant contends that 83 dwellings will be delivered over the five-year period. If this were to be the case, it would result in a deficit of 617 dwellings.
52. The appellant explains that the Council’s calculation of 700 dwellings is based on expected completions at a rate of 25 dpa this year (2021/22), with a rise in delivery to 175 dpa for the following monitoring year (2022/23) and then 250 dpa for the two monitoring years thereafter (2023/24 and 2024/25). This has not been disputed by the Council.
53. At the hearing, the Council explained that one reserved matters application<sup>11</sup> for 193 dwellings had been approved in January 2021, which covers RM Area 1 and a further reserved matters application<sup>12</sup> for 197 dwellings was expected to be approved in June 2021, which covers RM Area 2. At the time of writing, I

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<sup>8</sup> PPG Paragraph: 007 – Reference ID: 68-007-20190722 (Revision date: 22 July 2019)

<sup>9</sup> Council Ref: DC/16/1677/OUT

<sup>10</sup> Horsham District Council: Five-year housing land supply Statement of the Local Planning Authority – Appendix 5

<sup>11</sup> Council Ref: DC/20/2047/REM

<sup>12</sup> Council Ref: DC/21/0066/REM



- have been provided with no evidence by the Council to confirm that the latter reserved matters application has been approved.
54. In addition, the Council state pre-application discussions have been recently held with Legal and General Suburban Build to Rent ('L&G SBTR') and Legal and General Affordable Homes ('L&G AH') in respect of the reserved matters applications for RM Area 6 and RM Area 7. Collectively, these developments would provide 219 dwellings.
  55. Legal and General explain that the dwellings would be of a modular construction and partly constructed off site and then components would then be transported and assembled on-site. Consequently, the modular dwellings can be constructed in approximately half of the time, when compared to traditional construction.
  56. The pre-construction programme provided by Legal and General<sup>13</sup> sets out that a reserved matters application will be submitted in June 2021, with site set-up and infrastructure provision occurring between December 2022 and March 2022. Given the modular construction, the Council expects all of the 219 dwellings to be completed by September 2023.
  57. The respective developments that will take place at these four different areas (RM Area 1, RM Area 2, RM Area 6 and RM Area 7) will be undertaken by four different developers. If all of the respective developments over the four areas were all completed within the five year period up to 31 March 2025, this would provide a total of 609 dwellings.
  58. The Council state that additional homes would be built in future phases and explain that pre-application advice has recently been given to a fifth developer for a further 178 homes to be developed on RM Area 1E of the site. Accordingly, they are satisfied that 700 dwellings will be delivered at the strategic allocation over the five-year period.
  59. Given the significant infrastructure work and site preparation that has been undertaken to support large scale development at the strategic allocation, which includes the construction of a school and bridge across the A264, and, the fact the development of the respective RM Areas will be undertaken by different developers, I cannot agree with the appellant's position that only 83 dwellings will be delivered over the five-year period. This would equate to just over 20 dpa over the next four years, which is an unrealistically low estimate.
  60. The evidence before me demonstrates that firm progress has been made in respect of the delivery of housing at RM Area 1 with detailed planning permission in place for 193 dwellings. In addition, a reserved matters application has been submitted for 197 dwellings at RM Area 2, which is likely to approved within the coming months. Collectively, these developments would deliver 390 dwellings once completed.
  61. Based on the evidence before me, I consider that there a realistic prospect that the entire 193 dwellings will be delivered at RM Area 1 within the five-year period. In respect of RM Area 2, given that the reserved matters application remains undetermined, even if it were approved in the coming weeks, it is unlikely that any of the dwellings pursuant to the detailed planning permission would be completed this year. However, there appears to be sufficient progress

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<sup>13</sup> Horsham District Council: Five-year housing land supply Statement of the Local Planning Authority – Appendix 6

- to suggest that a proportion of those dwellings will be completed within the five-year period. On that basis, I have made a conservative estimate that approximately 100 homes would be delivered at RM Area 2 by 31 March 2025.
62. In respect of the delivery of housing at RM Area 6 and RM Area 7, whilst some progress being made towards the submission of a reserved matters application, this is yet to occur, and the timings set out with Legal and General's pre-construction programme appear to have slipped. Nevertheless, I am mindful the respective development at RM Area 6 and RM Area 7 would provide modular dwellings that would be constructed partially off-site, which would enable fast housing delivery. On that basis, I have made a conservative estimate that approximately 110 homes would be delivered across RM Area 6 and RM Area 7 by 31 March 2025.
63. In respect of RM Area 1E, no clear evidence, such as a planning performance agreement or written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates etc, has been provided by the Council to demonstrate that any of the dwellings will be completed within the five-year period. Accordingly, the submitted details fall short of the clear evidence required such that I therefore discount these 178 dwellings.
64. In conclusion, I have found that clear evidence has been provided which shows that 403 dwellings are deliverable from the Council's supply at Strategic Allocation known as 'Land at North Horsham'. Accordingly, I consider that the Council's supply should be reduced by 297 dwellings as there is not clear evidence that 700 dwellings are deliverable within the five-year period.

#### Strategic Allocation: Kilnwood Vale – Colegate Reserved Land

65. Kilnwood Vale is large strategic allocation located on the edge of Crawley. The Council relies upon two parts of the Kilnwood Vale site within its five-year housing land supply. They are known as the 'Colegate Reserved Land' and 'Rusper'. I deal with these sites on an individual basis.
66. The main parties disagree on whether 210 dwellings at the Colegate Reserved Land would be completed by 31 March 2025. The appellant contends that 143 dwellings will be delivered over the five-year period. If this were to be the case, it would result in a deficit of 67 dwellings.
67. In October 2018, the Council granted outline planning permission for between 204 and 250 dwellings at the site. In October 2019, the Council granted reserved matters consent<sup>14</sup> for 86 dwellings. In May 2021, the Council granted reserved matters consent<sup>15</sup> for 168 dwellings. The latest reserved matters application for 168 dwellings, superseded the initial reserved matters consent for 86 dwellings.
68. The Council have provided a build-out schedule from Crest Nicholson, dated August 2020, which projects that 218 units will be delivered at the site by 31 March 2025. This exceeds the number of dwellings permitted by the latest reserved matters consent. To this regard, the Council explain that they met with Crest Nicholson in April 2021 to discuss the submission an application for the final section of development at the site. The Council state that they expect

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<sup>14</sup> Council Ref: DC/19/0426/REM

<sup>15</sup> Council Ref: DC/20/2223/REM

to receive a full application by July 2021, which would propose in excess of 86 dwellings. The Council state that they would be unlikely to resist such an application at the site, subject to suitable urban design.

69. However, no substantive evidence has been put forward to demonstrate that this full application has been submitted at this time. Accordingly, there is no clear evidence that the additional housing completions proposed as part of the forthcoming planning application will begin on site within five years.
70. As set out above, the appellant contends that 143 dwellings will be delivered at the site over the five-year period. This is marginally below the number of units approved by the detailed planning permission. Having regard to Crest Nicholson's build-out schedule, I am satisfied that sufficient progress has been made to suggest that all 168 dwellings will be completed within the five-year period.
71. On that basis, I consider that the Council's supply should be reduced by 42 dwellings as there is not clear evidence that 210 dwellings are deliverable at the site within the five-year period.

#### Strategic Allocation: Kilnwood Vale – Rusper

72. The main parties disagree on whether 180 dwellings at this site would be completed by 31 March 2025. If this were to be the case, it would result in a deficit of 180 dwellings.
73. At the hearing, the main parties agreed that no reserved matters applications have been submitted for development within this part of the Kilnwood Vale Strategic Allocation.
74. The appellant has drawn my attention to supporting documentation submitted by Crest Nicholson<sup>16</sup> in respect of a reserved matters application for development at the Colegate Reserved Land, which confirms they have hit unforeseen issues in relation to land remediation within Phases 2 and 3, which will slow the delivery of housing at Kilnwood Vale.
75. This has been acknowledged by the Council, but they argue that the build-out schedule from Crest Nicholson demonstrates that approximately 180 dwellings will be delivered at the site by 31 March 2025. To this regard, the Council argue that if the reserved matters applications for Phases 4 and 5 were submitted in early 2022 and decided by summer 2022, this would allow sufficient time for 180 completions at the site within the five-year period.
76. The build-out schedule from Crest Nicholson predates the supporting documentation submitted in respect of reserved matters application for development at the Colegate Reserved Land. Therefore, I cannot be certain that the build-out schedule takes account of the land remediation issues. Moreover, no reserved matters applications have been submitted for development at the site. Accordingly, no clear evidence has been provided to demonstrate that housing completions will begin on site within five years.
77. On that basis, the submitted details fall short of the clear evidence required such that I therefore discount these 180 dwellings.

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<sup>16</sup> Hearing Statement – Housing Land Supply Matters by Neame Sutton (March 2021) – Appendix 9

### Large Site: Former Novartis Site

78. Outline planning permission<sup>17</sup> was granted in February 2020 for the erection of up to 300 dwellings, which includes the conversion of existing office buildings, and up to 25,000 square metres of employment floor space. The application was made by West Sussex County Council.
79. The appellant has drawn my attention to paragraph 6.80 of the Council's Committee Report<sup>18</sup> which explains that the development would be phased with the first phase comprising 7,500 sqm of commercial floorspace, followed by the conversion of two existing buildings to residential. However, based on the evidence before me, this does not appear to be a condition of the outline planning permission.
80. At the hearing, the main parties agreed that no reserved matters applications have been submitted in respect of the proposed development. However, the Council explain that the West Sussex County Council have now selected Muse Developments as their delivery partner. Muse Developments<sup>19</sup> explain that a reserved matters application for phase 1, which would comprise of 133 dwellings, will be submitted in November 2021. It is anticipated that construction would begin in August 2022 and the 133 dwellings would be delivered at the site by 2023/24.
81. Whilst some progress has been made towards the submission of a reserved matters application, this is yet to occur, and the timings set out with the email provided by Muse Development lacks substantive detail. Nevertheless, I am satisfied that a proportion of the phase 1 housing completions will begin on site within five years. As such, I have made a conservative estimate that approximately 67 homes would be delivered at the site by 31 March 2025.
82. On that basis, I consider that the Council's supply should be reduced by 66 dwellings as there is not clear evidence that 133 dwellings are deliverable at the site within the five-year period.

### Neighbourhood Planning

83. The Council contends that the source of supply attributed neighbouring planning allocations should be 332 dwellings over the five-year period. The appellant argues that it should be reduced to 129 dwellings. If this were to be the case, it would result in a deficit of 203 dwellings.
84. The Land North of Passonage Farm is allocated in the Henfield Neighbourhood Plan (the 'Henfield NP') for approximately 205 dwellings. An email<sup>20</sup> from the planning agent explains that the developer intends to submit an outline planning application for 230 dwellings in June/July 2021 with an anticipated start date of Winter 2022/23 and completion at Winter 2024/25. At this time, I have not been made aware of the submission of an outline application at site. Nevertheless, it is clear that firm progress has been made towards the submission of an application and I am satisfied that the Council's estimate that 40 dwellings would be delivered at the site by 31 March 2025 is reasonable.

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<sup>17</sup> Council Ref: DC/18/2687

<sup>18</sup> Hearing Statement – Housing Land Supply Matters by Neame Sutton (March 2021) – Appendix 10

<sup>19</sup> Horsham District Council: Five-year housing land supply Statement of the Local Planning Authority – Appendix 8

<sup>20</sup> Horsham District Council: Five-year housing land supply Statement of the Local Planning Authority – Appendix 9

85. The Land East of Wantley Hill is allocated in the Henfield NP for approximately 25 dwellings. The Council explain that the development will be undertaken as a joint venture between West Sussex County Council and a development partner. The County Council approved their development partner in March 2021. An email<sup>21</sup> from the County Council explains that they hope to submit a planning application by December 2021, with a view of completing the works by Mid-2024. However, they advise that these dates are subject to joint venture programming. I do not consider that this amounts to an indication of firm progress towards the submission of an application. Indeed, the County Council confirm no pre-application or site layout work has been undertaken. For these reasons, I have discounted these 25 dwellings.
86. The Land West of Backsettown, off Furners Lane is allocated in the Henfield NP for approximately 30 dwellings. An email<sup>22</sup> from the planning agent explains that a full planning application is likely to be prepared in Early 2022 with the dwellings delivered in a single phase within the next five years. The timescales provided are vague and do not provide a clear indication of firm progress towards the submission of an application. For these reasons, I have discounted these 30 dwellings.
87. Crosby Farm is allocated in the Slinfold Neighbourhood Plan for up to 24 dwellings. In November 2020, an outline application<sup>23</sup> for 24 units was refused planning permission by the Council. The sole reason for refusal related to layout of the site access. An appeal was lodged against the decision by the planning agent. In addition, a revised outline application<sup>24</sup> was submitted in March 2021, whilst a full application<sup>25</sup> for 24 units was submitted by a different agent. Even if I were to assume that planning permission was not granted until the end of 2021, this would leave over three years to deliver 24 units. For a relatively small site, I am satisfied that the details provided amount to the clear evidence required.
88. Land North of Downsview Avenue is allocated within the Storrington, Sullington and Washington Neighbourhood Plan (the 'SSW NP') for at least 60 dwellings. Outline planning permission<sup>26</sup> for up to 62 dwellings was granted by the Council in May 2020 and an application to discharge an archaeological condition was approved in March 2021. A reserved matters application has been submitted to the Council. If this application were to be approved by the end of 2021, this would leave over three years to deliver 62 units. For a medium sized site, I am satisfied that the details provided amount to the clear evidence required.
89. The Ravenscroft Allotment Site is allocated within the SSW NP for at least 35 dwellings. An email<sup>27</sup> from the planning agent, dated March 2021, confirms that a hybrid application consisting of full permission for the relocation and enhancement of the Ravenscroft Allotment site and Outline Planning Permission for up to 78 homes with all matters reserved except access is very nearly ready for submission. Moreover, the Council explain that at a public exhibition held by the planning agents in December 2020, it was stated that construction of housing would begin in Summer 2022.

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<sup>21</sup> Horsham District Council: Five-year housing land supply Statement of the Local Planning Authority -Appendix 10

<sup>22</sup> Horsham District Council: Five-year housing land supply Statement of the Local Planning Authority -Appendix 11

<sup>23</sup> Council Ref: DC/19/1386/OUT

<sup>24</sup> Council Ref: DC/21/0109/OUT

<sup>25</sup> Council Ref: DC/21/0498/FUL

<sup>26</sup> Council Ref: DC/19/2015/OUT

<sup>27</sup> Horsham District Council: Five-year housing land supply Statement of the Local Planning Authority -Appendix 13

90. The Ravenscroft Allotment Site spans two local planning authorities and the number of units proposed is significantly higher than the SSW NP allocation of at least 35 dwellings, which may generate public objection. On that basis, the Council explain that there could be delays in granting permission. Accordingly, the Council have made a conservative estimate that works may start in 2023, and, if that were the case, they argue that 35 dwellings could be completed over the five year period.
91. Whilst I am unaware of whether a current planning application has been made for development at the site, it is clear that firm progress has been made towards the submission of an application and I am satisfied that the Council's estimate that 35 dwellings would be delivered at the site by 31 March 2025 is reasonable.
92. Land East of Pound Lane is allocated in the Upper Beeding Neighbourhood Plan for approximately 70 dwellings. The Council explain that the site has an extensive planning history, whereby four previous applications have been made for residential development. Whilst none of the applications were granted permission, the Council argue that they collectively demonstrate that a lot of work has already been put into bringing the site forward for residential development.
93. In terms of a new application, the Council explain that they had pre-application discussions with a developer in July and September 2020. On that basis, the Council are hopeful that an application will be submitted and granted permission in 2022. Therefore, the Council argue that 40 dwellings could be completed over the five-year period.
94. The details provided are vague and do not provide a clear indication of firm progress towards the submission of an application. For instance, it is unclear why a formal application did not follow the pre-application discussions that were held with the Council in 2020. For these reasons, I have discounted these 40 dwellings.
95. In conclusion, I have found that the Council's supply from neighbourhood plan allocations should be 161 dwellings. On that basis, I consider that the Council's supply should be reduced by 171 dwellings as there is not clear evidence that 332 dwellings are deliverable across the respective sites within the five-year period.

### Windfalls

96. The appellant disputes the Council's figures for major windfall sites (10+ dwellings) and medium windfalls sites (5-9 dwellings). The appellant accepts the Council's figures for small sites (1-4 dwellings). As such, the appellant argues that the contribution that should be attributed from the windfalls should be reduced from 605 dwellings to 431 dwellings over the five-year period. If this were to be the case, it would result in a deficit of 174 dwellings.
97. Paragraph 71 of the Framework states "Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends".

98. The appellant argues that the Council's data is predicated on historic data trends, with little evidence that the supply of windfall development will continue at the same rate as seen previously.
99. At the hearing, the Council explained that the windfall allowance has been calculated by assessing windfall delivery for developments of 5+ dwellings over a six-year period. This is evidenced within the Council's latest Annual Monitoring Report.
100. The Council explain that they previously calculated their windfall allowance using data from a four-year period, but this period had been extended following an appeal decision from October 2019 for residential development at Sandy Lane, Henfield<sup>28</sup> where the Inspector concluded that "four years is a relatively short period from which to make assumptions on future trends".
101. In my view, the Council's analysis of historic rates of windfall delivery over the extended six-year period provides a robust data set over a prolonged period of time from which to make assumptions on future trends. Accordingly, I see no reason why the discount applied to the Council's windfall allowance by the previous Inspector should be maintained.
102. Moreover, at the hearing, the Council explained that following the Government's latest changes to permitted development rights, which provide further opportunities for the change of use and extension of existing buildings to provide residential development, they predict that such prior approval applications will deliver additional windfall development over and above historic trends over the five-year period up to 31 March 2025. I agree that this is a reasonable position.
103. Overall, I am satisfied that compelling evidence has been provided by the Council to demonstrate that windfalls will provide a reliable source of housing supply over the five-year period. As such, I agree with the Council's windfall allowance of 605 dwellings.

#### Conclusion on housing land supply

104. For the reasons set out above, 519 dwellings should be discounted from the Council's figures for the strategic allocations, 66 from the Norvatis Site and 171 from neighbourhood planning. This results in a total deduction of 756 dwellings, which results in a supply of 3958 dwellings over the five-period.
105. Based on the above, this results in a deficit of 751 dwellings below the five-year requirement of 4709 dwellings. Therefore, for the purposes of this appeal, I conclude that the Council has a 4.2 year supply of deliverable housing sites.
106. Given that I have found that the Council is unable to demonstrate a five-year supply of deliverable housing sites, the tilted balance contained in paragraph 11(d) of the Framework is engaged.

#### *Are the 'most important' policies out of date*

107. The appellant explains that the strategy and policies within the HDPF which are tasked with delivering housing are predicated on a housing requirement of 800 dwellings per annum. He argues that this figure is significantly lower

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<sup>28</sup> Appeal Ref: APP/Z3825/W/19/3227192

than the housing requirement set by the standard methodology, which now applies because the strategic policies contained within the plan are over five years old<sup>29</sup>.

108. Consequently, the appellant argues that the development plan will continue to fail to provide enough housing. Accordingly, the appellant contends that the most important policies contained within the development plan are out of date because the housing requirement set out within the plan has materially changed. Therefore, he argues that the tilted balance contained in paragraph 11(d) of the Framework is engaged regardless of whether or not the Council can demonstrate a five-year supply of deliverable housing sites.
109. For applications involving the provision of housing, footnote 8 to paragraph 11(d) of the Framework explains that the policies which are most important for determining the application will be out-of-date in situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74).
110. Given that I have found that the Council cannot demonstrate a five-year supply of deliverable housing sites, which triggers the application of the tilted balance contained in paragraph 11(d) of the Framework as per footnote 8 of the Framework, it is not necessary for me determine whether the most important policies contained within the development plan are out of date as a collective basket of policies irrespective of the Council's housing land supply position.

*Is Paragraph 14 of the Framework engaged?*

111. Paragraph 14 of the Framework states "In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:
  - a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
  - b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
  - c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74); and
  - d) the local planning authority's housing delivery was at least 45% of that required over the previous three years".
112. The PPG explains that in order for a neighbourhood plan to meet the criteria set in paragraph 14b of the Framework, the 'policies and allocations' in the plan should meet the identified housing requirement in full, whether it is derived from the housing figure for the neighbourhood area set out in the relevant strategic policies, an indicative figure provided by the local planning authority, or where it has exceptionally been determined by the neighbourhood planning

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<sup>29</sup> Paragraph 74 of the Framework



body. For example, a neighbourhood housing requirement of 50 units could be met through 2 sites allocated for 20 housing units each and a policy for a windfall allowance of 10 units. However, a policy on a windfall allowance alone would not be sufficient.

113. The site falls within the neighbourhood area of the Shipley NP. The Shipley NP does not contain policies and allocations that meet an identified housing requirement for the neighbourhood area. Instead, Policy xx of Shipley NP relies upon windfall delivery.
114. At the hearing, the main parties agreed that paragraph 14 of the Framework was not engaged because the requirements of paragraph 14(b) were not met by the Shipley NP. Given the above, and, having regard to the PPG, I agree with this position.
115. I am cognisant that the Southwater NP contains policies and allocations to meet its identified housing requirement. However, the appeal site falls outside of the neighbourhood area of the Southwater NP. Consequently, regardless of the location of Rascals Farm adjacent to the settlement of Southwater, it is a matter of fact that the Southwater NP does not form part of the development plan for the appeal site. Accordingly, the Southwater NP cannot engage paragraph 14 of the Framework in respect of proposed development at the appeal site.

#### *Planning obligations*

116. The completed legal agreement makes provisions for 35% of the dwellings of the proposed development to be provided as affordable housing. Given that all matters except for access are reserved at this stage, the type, tenure, location and timing of the construction of the affordable housing units will be agreed with the Council at a later date as part of an affordable housing scheme and timetable.
117. The affordable housing provisions accord with the requirements of Policy 16 of the HDPF which requires new housing development of 15 dwellings or more to provide 35% of the number of dwellings as affordable housing units.
118. The legal agreement also makes provisions for highway works and for upgrades to the existing public right of way which runs along the northern boundary of the site. The works will promote an improved transport network in and a modal shift away from the use of private motor vehicles. This accords with the requirements of Policy 40 of the HDPF.
119. In addition to the above, the legal agreement makes provisions for a financial contribution towards the Council's air quality mitigation scheme. The contribution arises from Policies 24 of the HDPF and the payment has been calculated using a formula based on the air quality and emissions mitigation guidance for Sussex.
120. Finally, the legal agreement makes provisions for a LEAP and open amenity space, which includes landscaped boundaries. These areas of managed land would be managed by a management company in accordance with the provisions of the legal agreement. The requirement for a LEAP and open amenity space arises from Policy 43 of the HDPF which requires the provision of new community facilities where they meet the identified need of local communities.

121. Having regard to Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and paragraph 57 of the Framework, I am satisfied, that the planning obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.

### **Planning Balance**

122. Planning law<sup>30</sup>, as noted by paragraph 12 of the Framework, dictates that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions.
123. I have found that the Council is unable to demonstrate a five-year supply of deliverable housing sites. As such, the tilted balance contained in paragraph 11(d) of the Framework is engaged. For decision making this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
124. Chapter 5 of the Framework relates to the delivery of a sufficient supply of homes. Paragraph 60 states "to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay".
125. The Council have commenced a review of the HDPF. As part of the plan review, the Council will be required identify a sufficient supply and mix of sites to meet its housing requirements, taking into account their availability, suitability and likely economic viability. However, following the latest revisions to the Framework, the Council explain that the plan review has been suspended.
126. I am cognisant that the Council have significantly exceeded the number of homes required under the Housing Delivery Test (the 'HDT'). However, this is a measure of housing delivery, as opposed to housing supply. Despite the Council's good track record when assessed against the HDT, the supply of deliverable housing sites within the District has fallen below five years. In such circumstances, the tilted balance contained in paragraph 11(d) of the Framework is engaged. Given that the plan review has been suspended, additional strategic housing allocations, which would meet the Council's housing land supply requirements are unlikely to come forward for several years.
127. Paragraph 73 of the Framework explains that "the supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes)".
128. Chapter 9 of the Framework promotes sustainable transport. In this context, paragraph 105 of the Framework states "the planning system should actively manage patterns of growth in support of these objectives. Significant

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<sup>30</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004

development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making”.

129. The appeal site is well located on the edge of Southwater, which is a second-tier settlement on the Council’s development hierarchy, as set out within the HDPF. The table to Policy 3 of the HDPF explains that these are settlements with a good range of services and facilities, strong community networks and local employment provision, together with reasonable rail and / or bus services. The settlements act as hubs for smaller villages to meet their daily needs, but also have some reliance on larger settlements/each other to meet some of their requirements.
130. The site is located approximately 1km away from the centre of Southwater. On my site visit, I observed that the walk from the site to the centre of Southwater was relatively level and could be made on the pavements, which featured street lighting. In addition, off-site highway improvements are proposed, which will encourage walking from the appeal site. Accordingly, I am satisfied that occupiers of the proposed development would be likely to walk to the local services from the appeal site.
131. In addition, the appellant explains<sup>31</sup> that the site is located within close proximity of several existing bus routes, the closest of which is located 140m from the site on Foxfield Cottages. Collectively, the bus routes offer services to a range of destinations. The appellant explains that the No 98 service, which provides access to Horsham, runs every 15 minutes on weekdays and Saturdays and every 35 minutes on Sundays. In addition, the appellant states that less frequent services are available from Southwater to other settlements such as Worthing, Brighton and Shoreham. This information has not been disputed by the Council.
132. Given the close proximity of local services, which are accessible on foot, and the accessibility to public transport links, which would provide access to a range of services in nearby settlements, I consider that occupiers of the proposed development would have access to a genuine choice of transport modes to access local services and employment opportunities. Accordingly, occupiers of the proposed development would not be reliant upon the use of a private motor vehicle for all journeys.
133. The proposal would deliver up to 100 dwellings, which would make a sizeable contribution to the Council’s current shortfall. Of those new homes, 35% would be affordable housing. Given the extent of the Council’s housing shortfall and identified need for affordable housing within the District, I afford these benefits significant weight in the planning balance.
134. In addition, off-site highway improvements would be undertaken as part of the proposal, which would benefit the wider community of Southwater by providing improved pedestrian crossings along Shipley Road.

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<sup>31</sup> Sustainability Statement: Rascals Farm, Southwater – Prepared by Turley Sustainability (October 2020)

135. There would also be some limited benefits to the construction industry and the vitality and viability of local services within Southwater and nearby settlements from the spend of future occupiers, as such the proposal would have social and economic benefits. These matters attract limited weight in the planning balance.
136. The provision of a financial contribution towards the Council's air quality mitigation scheme and the provisions for a LEAP and open amenity space, which includes landscaped boundaries, as set out within the legal agreement, are required to mitigate the effects of the development and to meet minimum policy requirements. Accordingly, these matters attract neutral weight.
137. The proposed development would minimise impacts on and provide an opportunity for biodiversity enhancements, as set out with the ecological appraisals submitted with the planning application. The mitigation and enhancement measures that are to be undertaken as part of the development could be secured by a planning condition. Given that the development would be undertaken on land within the open countryside, this matter attracts limited weight in the planning balance.
138. On the other hand, I have found that the proposal would cause harm to the character and appearance of the area. However, for the reasons given above, I have found that the harm would be localised, and the proposal would not cause harm to the wider landscape.
139. In addition, based on the evidence before me, which includes my site observations, I consider that the location and overall density of the proposed development would appear well related to the existing settlement pattern of Southwater, which includes extensive development to the north of the appeal site to the west of Worthing Road, and a recent development, known as Rascals Close, which is located immediately to the east of the appeal site on the other side of Shipley Road. In this context, the proposal would not materially extend the settlement beyond the western and southern edges formed by the existing developments to the north and east of the appeal site. Moreover, the proposal would not result in any coalescence of settlements. For these reasons, I consider that the proposal would represent a logical extension to Southwater.
140. The Council's Landscape Capacity Study (2020) (the 'LCS') identifies that the appeal site lies within local landscape area 26 (Land South of Southwater). The study concludes that the local landscape area 26 has a 'low-moderate' capacity to accommodate medium scale development in limited locations without unacceptable adverse landscape and visual impacts or compromising the values attached to it, taking account of any appropriate mitigation. At the hearing, the Council accepted that the site had potential for some form of development, but not the overall quantum of development proposed, which the Council argue would fail to relate sympathetically to the surroundings and rural qualities of the site. For the reasons set out below, I do not agree with the Council's position.
141. The Council have expressed concern that the illustrative layout would not respond sympathetically to the surroundings. However, layout is a reserved matter at this stage. Nevertheless, I consider that the layout of the proposed development would need to be reflective of the site's position on the edge of the settlement where it would be necessary to deliver a layout which

successfully transitions from the urban context of Southwater into the surrounding open countryside.

142. In part, this transition could be achieved by retaining a significant proportion of the green corridor, which runs across the site and separates the two fields, and the provision of a buffer zone between the proposed dwellings and the surrounding ancient woodland. These features are shown on the illustrative masterplan of the site. Accordingly, and having regard to the relatively moderate density of the proposed development, I am satisfied that a suitable layout could be achieved and that the overall quantum of development proposed could come forward at the site.
143. Moreover, having regard to the relatively moderate density of the proposed development, I am satisfied that the development could meet the requirements of paragraph 131 of the Framework, which states that "Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible". In respect of the long-term maintenance, I have imposed a condition requiring the submission of a landscape management and maintenance plan with the reserved matters application.
144. In conclusion, I have found that the proposal would cause harm to the character and appearance of the area. Harm is also caused by the proposal's conflict with the Council's spatial strategy for new housing development within the District. Accordingly, the proposal would conflict with Policies 2, 3, 4, 25 and 26 of the HDPF. Nevertheless, for the reasons given above, which includes the Council's housing land supply position, and, when having regard to paragraphs 60, 73 and 105 of the Framework, I afford this collective harm limited weight.
145. In conclusion, the proposed development would meet identified local housing needs by delivering housing on a site, which is on the edge of an existing settlement and well related to local services in Southwater. In addition, I have found that occupiers of the development would have a genuine choice of transport modes to access local services and employment opportunities.
146. Overall, I conclude that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is a material consideration which indicates that planning permission should be granted.
147. I afford this matter significant weight in the overall planning balance and find that it outweighs the conflict with the aforementioned development plan policies. Accordingly, planning permission should be granted for the proposed development.

### **Other Matters**

148. No substantive evidence has been put forward which demonstrates the proposal would place harmful pressure on local infrastructure, including school places, the doctor's surgery and the dentist. Nevertheless, the development would be liable for a CIL payment, which can be used by the Council to deliver infrastructure improvements.

149. The Local Highway Authority (the 'LHA') have assessed the proposal and raised no objection. I have no reason to disagree with the LHA in respect of this matter and I am satisfied that the drawings demonstrate the proposal would not be prejudicial to highway and pedestrian safety.
150. Concerns have been expressed about the impact of construction noise and air pollution on the living conditions of local residents. Such matters can be appropriately managed through a Construction Environmental Management Plan ('CEMP'), which can be secured via a planning condition.
151. Several Ecological Appraisals were submitted as part of the application which collectively set out the mitigation and enhancement measures that are to be undertaken as part of the development. This includes the provision of a 15 metre buffer strip between the proposed development and the adjoining ancient woodland. Substantive evidence is not before me that demonstrates I should not rely on the conclusions of the report, which was prepared by a suitably qualified ecologist and reviewed by the Council's Ecology Consultant. Moreover, I have imposed planning conditions which deal with protected species and the submission of a Construction Biodiversity Environmental Management Plan ('CBEMP').
152. At the hearing, I heard evidence about whether the use of the proposed areas of open space, such as the LEAP, would compromise the suitability of the proposed ecological mitigation. Based on the evidence before me, and having regard to modest density of development, which provides scope to deliver a variety of play areas, I am satisfied that these areas can be delivered as part of the final without causing to the proposed ecological mitigation. Indeed, the Council's Ecology Consultant has raised no objection to the proposal.
153. Concerns have been expressed by local residents about the management of surface water. The Lead Local Flood Authority and the Councils Drainage Engineer have raised no objection to the proposed drainage strategy. Furthermore, detailed drainage matters related to surface water drainage and foul water drainage can be dealt with by a planning condition. I see no reason why it would be inappropriate to follow this course of action in this appeal; especially as substantive evidence has not been provided to demonstrate the scheme could not address current policy expectations.
154. Local residents explain that the appeal site provides an important area for recreation and exercise. They contend that this would be lost if the appeal site were to be developed. However, the existing PRoW through the appeal site would be retained, which would preserve access into the adjoining ancient woodland and nearby open countryside, both of which feature an extensive network of PRoWs. Moreover, the proposed development would include a LEAP and open amenity space, which would be accessible to the public and secured through the planning obligation. Accordingly, I am satisfied that the appeal site, if developed in the manner proposed, would continue to provide opportunities for recreation and exercise for local residents, which would include occupiers of the proposed dwellings.
155. Concerns have been raised by local residents about the impact of the proposed development upon air quality within the local area. However, no such concerns were raised by the Council. Moreover, no substantive evidence has been put forward which demonstrates the proposal would put existing development at unacceptable risk from unacceptable levels of air pollution.

156. Local residents argue that there is no housing need for additional development in Southwater. In support of this position, they explain that many new build properties located elsewhere within the settlement remain unsold. However, no substantive evidence has been provided to demonstrate that this case. Moreover, I have found that the Council are unable to demonstrate a five-year supply of deliverable housing sites.

### **Conditions**

157. The Council have suggested 21 conditions, all of which except one condition relating to landscape management, have been agreed by the appellant within the statement of common ground.
158. I have considered against the conditions against the tests as laid out in paragraph 56 of the Framework. In the interests of consistency and precision, I have amended the wording of some of the conditions.
159. Outline planning permission is granted subject to the conditions relating to the submission of reserved matters and the time limits associated with this. I have also included a condition specifying that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
160. To safeguard human health and the wider environment, it is necessary to impose a condition relating to the investigation, and if required, the remediation of contaminated land. To ensure that such risks are appropriately managed, it is necessary for these details to be agreed prior to the commencement of development. In addition, I have also imposed a regulatory condition to control work if unsuspected contamination is found.
161. Due to the scale of the development and the proximity of neighbouring residents, it is necessary to impose a condition requiring a CEMP. To ensure that the interests of neighbouring residents are safeguarded during the entire construction period, it is necessary for the details of the CEMP to be agreed prior to the commencement of development.
162. Similarly, it is necessary to impose a condition to restrict the hours of construction and deliveries, in order to limit noise disturbance in the evenings and at weekends. In the interests of precision, I have amended the Council's suggested wording.
163. In the interest of ecology and biodiversity, it is necessary to impose conditions related to the submission of a CBEMP, Landscape and Ecological Management Plan and protected species. To safeguard ecological interests, it is necessary for these details to be agreed prior to the commencement of development.
164. I have also imposed a condition to secure the ecological mitigation and enhancement measures biodiversity enhancement and mitigation set out within the supporting ecological appraisals are undertaken as part of the development. I have amended the Council's suggested wording to ensure that the works are carried out prior to the occupation of the proposed dwellings. Furthermore, to safeguard important foraging routes used by bats and their associated territory, I have imposed a condition relating to the development's lighting scheme.

165. The Council's Historic Environment Record has indicated that the proposed development has potential for archaeological deposits. Accordingly, I have imposed a condition relating to the implementation of a programme of archaeological works, which includes a post investigation assessment. To minimise the risk of damage to archaeology, it is necessary for these details to be agreed prior to the commencement of development.
166. As set out within the other matters, I have imposed conditions relating to foul and surface water drainage. To ensure that adequate provision for drainage is provided as part of the proposal, it is necessary for these details to be agreed prior to the commencement of development.
167. In addition, I have imposed a condition which requires the submission of a sustainable urban drainage system verification report. This will ensure that an adequate drainage system has been provided as part of the development.
168. To ensure that the development achieves a high standard of sustainability and makes efficient use of resources, I have imposed a condition relating to internal water usage. In addition, to ensure that the occupiers of the proposed development will have access to reliable communications infrastructure, which are essential for economic growth and social well-being, I have imposed a condition relating to the provision of broadband internet connectivity.
169. In the interests of highway safety, it is necessary to impose conditions relating to the vehicular access and the maintenance of visibility splays onto Shipley Road.
170. To safeguard trees at the appeal site, it is necessary to impose a condition which requires the development to be carried out in accordance with the tree protection measures set out within the submitted arboricultural documents.
171. The Council have suggested a condition relating to the submission of a landscape management and maintenance plan. However, landscaping is a reserved matter at this stage. Nevertheless, I share the Council's position that a landscape management and maintenance plan is required in the interests of the character and appearance of the area and nature conservation. Accordingly, I have amended the wording of the suggested condition to require such details to be submitted at reserved matters stage.

## **Conclusion**

172. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

*Christopher Miell*

INSPECTOR



## **SCHEDULE OF CONDITIONS:**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Drawing No: SLP-03 REV:P1 (Site Location Plan)
  - Drawing No: PAR 01 REV:P4 (Parameter Plan: Development Area)
  - Drawing No: 21007-03-1 REV:B (Proposed Site Access Arrangement Vehicle Tracking – Refuse Vehicle)
  - Drawing No: 21007-03-2 REV:B (Proposed Site Access Arrangement Vehicle Tracking – Internal Section)
  - Drawing No: 21007-03-3 REV:B (Proposed Site Access – General Arrangement)
  - Drawing No: 21007-03-3 REV:B (Proposed Site Access Arrangement)
  - Drawing No: 21007-03-4 REV:B (Proposed Site Access – Visibility Splays)
  - Drawing No: 21007-04-1 (Proposed 30/60 MPH Speed Limit Change)
- 5) No development shall commence until the following components of a scheme to deal with the risks associated with contamination, (including asbestos contamination), of the site, in accordance with the recommendations and conclusions of the P9249 Phase I Site Appraisal for Catesby Estate PLC by GRM Development Solutions dated Feb 2020, shall be submitted to and approved in writing by the local planning authority:
  - a) An intrusive site investigation scheme, based on the P9249 Phase I Site Appraisal to provide information for a detailed risk assessment to the degree and nature of the risk posed by any contamination to all receptors that may be affected, including those off site.
  - b) Full details of the remediation measures required and how they are to be undertaken based on the results of the intrusive site investigation (b) and an options appraisal.
  - c) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action where required.

The scheme shall be implemented as approved. Any changes to these components require the consent of the local planning authority.

- 6) No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of the following relevant measures:
- (i) An introduction consisting of a description of the construction programme, definitions and abbreviations and project description and location;
  - (ii) Details of how residents will be advised of site management contact details and responsibilities
  - (iii) Detailed site logistics arrangements, including location of site compounds, location for the loading and unloading of plant and materials, site offices (including height and scale), and storage of plant and materials (including any stripped topsoil)
  - (iv) Details regarding parking or site operatives and visitors, deliveries, and storage;
  - (v) The method of access to and from the construction site
  - (vi) The arrangements for public consultation and liaison prior to and during the demolition and construction works – newsletters, fliers etc.
  - (vii) Details of any floodlighting, including location, height, type and direction of light sources, hours of operation and intensity of illumination
  - (viii) Locations and details for the provision of wheel washing facilities and dust suppression facilities

The construction shall thereafter be carried out in accordance with the details and measures approved in the CEMP.

- 7) No development shall commence until a construction Biodiversity environmental management plan (CBEMP) has been submitted to and approved in writing by the local planning authority. The CBEMP shall include the following:
- a) Risk assessment of potentially damaging construction activities.
  - b) Identification of "biodiversity protection zones".
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
  - d) The location and timing of sensitive works to avoid harm to biodiversity features.
  - e) The times during construction when specialist ecologists need to be present on site to oversee works.
  - f) Responsible persons and lines of communication.
  - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
  - h) Use of protective fences, exclusion barriers and warning signs.

The approved CBEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 8) No development shall commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to, and be approved in writing by, the local planning authority prior occupation of the development. The content of the LEMP shall include the following:
- a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organisation responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 9) No development shall commence until the local planning authority has been provided with either:
- a) A copy of the European Protected Species Mitigation licences for bats and hazel dormouse issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 authorizing the specified activity/development to go ahead; or
  - b) A statement in writing from the relevant licensing body to the effect that it does not consider that the specified activity/development will require a European Protected Species licence.
- 10) No development shall commence until a programme of archaeological work has been secured in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be commenced until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under this condition and that provision for analysis, publication and dissemination of results and archive deposition has been secured and approved by the local planning authority in writing.
- 11) No development shall commence until a detailed surface water drainage scheme including a Surface Water Drainage Statement, based on sustainable

drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The submitted details shall be fully coordinated with the landscape scheme. The development shall subsequently be implemented prior to first occupation in accordance with the approved details and thereafter retained as such.

- 12) No development shall commence unless and until details of the proposed means of foul water sewerage disposal including the proposals for the associated off-site infrastructure improvements have been submitted to and been approved in writing by the local planning authority. Thereafter all development shall be undertaken in accordance with the approved details and no occupation of any dwelling shall take place until the approved works have been completed. The foul drainage system shall be retained as approved thereafter.
- 13) No development above ground floor slab level of any part of the development hereby permitted shall take place until confirmation has been submitted, in writing, to the local planning authority that the relevant Building Control body shall be requiring the optional standard for water usage across the development. The dwellings hereby permitted shall meet the optional requirement of building regulation G2 to limit the water usage of each dwelling to 110 litres per person. The subsequently approved water limiting measures shall thereafter be retained.
- 14) No development above ground floor slab level of any part of the development hereby permitted shall take place until a lighting design scheme for biodiversity has been submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme.

No other external lighting or floodlighting shall be installed without prior consent from the local planning authority.

- 15) No part of the development shall be first occupied until such time as the site access arrangement has been provided onto Shipley Road in accordance with the approved planning drawings, and maintained as such thereafter.
- 16) No part of the development shall be first occupied until visibility splays of 2.4 metres by 74 metres to the south and 71 metres to the north have been provided at the proposed site vehicular access onto Shipley Road in accordance with the approved planning drawings. Once provided the splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metre above adjoining carriageway level or as otherwise agreed.

- 17) Prior to the first occupation (or use) of any part of the development hereby permitted, a verification report demonstrating that the Sustainable Urban Drainage System has been constructed in accordance with the approved design drawings shall be submitted to and approved by the local planning authority. The development shall be maintained in accordance with the approved report.
- 18) Prior to the first occupation of each dwelling, the necessary infrastructure to enable connection to high-speed broadband internet (defined as having speeds greater than 24 megabits per second) shall be provided.
- 19) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.
- 20) All ecological mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the EcIA (ACD Environmental Ltd, February 2020) as well as the Ecological Position Statements (ACD Environmental, 1st and 18th June 2020) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. No occupation of any dwelling shall take place until the approved works have been completed.
- 21) Demolition or construction works (including deliveries and dispatch) shall take place only between 08:00 and 18:00 on Mondays to Friday, 09:00 to 13:00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 22) All works shall be executed in full accordance with the approved Arboricultural Impact Assessment/Method Statement [SC39-1039 PLANNING SUBMISSION (ARBORICULTURE) TREE SURVEY TO BS5837;2012 - PROPOSED TREE RETENTION AND REMOVAL - OUTLINE TREE PROTECTION PLAN] Issued June 2020 by FLAC.
- 23) A landscape management and maintenance plan (including long term design objectives, management responsibilities, a description of landscape components, management prescriptions, maintenance schedules and accompanying plan delineating areas of responsibility) for all communal landscape areas shall be submitted with the reserved matters application. The landscape areas shall thereafter be managed and maintained in accordance with the approved details.

**\*\*\* END OF CONDITIONS \*\*\***

## **APPEARANCES**

### FOR THE APPELLANT:

Ms V Groves	Catesby Strategic Land Limited
Mr D Morris	Catesby Strategic Land Limited
Mr A Driscoll	Landowner
Mr D Neame	Neame Sutton Limited
Ms A Sutton	Neame Sutton Limited
Ms R Jones	Neame Sutton Limited
Mrs C Brockhurst	Leyton Place Limited
Mr S White QC	Landmark Chambers

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Smith	Horsham District Council
Mr M McLaughlin	Horsham District Council
Mr M Porter	Horsham District Council
Ms I Watson	Horsham District Council

### OTHER INTERESTED PARTIES:

Cllr P Baxter	Shipleigh Parish Council
Mrs T Nash	Local Resident
Mr P Kornysky	Local Resident
Mr P Johnson	Local Resident
Mrs M Haire	Local Resident
Mr D Corcoran	Observer
Ms F Goodson	Observer
Mr A Munton	Observer

**DOCUMENTS SUBMITTED AT THE HEARING:**

1. Opening statement by Mr S White QC
2. CIL Compliance Statement from the Council
3. Suggested planning conditions (v2)
4. Statement of common ground
5. Extract from the Horsham District Council Landscape Capacity Assessment
6. Plan of the Kilnwood Vale development
7. Housing land supply position statement dated 13 April 2021
8. Legal agreement signed by the main parties
9. Statement of common ground (v2)
10. Data from the Council relating to major windfall sites evidence dated 29 November 2019
11. Decision notice regarding the Former Novartis Site
12. Decision notice regarding Phase 6A of the Kilnwood Vale development
13. Statement of Common Ground related to Appeal Ref: APP/Z3825/W/21/3266503
14. Appeal decision ref: APP/Z3825/W/20/3265681
15. Appeal decision ref: APP/Z3825/W/20/3262938
16. Suggested planning conditions (v4)

**DOCUMENTS ACCEPTED AFTER THE HEARING:**

1. Closing submissions by Mr S White QC
2. Closing submissions from the Council
3. Housing land supply position statement dated 9 June 2021
4. Statement of Common Ground related to Appeal Ref: APP/Z3825/W/20/3261401
5. Housing land supply position statement dated 28 June 2021
6. Appellant response to the revised Framework (July 2021)
7. Council response to the revised Framework (July 2021)
8. Press release from Horsham District Council regarding the local plan review