



Department for
Communities and
Local Government

Our Ref: APP/C1435/A/12/2186147

P E Hughes PHD Chartered Town
Planners
PO Box 700
St Albans
Hertfordshire
AL2 3WB

18 June 2013

Dear Sir/Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MASMA LTD
OAKLANDS, ERSHAM ROAD, HAILSHAM, EAST SUSSEX
APPLICATION REF: WD/2012/0942/MAO**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Christina Downes, BSc DipTP MRTPI, who held a public local inquiry on 5 days between 12 February and 7 March 2013 into your client's appeal against the refusal by Wealden District Council (the Council) to grant outline planning permission for residential development incorporating access arrangements and a doctor's surgery at land at Oaklands, Ersham Road, Hailsham, East Sussex in accordance with application reference WD/2012/0942/MAO dated 25 April 2012.
2. On 22 November 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal over 150 units on a site of more than 5 ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

The Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State notes that the appellant requested a Screening Direction under Regulation 5(7) to determine whether the development would be an Environmental Impact Assessment development and that previously it was concluded that it would not. The Secretary of State has considered this and concluded it unlikely that there will be any significant effects on the environment and therefore, that the development would not be an Environmental Impact Assessment development.
5. The Secretary of State has considered the concerns of the local councillors present at the Inquiry regarding its location. For the reasons given by the Inspector at IR4, he is satisfied that an acceptable opportunity was made available for those who wished to participate in the Inquiry process to do so.
6. Following the close of the inquiry, the Secretary of State received representations from you, on behalf of the Appellant, listed at Annex A. The representation explained that your client has become aware of a challenge to the Wealden Core Strategy Local Plan. The Secretary of State has given careful consideration to this correspondence. In his opinion the Core Strategy remains part of the development plan for the area unless and until such time that it is quashed either in part or as a whole, and therefore does not alter the basis upon which he has come to a decision on the appeal before him. Copies of this correspondence may be obtained, upon written request, from the address at the bottom of the first page of this letter.

Policy Considerations

7. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. The Secretary of State agrees with the Inspector that the policies in the South East Plan (SEP) that apply to Wealden have been revoked and are no longer part of the development plan [IR14], and that in this case the development plan, therefore, comprises the saved policies of the Wealden Local Plan (WLP) adopted in 1998 and the Wealden Core Strategy Local Plan (CS) adopted on 19 February 2013. The Secretary of State agrees with the Inspector that the most relevant policies of these plans are set out in the Statement of Common Ground [IR14] and he considers these policies to be broadly consistent with the Framework.
9. Other material considerations which the Secretary of State has taken into account include The National Planning Policy Framework (The Framework); Technical Guidance to the National Planning Policy Framework; Circular 11/95: Use of Conditions in Planning Permission; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and the impact on the Planning System, Circular 3/99: Planning Requirements in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development and Pollution Prevention Guidance Note 4; Interim Supplementary Planning Guidance: A New Approach to Development Contributions and Guidance on Travel Plans for New Development.
10. The Secretary of State has also has regard to the Council's Strategic Sites Development Plan Document (DPD) although has afforded it little weight as it is at a very early stage of preparation; and the Non-Statutory Wealden Local Plan (NSWLP).

Main issues

11. The Secretary of State agrees with the Inspector that the main issues in this case are those identified by the Inspector at IR139.

The effect of the proposal on the character and appearance of the area

12. The Secretary of State notes that there is no dispute that the site is presently greenfield land that lies outside the development boundary for Hailsham [IR142]. He understands that the Council envisage further growth by means of urban extensions on land outside of existing development boundaries and agrees with the Inspector that this is as part of a planned approach to housing provision, and that it does not mean that development boundaries no longer serve a useful purpose [IR143].

13. The Secretary of State agrees with the Inspector's assessment that the area has a semi-rural character [IR144]. He agrees with the Inspector, for the reasons given by her at IR145 that the size of the proposed development would result in a significant change of character from semi-rural to urban and that whilst the proposal would not impact on the character of the town itself in a negative way, it would, despite mitigation measures, cause significant harm to the character and appearance of the semi-rural area beyond the edge of the settlement [IR145-147].

Whether the proposal is necessary to meet the housing needs of the district

(a) Housing Requirements

14. The Secretary of State notes the Inspector's outline of the background to the area's housing requirements [IR148]. He also notes that the Inspector who examined the Core Strategy (Examining Inspector) recognised that there were environmental constraints to the level of housing provision and that as a result, for the time being, this could justify a lower target of at least 9,400 dwellings [IR149]. The Secretary of State recognises that modifications were necessary to make the Core Strategy sound, one of which required a review of the strategy in 2015 or when a preferred solution to the capacity at the Hailsham North and Hailsham South waste water treatment works was identified, whichever was the sooner. The Secretary of State agrees with the Inspector, for the reasons given at IR150, that there is no justification for departing from the housing requirement set out in the newly adopted Core Strategy at the present time even though it may change in 2015 and considers that the strategy does meet longer term needs up to 2027, albeit subject to the infrastructure constraints that presently exist [IR150]. For the reasons outlined at IR151-152, he agrees with the Inspector's assessment that there would be a requirement for 2,404 homes in the next 5 years.

(b) Housing Land Supply

15. The Secretary of the State recognises that in order for the Core Strategy to be found sound the Examining Inspector had to be satisfied that there was a sufficient supply of deliverable sites to meet housing requirements in both the long and short term. However, he agrees with the Inspector that consideration of the 5 year Housing Land Supply position will be a snapshot in time, and that it is quite proper that it should be re-examined in detail through the development management process [IR153]. The Secretary of State notes the difference of opinion between the Council and the Appellant about the supply of housing land and the debate at the Inquiry regarding

Footnote 11 to Paragraph 47 of the National Planning Policy Framework and whether a site has to benefit from outline planning permission in order to be considered “deliverable” [IR154]. He agrees with the Inspector’s view that there is nothing in the wording that says that sites without planning permission should be excluded as a matter of principle.

16. The Secretary of State notes the Inspector’s assessment of the disputed sites [IR155], large sites [IR156-158] and small sites [159] and agrees with her findings. For the reasons outlined in IR160, he agrees with the Inspector that there is not sufficient compelling evidence to justify a windfall allowance even at the heavily discounted rate.
17. The Secretary of State agrees with the Inspector’s conclusion that the Council can demonstrate a 5 year supply of deliverable sites, albeit by a marginal degree, and that, as a result, the relevant policies for the supply of housing in the Core Strategy are considered to be up to date [IR161]. He agrees it reasonable to conclude that there is no necessity for the appeal site to be released in order to meet the short term housing needs of the district as established in the Core Strategy.

The effect of the proposal on the Pevensy Levels site of international importance for nature conservation

18. The Secretary of the State notes the requirements of the Habitats Regulations set out by the Inspector at IR162. He also notes that the Hailsham North and Hailsham South waste water treatment works discharge effluent into the Pevensy Levels, which is both a Ramsar Site and a Candidate Special Area of Conservation. The Secretary of State is aware that the Environment Agency has been very concerned about the relationship between the discharge of treated effluent from the treatment works and the ecological quality downstream, and that as a result they will not increase the discharge capacity of the treatment works, which has limited the number of additional dwellings that can be accommodated within the existing mains drainage system. This, he recognises, has resulted in the lowering of the Core Strategy housing requirement to a level of development which could be accommodated without significant harm to the European site [IR163].
19. The Secretary of State has taken into account that the Appellant does not take issue with the Council’s approach to safeguarding capacity within the Hailsham South waste water treatment works to accommodate housing commitments [IR164]. He notes the implications of the infrastructure constraints on the Core Strategy in respect of meeting the objectively assessed housing needs of the district, that a solution should be possible between 2015 and 2020 but that it is unlikely that further development outside that anticipated in the Core Strategy would materialise until after 2020 [IR165].
20. The Secretary of the State recognises that the Appellant proposes all foul sewage deriving from the scheme to be dealt with by means of an on site Package Sewage Treatment Works and that the development, therefore, would not rely on the small amount of remaining mains capacity. He notes the Council’s objection to this method of disposal, that this has been guided to a large degree by the response of the Environment Agency and Southern Water, and their view that present capacity within the mains system should be used in preference, which is endorsed by Circular 03/99 [IR166-167]. The Secretary of State is aware of the problem faced by the Council, that being if the appeal development were to use up some of the presently available capacity it would displace some of the development planned for later in the Core Strategy period, which would then fall foul of the Habitat Regulations. He agrees with

the Inspector that if such a scenario came about the spatial strategy in the statutory development plan is likely to be severely compromised.

21. The Secretary of the State is aware that when the use of Package Sewage Treatment Works was considered by the Examining Inspector he concluded that they were not a desirable alternative to proper infrastructure planning but, agrees with the Inspector that the Examining Inspector did not reject their use for individual developments as a matter of principle [IR168]. The Secretary of State notes that the technical evidence put forward by the Appellant, that Package Sewage Treatment Works would be effective in preventing a significant adverse impact on the European site either alone or in combination with other plans and projects, was not challenged by any countervailing technical evidence from the Council or the Environment Agency. He also notes the Inspector's comments regarding the operational issues which would be included within a planning condition, and the provision within the Planning Obligation to set up a management company [IR169].
22. The Secretary of State is aware that, in order for the development to go ahead, the Appellant would be required to apply to the Environment Agency for an Environmental Permit to utilise the Package Sewage Treatment Works, and that no such application has yet been made [IR170]. He agrees with the Inspector's analysis of the Environmental Permitting regime, the use of a condition relating to the Package Sewage Treatment Works and how it could be discharged because the planning evidence indicates that the appeal scheme would not have a significant effect on the Pevensy Levels European Site. He also shares the Inspector's view that if, as a result of further modelling and assessment in association with the permitting regime, the Environment Agency reached a different view it seems inconceivable that an Environmental Permit for the Package Sewage Treatment Works would be issued [IR171]. The Secretary of State agrees with the Inspector that the appeal development would not result in a significant effect on the Pevensy Levels, either alone or in combination with other plans and projects and that the scheme would comply with the pertinent development plan policies.

Whether there is justification for infrastructure and highway contributions

23. The Secretary of State agrees with the Inspector, for the reasons outlined in IR173-181, that there is justification for the infrastructure and highway contributions provided for in the Planning Obligations and that, save for that relating to secondary education, the various obligations meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations and can be taken into account in the consideration of this appeal [IR182].

The effect of the proposal on the local highway infrastructure

24. The Secretary of State notes that the Highway Authority and the Highways Agency have raised no objections to the appeal development either in terms of its access arrangements or the ability of the local highway network to cope with the additional traffic generated. He agrees with the Inspector, for the reasons outlined in IR183 and 184, that the proposal would not give rise to harm to highway safety or free flow of traffic and that relevant development plan policy would not be offended in this respect.

Other matters

25. The Secretary of State agrees with the Inspector's conclusions that: the affordable housing element of the appeal scheme is a benefit of significant weight to be added into the planning balance [IR185]; the development would not be likely to increase

surface water flooding in the locality [IR186]; the provision of a new doctor's surgery would be a benefit of the scheme and that there is no reason why the lack of detail at this stage should count against it [IR187]; the Planning Obligation makes the necessary provision for outdoor play space and these obligations comply with the Community Infrastructure Levy Regulations [IR188]; and that the ecological assessment accompanying the planning application did not record any evidence of the presence of badgers and a number of ecological mitigation measures have the potential for greater ecological value and would be subject to a planning condition [IR189].

Overall conclusion on whether the proposal would be a sustainable form of development

26. The Secretary of State agrees that the relevant policies, including those relating to the countryside and the supply of housing, are not out-of-date and that the appeal scheme should be determined in accordance with the development plan unless material considerations indicate otherwise [IR190].
27. The Secretary of State notes the economic, social and environmental benefits of the appeal development as outlined in IR191 & IR192. However, he agrees with the Inspector that the appeal development would not accord with the newly adopted Core Strategy. The Secretary of State accepts that the Council has identified sufficient land to meet its housing requirements in the short term [IR193] and that a review mechanism will in due course look again at whether housing requirements can be increased and if so how this will be done. He agrees with the Inspector that, as matters stand, the appeal site is outside the development boundary for Hailsham within an area of countryside and that the development, and in particular the necessary highway works, would result in significant harm to the character and appearance of the semi-rural area.
28. The Secretary of State agrees with the Inspector that the Core Strategy has not changed the position in respect of the development boundary to the south of the town and has determined that development needs can be accommodated through urban extensions to the north and east [IR194]. He has considered the Appellant's comparison of the appeal site against the greenfield releases of the Hailsham and Stone Cross Strategic Development Areas but agrees with the Inspector that this is not an appropriate test because the Strategic Development Areas have been specifically selected for future growth through a robust examination within the development plan process whereas the appeal site has not. As a result, the Secretary of State agrees that the proposal would be contrary to the spatial distribution set out in Policy WCS2 of the Core Strategy.

Conditions and Obligations

29. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR127-134 and is satisfied that the conditions recommended by the Inspector and set out in Annex C to the IR are reasonable and necessary and meet the tests of Circular 11/95. However, he does not consider that they would overcome his reasons for refusing the appeal.
30. The Secretary of State has also considered the Inspector's reasoning and conclusions on the Planning Obligations at IR 173-182. The Secretary of State is satisfied that, save for that relating to secondary education, the terms of the Planning Obligations are necessary and fairly and reasonably related to the development and that they are

therefore in accordance with section 122 of the CIL Regulations and paragraph 204 of the Framework. However, he does not consider that these provisions are sufficient to overcome the concerns with these appeal proposals identified in this decision letter.

Overall Conclusions

31. Overall, the Secretary of State agrees with the Inspector that the appeal scheme would not have a significant effect on the Pevensey Levels European Site, either alone or in combination with other plans and projects [IR195] He also agrees with the Inspector that the development would result in significant harm to the character and appearance of the area and would be contrary to up to date development plan policy, in particular the spatial distribution set out in the Core Strategy. Whilst he recognises the many advantages that it would have to offer, he agrees with the Inspector that the benefits would not demonstrably outweigh the harm and would be insufficient to justify the granting of planning permission.

Formal Decision

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby dismisses your client's appeal against refusal of outline planning permission for residential development incorporating access arrangements and a doctor's surgery at land at Oaklands, Ersham Road, Hailsham, East Sussex.

Right to challenge the decision

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

34. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Lindsay Speed

Authorised by Secretary of State to sign in that behalf

Post-Inquiry Representations

Correspondent

Date

Mr P E Hughes (PHD Chartered Town Planners)

7 June 2013



The Planning
Inspectorate

Report to the Secretary of State for Communities and Local Government

by Christina Downes BSc DipTP MRTPI

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

Date 16 April 2013

TOWN AND COUNTRY PLANNING ACT 1990

WEALDEN DISTRICT COUNCIL

Appeal made by

MASMA LTD

TOWN AND COUNTRY PLANNING ACT 1990

Inquiry held on 12-15 February and 7 March 2013

Oaklands, Ersham Road, Hailsham, East Sussex BN27 3PL

File Ref: APP/C1435/A/12/2186147

CONTENTS

	Page
Abbreviations List	2
Procedural Matters	3
The Site and Surroundings	4
The Proposal and the Council's Decision	5
Planning Policy	5
The Case for Wealden District Council	7
The Case for Masma Ltd	18
Other Oral Representations to the Inquiry	28
Written Representations	30
Conditions	31
Planning Obligation by Unilateral Undertaking	32
Conclusions	34
Recommendation	49
Annex One: Appearances	50
Annex Two: Documents	51
Annex Three: List of Conditions	54

ABBREVIATIONS LIST

Term	Acronym
Community Infrastructure Levy	CIL
Development Plan Document	DPD
Environment Impact Assessment	EIA
Conservation of Habitats and Species Regulations 2010	The Habitats Regulations
Housing Land Supply	HLS
Interim Supplementary Planning Guidance	ISPG
Non-Statutory Wealden Local Plan	NSWLP
Package Sewage Treatment Works	PTW
South East Plan	SEP
Statement of Common Ground	SCG
Strategic Development Area	SDA
Strategic Housing Land Availability Assessment	SHLAA
Waste Water Treatment Works	WWTW
Wealden Core Strategy Local Plan	WCS
Wealden Local Plan	WLP

File Ref: APP/C1435/A/12/2186147

Oaklands, Ersham Road, Hailsham, East Sussex BN27 3PL

- 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 Masma Ltd against the decision of Wealden District Council.
- The application Ref WD/2012/0942/MAO, dated 25 April 2012, was refused by notice dated 20 August 2012.
- The development proposed is a residential development incorporating access arrangements and a doctor's surgery.

Summary of Recommendation: That the appeal be dismissed

PROCEDURAL MATTERS

1. On 14 February 2013 the Secretary of State for Communities and Local Government (the Secretary of State) announced that he would be partially revoking the South East Plan following consideration of the consultation responses to the Strategic Environmental Assessment. The parts that will remain relate to the Thames Basin Heaths Special Protection Area and the former air base at Upper Heyford in Oxfordshire. Neither has any bearing on the present appeal. The Order came into force on 25 March. Furthermore on 19 February 2013 the Wealden Core Strategy was adopted following consideration by the South Downs National Park Authority. The main parties' views on both matters were submitted prior to the close of the Inquiry and have been taken into account (*Documents AD/5; AD/10*).
2. The Council gave a Screening Opinion under Regulation 5(1) of the Town and Country Planning (Environmental Impact Assessment) (England) Regulations 2011 and determined that due to the size and nature of the development there was the potential for a significant environmental effect on the landscape setting of Hailsham and on the Pevensey Levels site of international nature conservation importance. However following a request by the Appellant for a Screening Direction under Regulation 5(7) the Secretary of State determined that there was unlikely to be any significant effects on the environment and that the development would not be Environmental Impact Assessment (EIA) development (*Document AD/2*).
3. The appeal was recovered by the Secretary of State for his own determination on 22 November 2012. The reason for this direction was that it involved a proposal for residential development of over 150 units and was on a site of over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
4. There was concern expressed by the local councillors present at the Inquiry that it was held too far away from Hailsham for local people to attend. This was a reasonable point as the first four days were held near Halland which is a considerable distance away. I was told that the Council had been unable to secure a suitable venue closer to the town. This was remedied to some degree by the fifth sitting day which was held just outside Hailsham. This was very well attended and local residents were able to give their views which are recorded later in the Report. Whilst the arrangements were not ideal I am satisfied that an acceptable opportunity was made available for those who wished to participate in the Inquiry process to do so.

THE SITE AND SURROUNDINGS

5. There is an agreed site description in the Statement of Common Ground (SCG) (**Document AD/12**) and **Plan A/17** is a site survey showing existing contours, hedges and trees. **Plan A/6** shows the site in relation to Hailsham and its footpath network whereas **Plan A/7** shows it in relation to the town's community facilities. The location of the adjoining ancient woodland and remnant brickworks is shown on **Plan A/13** and there are some useful pictures of the Landscape Strategy (**Document APP/5**). There are also some photographs of Ersham Road and the vicinity of the site in **Document AD/4, Appendix G**. The surrounding road network is shown in the Transport Assessment (**Document APP/1, Appendices B, C**). The location of the Pevensy Levels relative to Hailsham is shown at **Document AD/4, Appendix K, Annex WW-1, Page 8**.

The main points are:

6. The appeal site is located on the southern side of Hailsham. It comprises two parcels of mainly open pasture and paddock land on the western side of Ersham Road and separated by Coldthorn Lane. To the south west is an extensive area of ancient woodland whilst to the south is an area formerly used as brickworks. This contains remnant buildings, hard surfaces, ponds and regenerating woodland. The site has an undulating topography and is reasonably well contained by trees and hedgerows. The vicinity is not protected by any special designations but nevertheless has an attractive semi-rural ambience.
7. Ersham Road is a relatively busy route leading towards the centre of Hailsham. To the south of the site it is edged with mainly residential properties which face towards open countryside. A short distance to the east is the 14 mile long Cuckoo Trail which is a pedestrian and cycle route that follows a disused railway line between Polegate to the south and Hailsham and Heathfield to the north. At the northern end of the site is the junction of Ersham Road and Coldthorn Lane. Ersham Road at this point has a wide grass verge fringed with hedges on its eastern side whilst Coldthorn Lane is a narrow country lane that runs south through the appeal site eventually joining the A22. There is sporadic housing along this lane. To the north-west is the residential Sandbanks estate of houses and bungalows and a narrow area of low lying land separates this from the northern boundary of the appeal site. To the north-east is Ersham Farm on which permission has been granted for residential development.
8. Hailsham is one of the main towns in the district and lies on the eastern side of the A22. The town offers shops and services to meet day to day needs. It also includes employment areas, primary schools, community and recreational facilities and most of these services are within 1.5 km of the appeal site. Ersham Road is a bus route carrying services between Hailsham and Eastbourne. The nearest railway stations are in Polegate or Eastbourne where there are good main line services to Ashford, London and the coastal towns.
9. The Pevensy Levels lies a short distance to the east of the town. It is a wetland habitat that supports a range of aquatic flora and invertebrates and has been designated a Ramsar site and a Candidate Site of Special Nature Conservation.

THE PROPOSAL AND THE COUNCIL'S DECISION

10. The application was made in outline form with all matters save for access reserved for future consideration. Whilst the description of the proposal does not mention a specific number of dwellings the supporting information indicates a proposal for around 195 residential units including 69 affordable homes. There was various illustrative material, including a layout showing how this might be achieved within the site. This shows two residential areas intersected by Coldthorn Lane known as Oaklands East and Oaklands West. It is proposed to upgrade the Ersham Road junction with a mini-roundabout, provide kerbing and pavements and realign and upgrade the northern section of Coldthorn Lane. Two new access points would be provided on each side of Coldthorn Lane to serve the two areas of development.
11. A doctor's surgery is indicated on the northern part of the site close to the new road junction. Areas of open space are shown within the development and it is also proposed to manage the section of ancient woodland that is within the control of the Appellant. The existing public footpath that runs across Oaklands East would be diverted along the southern edge of the site.
12. The proposal also includes a new roundabout junction to serve Ersham Road, Diplocks Way and South Road. This would include a small area of land owned by Hailsham Town Council and so their approval would be necessary before these works could go ahead.
13. The Council refused planning permission for the scheme on 20 August 2012. One of the reasons for refusal concerned the impact on heritage assets. This concerned possible harm to the archaeological remains on the brickworks land to the south. However following a further survey it was agreed that the matter could be dealt with by a planning condition. The Council did not call further evidence on the matter in connection with the appeal (**Document AD/9, Appendix 4**). There was also a reason for refusal concerning adverse impacts on local infrastructure and the highway network. The Council agreed in the SCG that this could be resolved through a Planning Obligation (**Document AD/12, Paragraph 3.10**). Further information on the infrastructure requirements is at **Documents AD/4, Appendix N; ID/13 and ID/20**.

PLANNING POLICY

14. The policies in the South East Plan (SEP) that apply to Wealden District have been revoked and are therefore no longer part of the development plan. This now comprises the saved policies of the Wealden Local Plan adopted in 1998 and the Wealden Core Strategy Local Plan. Although Wealden District Council resolved to adopt the latter document on 30 October 2012 it was not formally adopted until 19 February 2013 following consideration by the Full Council of the South Downs National Park Authority. A list of the relevant development plan policies are set out in the SCG (**Document AD/12, Section 12**). Extracts can be found in **Documents AD/4, Appendix E and AD/9, Appendix 9**).
15. Set out below are those policies which are the most pertinent to the main considerations in this appeal. However the Conclusions and Recommendation in this Report have taken account of all relevant policies.

Wealden Core Strategy Local Plan (CS)

16. The CS contains a number of spatial planning objectives. Policy SPO1 seeks to manage countryside resources whilst protecting internationally important sites such as the Pevensey Levels. Policy SPO3 states that at least 9,400 homes will be provided between 2006 and 2027 with an average delivery of 450 a year. The majority of new development is to be delivered as sustainable extensions and focused in and around several areas including Hailsham and Hellingly. Policy SPO4 aims to ensure the long term viability of the 5 main towns through a range of improvements with more substantial investment in Uckfield and Hailsham, which are 2 of the 3 District Centres in Wealden. Policy SPO15 requires that infrastructure to support the spatial strategy is identified and that development contributes to its provision. Phasing of development may be necessary to ensure delivery of necessary infrastructure to support growth.
17. Policy WCS1 deals with the provision of homes and jobs and includes a requirement to review the plan in 2015 or when a preferred solution to the capacity of the Hailsham North and Hailsham South Waste Water Treatment Works (WWTW) has been identified whichever is the earlier. This is in order to ensure an adequate supply of development land in the longer term. Policy WCS2 sets out the distribution of housing growth with 1,300 additional houses in Hailsham and Hellingly between 2006 and 2027. The broad locations for development are shown on the various insets to the Key Diagram. Policy WCS4 identifies 11 Strategic Development Areas (SDA), including two to the north and east of Hailsham. The former would accommodate around 700 homes with employment, retail and education floorspace (SD3). The latter would accommodate about 600 homes (SD2). Policy WCS8 sets the affordable housing requirement for sites of 5 or more dwellings at 35% with 80% to be social rented units and 20% to be intermediate housing.

Emerging Development Plan Documents (DPD)

18. The Strategic Sites DPD is presently at an early pre-submission stage. It will set out in detail how the SDAs are to be developed. A Delivery and Site Allocations DPD will also be produced in due course. These documents and the CS will eventually comprise the district's Local Plan.

Wealden Local Plan (WLP)

19. It is to be noted that since the adoption of the CS Policy HG3 referred to in the Council's decision has been superceded. Saved Policies GD2 and DC17 seek to restrict development outside the development boundaries shown on the Proposals Map. Saved Policy TR3 requires development to provide a satisfactory means of access and not to create or perpetuate unacceptable traffic conditions. Saved Policy CS1 seeks to ensure that community services needed to service the development are provided at the appropriate time. The plan covers the period 1986 to 2004.

The Non-Statutory Wealden Local Plan (NSWLP)

20. This document is dated December 2005 and has an end date of 2011. It was never formally adopted but is used by the Council for development control purposes. Relevant extracts can be found in the Questionnaire (**Document AD/2**). Policies GD2 and DC15 have similar provisions about development

boundaries as saved Policies GD2 and DC17 in the WLP. Policy HG5 is an affordable housing "exceptions" policy. Policy CS1 requires adequate infrastructure to be provided to meet the direct needs arising from development. Policy BE12 seeks an assessment of archaeological implications for proposals affecting sites of archaeological interest. Policies TR1 and TR2 seek to reduce the need to travel, locate new development in accessible locations, maximise the potential for journeys by non-car modes and meet its travel demands. The NSWLP includes 3 additional sites allocated for housing in Hailsham and Isfield.

The National Planning Policy Framework (March 2012) (the Framework)

21. The Framework has the presumption in favour of sustainable development at its heart and this has three dimensions: economic, social and environmental. It is confirmed that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is one such material consideration. Development plans should be consistent with it and since 26 March 2013 there is no longer the provision under Paragraph 214 to allow those development plans adopted under the 2004 Planning and Compulsory Purchase Act to have a limited degree of conflict with its policies. Paragraph 215 makes it quite clear that the Framework can override development plan policy that is not consistent with its provisions.
22. Paragraph 49 indicates that relevant policies for the supply of housing will not be considered up-to-date if the Council is unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances Paragraph 14 indicates that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole or unless specific Framework policies indicate development should be restricted. Paragraph 119 indicates that the presumption in favour of sustainable development will not apply to development requiring Appropriate Assessment under the Habitats Directive.

THE CASE FOR WEALDEN DISTRICT COUNCIL

The main points are:

Introduction

23. This appeal relates to a windfall proposal which is fundamentally at odds with the CS. The Appellant took issue with this policy approach in objections to the emerging CS. It promoted the appeal site for development through those objections and its representations were rejected by the Examining Inspector. At the heart of this appeal is a misconceived attempt to undermine now the primacy of the development plan process which dismissed this site as unacceptable for housing. This has involved arguments relating to policy interpretation, housing land supply, and the proper approach to constraints on discharges from the Waste Water Treatment Works (WWTW), which simply do not bear proper scrutiny.

Effect on character and appearance of the area

24. The development of the appeal site and the associated access works would be at odds with the increasingly rural and sylvan character of the area, as

perceived on a journey away from the town. From a point around Ersham Cemetery the road starts to meander and the development becomes more sporadic with dwellings being well set back from the road. The streetscene becomes less dominated by built form and trees and hedgerows become more important.

25. Whilst the appeal site itself is well contained from longer views the surroundings clearly have a countryside character. The opening up of the low key junction between Ersham Road and Coldthorn Lane and the insertion of a mini roundabout with associated footway improvements would urbanise this rural approach to Hailsham. Even though the harm would be localised it would be significant, detrimental and contrary to saved Policies GD2 and DC17 of the WLP and Paragraph 17 of the Framework (*Documents AD/3, Paragraphs 5.12-5.24; AD/4, Appendix G*).

Whether the proposal is necessary to meet the housing needs of the district

Policy approach to housing provision

26. The revocation of the SEP removes a central theme of the Appellant's approach to housing provision which was that it was the only part of the development plan which sought to address the demographically assessed housing needs of the district. However that approach was flawed because the SEP did not anticipate that districts would necessarily provide for such needs.
27. Neither does the Framework require authorities to meet the full, objectively assessed needs for market and affordable housing in their areas. Needs are to be provided for as far as is consistent with policies set out in the Framework which include those aimed at protecting European sites from breaches of the Habitats Directive and Regulations. There is no requirement in the Framework to simply provide for housing needs at all costs. The CS is in accordance with the Framework otherwise the Inspector could not have found it to be sound.
28. The CS Examining Inspector accepted that the Council's projections did not provide a robust demographic basis to justify moving away from higher figures for housing provision that were then set out in the SEP (*Document AD/4, Appendix D, Paragraph 15*). There is no dispute that he properly considered policies in the SEP and the Framework, which allowed for housing provision at lower levels. There is also no dispute that he accepted the evidence about the potential effect of additional discharges on the Pevensey Levels resulting from the provision of housing above the available capacity. It was clearly acknowledged that the need to avoid a breach of the Habitats Directive and Regulations should justify lower housing numbers for the district, consistent with extant policy¹ (*Document AD/4, Appendix D, Paragraphs 18, 20, 22*). That evidence was detailed and substantiated the concerns of the statutory bodies (*Document AD/4, Appendix K, Annex WW3-7*). It was preferred to the representations of others, including the Appellant, who were arguing for higher levels of provision.

¹ Inspector's Note – These points were agreed by Mr Hughes in cross-examination by Mr Lyness.

29. It cannot therefore be argued now that less weight should be given to the CS housing policies on the grounds that they do not address demographically based housing needs. Similarly it cannot be argued that the appeal proposal should be viewed positively because it assists in meeting housing needs which would otherwise be unmet by the CS. The appeal site lies outside those areas of housing provision which have been tailored specifically to meet waste water treatment capacity issues in accordance with historic and extant policy. To argue that the development of the site should nonetheless be considered favourably ignores policy reality.
30. The Examining Inspector concluded that there was a limit on the scale of development in south Wealden that could be served by the Hailsham South WWTW. This cannot be interpreted to mean that there is scope for further significant housing development to be served, even in the short term, beyond the particular works referred to. If that had been the Inspector's conclusion he would have found the CS unsound for failing to make further provision when there was an opportunity to do so, through the use of Package Sewage Treatment Works (PTW) as is being suggested at the appeal site.
31. The approach in the CS, which was accepted by the Inspector, is that a review of housing provision will take place by 2015 in order to see if the potential for a breach of headroom capacity at the two WWTWs can be overcome (**Document AD/4, Paragraphs 20-25**). It is clear from the evidence that the Council had to be influenced by the Environment Agency undertaking a review of discharge consents for the two WWTWs, the outcome of which is not yet known. Southern Water is also considering alternative options to address the capacity constraints at the works. OFWAT funding would need to follow. In these circumstances the approach taken by the CS is obviously correct whereby provision for as much housing as possible is made in advance of the review, which then allows for that to be increased in the event that a solution which protects the integrity of the Pevensey Levels can be found.
32. Policy WCS1 therefore provides for housing needs as far as possible over the period 2006-2027. It does not provide for housing for 2 years and nothing thereafter. The review is intended to establish whether there is an opportunity to come closer to SEP levels of provision in the event that a solution to the infrastructure issue comes forward. The Appellant is therefore incorrect in contending that this means it does not act as a strategic document. If it is right that strategic housing provision greater than that envisaged in the plan cannot come forward without harm to the integrity of the Pevensey Levels, then that review process is beyond reproach. Until that stage is reached, there is no justification at all for qualifying the weight to be given to the CS, particularly given the acceptance that it is sound.

Policy approach to the appeal site

33. The environmental constraints which informed the approach to housing provision in the CS preclude this site from being supported for development. During the Examination the Appellant sought to have the land included within a SDA for Hailsham. The Inspector did not regard it as an appropriate location for housing development whether as an alternative to the Stone Cross SDAs or otherwise. He concluded that the areas promoted by the Council in both Hailsham and Stone Cross had been selected through a robust process and

were the proper responses to further housing development in those settlements (*Document AD/4, Appendix D, Paragraphs 75, 81*). Those conclusions, as reflected in the CS should again be given significant weight².

34. The CS envisages SDAs as the appropriate mechanism to provide substantial levels of housing whilst respecting the environmental constraints facing this part of the district. Windfall development will not be allowed to conflict with this strategy of ensuring that discharge capacity at the WWTWs is not breached so as to lead to conflict with the Habitats Directive and Regulations (*Document AD/4, Paragraph 5.9*). These proposals are the very form of development which the CS is seeking to protect against.
35. There is no dispute that the proposals conflict with saved WLP Policies GD2 and DC17, which seek to guide development within designated development boundaries. The function of development boundaries was originally to make clear a distinction between areas where development was regarded as appropriate and the rural area where the protection and enhancement of the countryside was of paramount importance. These boundaries were not defined merely to identify appropriate locations for housing but were concerned with restricting development generally to those areas where it could be suitably accommodated (*Document AD/9, Appendix 9, Paragraph 3.4, 3.6*).
36. The Appellant argues that these policies are out-of-date and inconsistent with the Framework because they were promulgated at a time when the development plan was not seeking to provide for current housing needs. However their age does not undermine their materiality or weight. Paragraph 211 of the Framework confirms that just because a policy was adopted and then saved before its publication does not mean that it should be regarded as out-of-date. The Framework still allows for the different roles and characters of different areas, along with the intrinsic character and beauty of the countryside, outside protected areas, to be recognised. The policies therefore accord with Paragraph 215 of the Framework.
37. The CS specifically endorses the continued application of development boundaries. It acknowledges that generally the saved policies of the WLP will only be replaced once the full suite of DPDs has been progressed (*Document AD/4, Appendix E, Paragraphs 1.2, 9.1*). Paragraph 3.6 addresses the provision of development boundaries and confirms that they are used to distinguish the built-up areas from the countryside and that development outside the boundary is restricted in principle. The CS also recognises that there may be an opportunity to consider extending development boundaries and that this will be addressed in later DPDs. This is clearly a reference primarily to SDAs which are identified as broad locations for development lying beyond development boundaries. The strategy for rural areas identifies specific instances where development boundaries will be removed but the supporting text confirms that it seeks to retain development boundaries around the towns (*Document AD/4, Appendix E, Paragraph 6.47*).
38. It is clear that there is no prospect of the development boundary altering so as to include the appeal site. For any Site Allocations DPD to be consistent with the CS it could only contemplate an extension that was consistent with the

² Inspector's Note – This was agreed by Mr Hughes in cross-examination by Mr Lyness.

SDAs, which exclude the appeal site. Extant policy only supports appropriate development within the Hailsham development boundary.

39. The boundaries are not based on an outdated assessment of housing need because they were never devised to address housing needs alone. A similar conclusion was reached in the appeal decision for housing development at Widham Farm, Swindon (*Document ID/10, Paragraph 57*). In any event the CS is based on an up-to-date assessment of housing need and only anticipates potential expansion of the development boundaries to address SDAs of which the appeal site does not form any part.

Housing land supply

40. The Appellant's argument that there is no 5 year housing land supply (HLS) involves the allegation that the housing requirement and supply figures on which the CS is based should be discarded as out-of-date. This is despite it being clear that the evidence on sites with planning permission and allocated sites was before the Examining Inspector who concluded that those figures were sound. Furthermore the advice in Paragraph 47 of the Framework is intended to direct decision makers towards applying the presumption in favour of sustainable development. However Paragraph 119 makes clear that the presumption does not apply where development requiring Appropriate Assessment under the Habitats Directive is being considered or determined.
41. There is no justification for any allegation that the Council cannot demonstrate an adequate HLS (*Documents AD/4, Appendix Q; AD/13, Appendix SSG2; ID/2*). The Framework seeks to provide for housing to meet identified needs and the CS has sought to achieve this as far as possible albeit with the exclusion of the appeal site.
42. Since the revocation of the SEP the housing targets in the CS are the only basis for undertaking a HLS assessment (*Document AD/5, Section 3*). The proper basis for assessing performance is against the current development plan and there is no sensible reason for looking back to old Structure Plan requirements. This approach is reflected in other appeal decisions (*Documents AD/7, Appendix 14; AD/7, Appendix 9, Paragraph 12*). Since the commencement of the plan period in 2006 there has only been a shortfall of 41 dwellings and this does not of itself indicate persistent under-delivery of housing. The Examining Inspector for the CS concluded that whilst there had been under delivery in the past this was not the case over the last five years (*Documents AD/4, Appendix D, Paragraph 31; AD/4, Appendix Q, Annex HLS-1, Paragraph 6.4; AD/6, Page 27, Table 6.1*). There is no dispute that significant weight should be attached to his resulting conclusion that only the 5% buffer should be applied on this basis.
43. Nothing hinges on whether the shortfall of 41 units is spread across the lifetime of the CS or within the next five years but the proper approach is to spread it across the period of the plan. This is reflected in several appeal decisions (*Documents AD/4, Appendix Q, Annex HLS-2, Paragraph 24; Document ID/9, Paragraph 14*).
44. There was dispute about the meaning of Footnote 11 to Paragraph 47 of the Framework and the Appellant contended that to warrant inclusion a site should have outline planning permission at the very least. However the advice in

Footnote 11 can be simply divided. Sites should be available and suitable “now” and they should be achievable with a reasonable prospect of delivery within 5 years. In any event the availability of land has nothing to do with whether it has been granted a planning permission. Furthermore a site with outline permission would not meet the “now” test given the need to apply for reserved matters approval. The approach is also inconsistent with the manner in which the flexibility allowance is to be applied according to the Framework, which involves the buffer being moved forward from later in the plan period. This suggests that allocations can be taken into account when assessing supply.

45. Footnote 11 advises that sites with permission should be presumed to be deliverable in the absence of clear evidence to suggest otherwise. However there is nothing in the guidance to say that sites without planning permission should not be regarded as deliverable. Such an interpretation would exclude sites that are the subject of a resolution to grant permission. It would be inconsistent with the recognition that windfalls can form part of the housing land supply. There is no reason on a proper interpretation of Footnote 11 why a site without planning permission now cannot be regarded as deliverable within a 5 year time period. This was recognised in the Swindon appeal decision which took into account allocated sites where there was a reasonable prospect of delivery within five years (*Document ID/10, Paragraphs 21-5*).
46. The housing provision figures in Policy WCS1 of the CS include those allocated sites from the NWSLP assessed as being deliverable or developable. If the Examining Inspector had had any concern about their inclusion within the overall numbers he would have raised it especially as these sites were relevant to infrastructure requirements. The three sites in question are all deliverable within the next 5 years. Detailed information on each site is provided in *Documents AD/13, Appendix SSG2 and ID/23, Paragraphs 147-151*. There would be 113 dwellings from this source.
47. The Framework require that sites with planning permission should be considered deliverable unless there is clear evidence that schemes will not be implemented within 5 years. Information on each of the large sites of 6 or more dwellings is provided at *Document AD/13, Paragraph 6 and Appendix SSG2 and Document ID/23, Paragraphs 154-161*. There would be 2060 dwellings from this source.
48. There is nothing in Footnote 11 that supports a 10-15% discount applied to the inclusion of the 454 dwellings on small sites with planning permission. No appeal decisions have been identified that support such an approach. Footnote 11 requires clear evidence that permissions will not come forward and there is no such evidence. Applying a generalised assertion based on past experience is inappropriate.
49. The Framework allows windfalls to be taken into account if there is compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. The evidence confirms that the average number of units coming forward annually over the past 10 years is 232. To demonstrate the extent to which windfalls will continue to provide a reliable source of supply the Council has taken into account all factors which will tend to reduce the delivery of such sites in the future and

has only relied upon a heavily discounted rate of 59 dwellings per annum (*Document AD/4, Appendix Q, Paragraphs 3.11-3.22*). If the risk of double counting meant that all windfalls should be excluded in principle the Framework would not have countenanced their inclusion in the supply figures. Although the historic windfall rate includes developments which came forward during a period where there was no development plan in place (2004-8) windfall levels remained consistent with the overall average (*Document AD/9, Appendix 12, Page 29*).

50. The difference between the Council and the Appellant relates to a supply of 6.08 years and 4.48 years respectively (*Document AD/6, Tables 7.2b and 7.3b*). The evidence clearly establishes that the overall supply figure should be far nearer the Council's assessment which shows a surplus of over 500 units against the CS requirement. This is plainly adequate, as is to be expected with such a recently tested CS. This resilience is underscored by the fact that the supply does not include the potential for the SDAs to deliver housing within the next five years. Pre-application discussions are already taking place in relation to land which is anticipated to deliver around 1,500 dwellings, which suggests a timescale for delivery which could well yield further provision beyond that allowed for in the Council's calculations.

Effect of the proposal on the Pevensey Levels site of international importance for nature conservation

51. The Appellant now accepts that there would be no capacity for the appeal scheme to be connected to the Hailsham South WWTW and relies on the use of a proposed PTW to avoid any adverse effect on the Pevensey Levels. The Pevensey Levels supports an outstanding assemblage of important communities of wetland flora and fauna. It is a Ramsar site and a candidate Special Area of Conservation. Concern for its protection throughout the preparation of the CS has related to discharges from the Hailsham South and Hailsham North WWTWs which serve development across a wider area including Hailsham. That concern constitutes a clear reason for permission to be refused in this case.

Legal and policy background

52. Special Areas of Conservation are sites designated pursuant to the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations), which implement the Habitats Directive. Designation is intended to provide a strict level of protection in recognition that the habitats in question are of particular conservation value in a European context. Once a site is proposed to the European Commission as a candidate Special Area of Conservation, it is regarded as a "European site" for the purposes of the Habitats Regulations. Ramsar sites are wetlands of international importance, designated under the Ramsar Convention, which was ratified by the UK in 1976. As a matter of policy they are to be regarded as "European sites" for the purposes of the Habitats Regulations.
53. The Habitats Regulations set out the procedure to be followed by the decision maker when dealing with plans or projects that are likely to have a significant effect on a European site. This matter is dealt with under the precautionary principle following the *Waddenzee Judgement* (*Document ID/23, Appendix C*).

There are various stages in assessment identified in Circular 06/2005: *Biodiversity and Geological Conservation – Statutory Obligations and their impact on the Planning System (Document ID/5)*. When considering whether a plan or project either alone or in combination with other plans or projects is likely to have a significant effect Waddensee acknowledges that there is no particular method for carrying out the Appropriate Assessment (*Document ID/23, Paragraphs 49-58*).

Capacity constraints and the integrity of the Pevensey Levels

54. An Appropriate Assessment was carried out in relation to the CS which considered the potential effects of developing the proposed level of housing on the Pevensey Levels. In particular this addressed the growth of waste water which would necessitate increasing discharges from the WWTWs. It concluded that the allocations in the CS had responded to concerns expressed by the Environment Agency that it would not be possible to provide further development above the current consented capacity of the Hailsham North and Hailsham South WWTWs such that no adverse effect would arise. Natural England agreed with that conclusion (*Document APP/4, Appendix K, Annex WW1, Section 8*).
55. The Environment Agency, Natural England, Southern Water and the Council made representations to the Examination into the CS. These confirmed that no housing development should be provided for above the level set out in the CS in order to protect the integrity of the Levels (*Document APP/4, Appendix K, Pages 2-10 and Annexes 3-7*). The remaining available discharge capacity at the WWTW was calculated and the result was translated into a headroom capacity for homes based on anticipated rates at which dwellings would return waste water to the sewers. Once capacity to be taken by extant planning permissions, completions and suitable and available allocations in the WLP had been taken into account this produced an upper limit of strategic provision which was reflected in the CS. Whilst this did not meet all housing needs, the CS includes a review mechanism to be carried out in 2015 or earlier if a preferred solution can be identified. As matters stand it is not known what the result of the work by the Environment Agency and Southern Water will be. Although there is a small amount of capacity remaining at the Hailsham South WWTW for about 65-70 dwellings this is needed for future windfall development on a first come first served basis.
56. At the Examination into the CS objectors queried the capacity calculations and argued that in any event PTWs could be employed in association with specific developments to enable waste water to be treated outside the public sewer system, thereby avoiding the constraints at the two Hailsham WWTWs. Such an approach was rejected as an option by the Council, Southern Water and the Environment Agency who considered that a mains connection is always the most sustainable and certain way of dealing with waste water from new development. Development should be timed to coincide with necessary mains infrastructure improvements and a proper long term approach to the issue should not be compromised by the short term expediency of the use of PTWs along with the uncertainty about their long-term maintenance and management (*Documents AD/4, Appendix K, Annex WW7, Paragraph 14; AD/4, Appendix L*).

57. Natural England supported the approach taken by the other bodies, stating that the approach taken in the CS was essential for the water quality in the Pevensey Levels to be protected. It considered however that the Environment Agency and Southern Water were better placed to respond in detail (*Document AD/4, Appendix K, Annex WW6*).
58. The Inspector to the Core Strategy examination accepted this analysis and concluded that under Circular 3/99: *Planning Requirement in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development* the first presumption must always be to provide a system of foul drainage discharging into a public sewer. He referred to a recent appeal decision where an Inspector was satisfied that PTWs would be a technical solution if issues of connection to the existing foul sewer network could not be resolved. He noted however that this proposal did not involve possible discharges affecting a European site. He considered that there was insufficient evidence to be confident that PTWs would be acceptable in terms of their environmental impacts or effects on flood risk and that at this point they should not be seen as a long-term planned approach for the CS (*Documents AD/4, Appendix D, Paragraph 23; AD/13, Appendix SSG4*).
59. The Environment Agency's position is that whilst there is remaining capacity at the Hailsham South WWTW they would be unlikely to grant a discharge consent for a PTW. They do not consider it their role to comment on how any headroom at the WWTWs should be allocated between different proposals. Given the environmental sensitivities of the Pevensey Levels any discharge from a private PTW is likely to require thorough assessment and at this stage no confirmation can be given as to whether a permit would be granted. Southern Water did not raise a formal objection but confirmed that the appeal site was not included in the headroom capacity calculations, noting that without the up-to-date position regarding planning permissions it could not comment on the level of headroom remaining.
60. The Appellant considers that the Council did not carry out an Appropriate Assessment when determining the application. The Council considers that it did, by relying upon the work which had previously been undertaken and the evidence submitted at the CS Examination. That analysis may not have followed the detailed form of Appropriate Assessments carried out in respect of other examples but there is no particular form required in law and the approach was clear. No issue is taken with the Appropriate Assessment of the CS.

Appropriate Assessment

61. The Appellant initially sought to knock out some of the sites which had been taken into account in the in combination assessment and assumed to take up capacity. However it is no longer alleged that there would be capacity at the Hailsham South WWTW to allow the appeal development to come forward through a mains sewer connection. Subject to the issue of PTWs the Secretary of State cannot therefore be certain that granting permission for this site would avoid a significant adverse effect on the Pevensey Levels because there is still the possibility or risk that the sites with planning permission in particular will be delivered.

62. The Appellant contends that no Appropriate Assessment is required because mitigation in the form of a PTW could be provided as part of the proposals to bypass a mains waste water connection to the Hailsham South WWTW. Such a plant is argued to be technically feasible and to deliver water quality even better than that discharged from the WWTW thereby avoiding any significant effect even in combination with the other projects and plans relied upon by the Council. The Appellant has proposed a Grampian style condition preventing development until a scheme for the proposed plant has been agreed.
63. It is not disputed that as a matter of law proposed mitigation measures secured by condition should be taken into account when deciding whether a project will have a significant effect on a European site³. However this is subject to the competent authority being satisfied that the proponents of a project have fully recognised, assessed and reported the effects in order to exclude the risk of a significant effect. These tests cannot be met in this case and it is simply not possible to screen out significant effects arising from the use of a PTW for the following reasons:
- The conditions on the discharge consent for the Hailsham South WWTW confirm that the potential impact of development on the Pevensey Levels relate to both discharge rates and discharge quality. The relevance of the overall quantity of flow is recognised in the Capita Symonds report. The Report indicates that the discharge from the PTW would be a very small proportion of the current licensed discharge. This is based on Code Level 4 figures which were not accepted by the Inspector in arriving at the headroom capacity calculation. In any event percentage figures do not enable a proper in combination assessment to take place, taking account of total flows alongside the issue of the water quality (per unit of treated water) that would be achieved by a PTW on the appeal site. Claiming that the flows would form an insignificant proportion of the total consented flow does not actually address the potential effect of discharges from the plant when considered with the discharge from the South Hailsham works. There is no proper evidence to demonstrate that any risk of harm to the Pevensey Levels can be excluded (*Documents AD/4, Appendix K, Section 5 and Annex WW3, Page 1; AD/11, Paragraph 4.2.3, Sections 5 and 6 and Appendix A; ID/16*).
 - None of the case studies relied upon by Capita Symonds demonstrate that flows or quality can be regulated in the manner now proposed. Whilst the report claims that the water quality would be better from a plant than the WWTW this does not sit easily with the other evidence that the works are operating to the best available technical standards (*Documents AD/4, Appendix K, Annex WW7, Paragraphs 9, 14; AD/11, Paragraph 5.5 and Appendix D*).
 - No reliance can be placed on the Environment Agency to assert that significant effects can be screened out or that the integrity of the Pevensey Levels would not be harmed having regard to the precautionary approach. The Agency has stated that it would not grant a permit given the availability of a viable mains connection to serve this development alone. Whilst this

³ Hart District Council v. SSCLG [2008] EWHC 1204 (Admin) [paras 54-61].

approach does not address in combination effects the Agency rejected the use of PTWs as a solution to capacity issues in evidence to the CS Examination given the uncertainties in their effective implementation and management. It emphasised the risk of a proliferation of PTWs in causing cumulative impacts on the Pevensey Levels. Even when the prospect of discrete proposals for such plants was considered, the Environment Agency highlighted the need for detailed assessment and modelling to be carried out. (*Documents AD/4, Appendix L, Sections 2 and 3; ID/17*).

- The manner in which the Appellant appears to be suggesting the imposition of a Grampian style condition on any permission would be unlawful. It was suggested that the condition would operate so as to preclude the commencement of development until the Environment Agency has conducted its own screening and Appropriate Assessment when determining any permit application for the plant pursuant to the Environmental Permitting Regulations. This relies upon Regulation 65 of the Habitats Regulations to claim that there should be no objection to allowing for the involvement of the Environment Agency in the discharge of the condition. However the fundamental difficulty with this approach is that it would defer any screening or Appropriate Assessment until after the grant of permission. The Regulations do not enable any assessment to be undertaken following the grant of permission for the project. Even if the Environment Agency were to be considered the suitable competent authority to carry out any screening or Appropriate Assessment there is no justification for this work to be carried out following the grant of permission as would happen with the Grampian condition proposed by the Appellant.
- This is entirely consistent with the guidance referred to by the Agency in its response to the supplementary Capita Symonds report. This advises in favour of “parallel tracking” of applications for permits and planning permissions No application for discharge consent for a PTW to serve the appeal site has been made. There was nothing to prevent the Appellant from doing so and seeking to obtain at least a draft consent from the Agency. That would not, as the appellant suggests, have involved the Agency pre-determining its position (*Documents ID/17; ID/23, Appendix A*).
- The overlap between the planning and environmental permitting regime does not mean that the determination of the planning proposal should assume that the permitting regime will adequately control discharges to the environment (*Documents ID/23, Paragraphs 108-112 and Appendix B; ID/25, Appendix B*). The potential for the Environment Agency to exercise detailed control over discharges in determining a future application for a discharge consent cannot allow the Secretary of State, on this appeal, to shed the responsibility of applying the Habitats Regulations and considering whether significant impacts on the Pevensey Levels can be ruled out as a matter of certainty, before the grant of planning permission.

64. The provision in the Planning Obligation for future maintenance to be undertaken by a management company is fraught with difficulty. The use of such a solution to address problems of future continued funding and maintenance of the PTW is flawed as management companies are vulnerable

to both administrative problems and insufficient funding being available to cover unpredicted liabilities arising from the system. If there were breaches of the requirement to maintain the system properly, it would be problematic taking action against a management company. Whilst the management company could have the right to recover charges these may not be sufficient to cover all liabilities which might arise including those arising from pollution issues. Further, the Council would not have recourse to individual occupiers for failures by the management company.

65. The EIA screening decision of the Secretary of State did not identify likely significant effects on the Pevensey Levels. However EIA screening is different to screening under the Habitats Regulations, not least due to the particular focus on the precautionary approach when conducting the latter form of assessment. Moreover, at the time of the screening decision the CS Examination had not commenced. Matters have now moved on and the CS has been adopted. The in combination effects of the current proposals inevitably are to be assessed having regard to the CS as a "plan" for the purposes of the Habitats Regulations along with the other permissions which are clearly to be regarded as other "projects" in accordance with Circular 6/2005.

THE CASE FOR MASMA LTD

The main points are:

Introduction

66. The appeal proposals are supported by a very extensive volume of material, which considers in great detail the potential of the appeal site to deliver sustainable development for Hailsham. The appeal site is in a sustainable location and is suitable to provide housing, including much needed affordable housing. It can be delivered without delay to meet existing housing needs in the area which will not be met by the emerging Local Plan⁴. The site was promoted through the Strategic Housing Land Availability Assessment and was found to be available, suitable and economically viable (**Documents AD/8, Paragraphs 2.2, 6.6; AD/9, Appendix 5**). The development would secure benefits for the local community including a new doctor's surgery, local highway improvements, the management of adjacent ancient woodland, habitat enhancement, improved linkage of the local footpath network and provision of sustainable homes that meet Code 4 standards (**Document AD/8, Paragraph 4.185-4.203**). These benefits were recognised by the Council (**Document AD/12, Paragraph 5.2**).
67. The appeal site is in single ownership and there are no barriers to development. The Appellant is an experienced house builder and is ready to develop this site expeditiously. The Unilateral Undertaking has now been completed and is in a format that is acceptable to the Council and the County Council.

⁴ Inspector's Note – The Appellant's reference to the emerging Local Plan encompasses the recently adopted CS and the draft DPDs.

Effect on character and appearance of the area

68. The Council's concern is limited to the urbanising effect of the highway improvements providing access to the appeal site. It was however conceded that the appeal site is situated in an area with a semi-rural character and appearance⁵. However the proposed mini roundabout junction at Ersham Road and Coldthorn Lane would not of itself unduly urbanise or detract from the sylvan character of the area. Existing trees and hedgerows along Ersham Road and Coldthorn Lane would be largely retained and supplemented by new native planting.
69. The elements comprising highway improvements to facilitate access to the proposed development are not uncommon in the area. For example the signal-controlled junction and its associated road markings at the junction of Ersham Road and the Cuckoo Trail is situated within the open countryside.
70. The character of the appeal site would change given that it would form an urban extension to Hailsham. However, the degree of change proposed is not inconsistent with the SDAs proposed in the CS. The Council has used urban extensions consistently to contribute to the development needs of the district.

Whether the proposal is necessary to meet the housing needs of the district

Policy approach to housing provision

71. There is no dispute that the saved policies of the WLP relevant to the determination of the appeal are not afforded the protection of paragraph 214 of the Framework, as they are not contained within a development plan document adopted in accordance with the Planning and Compulsory Purchase Act 2004. Applying Paragraph 215 it is agreed that the level of weight that they should be given will depend upon their degree of consistency with the Framework and not solely due to their age.
72. Paragraph 14 of the Framework defines the meaning of the presumption in favour of sustainable development. In the present context this means approving development proposals that accord with the development plan. Where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless any impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole or specific policies in the Framework indicate development should be restricted. In respect of this latter point, the only policy upon which the Council relies is contained within Paragraph 119 which involves cases that require Appropriate Assessment under the Habitats Directive. There is a fundamental flaw in the Council's case because it assumes that Appropriate Assessment is required to be carried out by the Secretary of State and the Environment Agency in respect of the Appellant's application for an Environmental Permit. At this stage it is simply not possible to predict what the Environment Agency will conclude when it undertakes its necessary assessment.

⁵ Inspector's Note – Mr Bending agreed in cross-examination by Mr Beard that the appeal site was in an area of transition between urban and rural and could be described as semi-rural.

73. The appeal site lies outside the settlement boundaries for Hailsham. However the settlement boundaries defined in the WLP are out of date and do not plan for housing beyond 2004. Moreover allocations in the WNSLP and the CS breach the settlement boundaries. The boundaries have not been reviewed in the CS and are therefore out of date. The settlement boundaries are meaningless unless they can accommodate the development needs of the community. The settlement boundary for Hailsham demonstrably fails to meet the need for housing in Hailsham and south Wealden and should be accorded very little weight in the determination of the appeal. The Council has indicated that the boundary will be reviewed in the emerging DPDs but that there is no prospect that the appeal site will be included. This pre-judges the future consideration of the DPDs.
74. There is no dispute that it is a key priority of current Government planning policy to boost significantly the supply of housing without undue delay. Local plans are required to meet in full the objectively assessed needs for market and affordable housing in their area as far as is consistent with policies set out within the Framework. Paragraph 47 of the Framework requires local planning authorities to demonstrate a five-year supply of deliverable housing sites. Where they cannot, local plan policies for the supply of housing should not be considered up-to-date.
75. The appeal proposal is necessary to meet the housing needs of the district because the CS and emerging Strategic Sites DPDs fail to meet in full the objectively assessed housing needs for housing. This failure may be justified in terms of the soundness of the CS but it cannot be said to plan strategically for housing. It is therefore essential that the needs that cannot be met by allocating land within the local plan are met through the development management process.
76. The CS is subject to a strategic review of housing provision before the end of 2015. Its interim nature and the Examining Inspector's conclusions on housing need demonstrate that the housing targets within the CS are not fit for the purpose of meeting the objectively assessed housing needs within the district. The CS was only found to be sound if it included a number of main modifications, the most important being the housing review. This has not yet started, which is an important factor given that it took eight years for the Council to prepare and adopt the CS (*Document AD/13, Paragraph 4*).

The appeal proposal

77. The Council's evidence clearly demonstrates that the available capacity of the Hailsham South WWTWs is in a state of flux and that small scale housing schemes on windfall sites continue to be permitted within its catchment. It is estimated that the current unused capacity at the Hailsham South WWTW would allow planning permission to be granted for 65 to 70 dwellings. Having regard to the likely timetable for delivering the infrastructure improvements necessary to increase WWTW capacity to serve new development in south

Wealden, no further windfall development can be served by the Hailsham South WWTW before 2020⁶.

78. It is agreed that the appeal scheme would not seek to utilise the available 65 to 70 dwelling's worth of wastewater treatment capacity available but would rather rely on a PTW. Save for existing commitments and windfall development, which the Council may permit to use the 65 to 70 dwellings' worth remaining capacity of the Hailsham South WWTW no development is likely to come forward before 2020 unless it is served by PTWs.
79. The advantage of the Appellant's approach is that the appeal proposal can be delivered without delay and without utilising the existing capacity that can be used to permit housing development on other windfall sites over the period to 2020. This approach maximises the potential for housing delivery in south Wealden and is consistent with the key priority of Government planning policy to boost significantly the supply of housing without undue delay.

Housing Land Supply

80. In determining this appeal, it is wholly reasonable for the decision maker to rely upon the housing allocations for the district within the SEP. This contains within it a specific housing allocation for the district of 11,000 dwellings of which 7,000 are to be provided within the Sussex Coastal Sub-region. The latter figure recognised that phasing of housing delivery may be necessary in recognition of the limitations of the Hailsham WWTW and allow the provision of new or improved waste water infrastructure (*Document AD/6, Paragraph 4.42*). Despite the fact that the CS has been recently adopted and is sound its interim nature and impending review mean that it is more appropriate to use the SEP housing numbers. These represent a more accurate assessment of objectively assessed housing needs than the CS targets, which do not attempt to meet in full the objectively assessed needs of the District as they currently exist. Indeed the Examining Inspector required a modification to make this clear (*Document AD/6, Paragraph 4.55*). The Council offers no demographically based alternative assessment of housing need. It is noted that when the Secretary of State originally indicated his intention to revoke regional strategies the DCLG's Chief Planner advised local planning authorities that their evidence base would continue to be relevant in the determination of applications and appeals.
81. Despite being recently adopted the CS housing targets are not fit for the purpose of determining this appeal. Given the imminence of the major review which must be completed within two years it is perverse to utilise the housing requirements within the CS to ascertain whether the Council can demonstrate a five-year supply of deliverable housing sites. The purpose of the major review is to boost significantly the supply of housing within the District, in particular, within south Wealden. It is unacceptable for the Council to assert that this may result in a reduction in the level of housing provision to be delivered by the CS in the latter part of the plan period and such an eventuality is remote.

⁶ Inspector's Note – Mr Bending agreed in cross-examination by Mr Beard that a solution to waste water treatment by means of mains drainage would be complex and that if such a solution is found further capacity for housing would be unlikely until 2020.

82. There is no inconsistency between the contention that the housing requirements within the recently adopted CS are not fit for purpose and the Examining Inspector's conclusion that the CS was sound and legally compliant. Considerations as to soundness are based upon an evidence-base that represents a snapshot in time and invariably will be somewhat out of date by the time the plan is independently examined and adopted.
83. Although the CS was found to be sound and legally compliant in October 2012 were the WCS submitted for independent examination today it would not be so. This is because it has not been prepared having regard to the Council's duty to co-operate with neighbouring authorities. The early review of housing provisions within the CS will be subject to that legal duty. Further the requirements of the independent examination and the assessments undertaken to test the soundness and legal compliance of a DPD are quite different to the assessments required when determining a planning appeal.
84. The Framework carries forward the requirement to demonstrate a minimum five-year supply of deliverable sites. To be deliverable such sites have to be available now. Whilst there was considerable debate over the meaning of the word 'deliverable' within Footnote 11 of the Framework it is probably unnecessary in the context of the present appeal for the decision maker to decide that point. In respect of the three large allocated sites without planning permission the Appellant does not rely solely on the absence of planning permission for discounting them from the Council's assessment. The term should be interpreted within the context of the key priority of boosting significantly the supply of housing. It is however acknowledged that different Inspectors have expressed different opinions as to the meaning of the term "deliverable" (*Document AD/6, Paragraphs 4.24-4.25*).
85. Apart from the last 2 years the Council has persistently failed over the last 10 years to deliver housing against development plan targets and a 20% flexibility allowance in accordance with the Framework should be applied (*Document AD/6, Page 27, Table 6.1 and Paragraphs 6.9-6.12*). There is no evidence that the historic shortfall in delivery was fed into the SEP housing requirements. The fact that the Examining Inspector found that a flexibility allowance of 5% was appropriate in the CS does not preclude the decision-maker in the present appeal coming to a different conclusion. The Examining Inspector did not for example take account of the persistent level of under-delivery beyond the past five years (*Document AD/9, Paragraph 31*).
86. The role of the Inspector conducting the Examination of a Local Plan often prevents him from examining this matter in any detail. There was no meaningful discussion during the hearings sessions concerning the robustness of the Council's evidence of a five-year supply of deliverable housing land. This is not unusual and the debate was focussed on housing delivery over the plan period, phasing and infrastructure.
87. Large sites with planning permission have been assessed in terms of their deliverability and it is concluded that the supply from this source should be reduced by 313 units resulting in a total of 1747. Small sites with planning permission were not individually assessed but should be assumed to come forward subject to a non-implementation allowance. Typically this allowance would be 10-15% depending upon the evidence of delivery from this source in

the local area. This is the usual approach when undertaking housing land availability assessments. This would reduce the contribution of small sites from 454 to 409 dwellings (*Documents AD/6, Paragraphs 7.10-7.15; AD/13, Appendix SSG2; ID/25, Paragraphs 64-81*).

88. There are no large allocated sites without planning permission outstanding from statutory plans. However there are three identified within the NSWLP as being suitable for residential development. Some practitioners take the view that these sites should be considered where a reasonable prospect of them coming forward in the five-year period exists. Although such sites fail the test set out in Footnote 11 of the Framework they were looked at anyway. However due to the difficulties associated with securing planning permission they should be excluded reducing the total number of dwellings by 113 (*Documents AD/6, Paragraphs 7.16-7.18; AD/13, Appendix SSG2; ID/25, Paragraphs 58-63*).
89. The Framework allows for the inclusion of a windfall allowance but Paragraph 48 makes clear that there should be "compelling evidence" for such completions and that there will be a continuing supply of such sites over the plan period. The Council's reliance upon an allowance of 59 extra dwellings per annum is in addition to completions from permitted schemes, many of which must already be categorised as windfalls. The essential problem associated with this process is that it ignores the fact that in order for a dwelling to be erected on a windfall site it must, of necessity, have received planning permission at some stage thereby converting it into a commitment. Making a further allowance for windfall sites therefore is simply double counting and should not be included in the assessment (*Document AD/6, Paragraphs 7.19-7.24*).
90. In any event the Council has failed to provide sufficient justification for the inclusion of a windfall allowance to constitute "compelling evidence" as required by the Framework. Past performance is not indicative of future performance and it is highly relevant to take account of the fact that within Wealden District a statutory local plan has not been in existence since 2004.
91. Housing land supply within the District should be measured against the requirements for housing provision within the SEP which are soundly based upon robust demographic evidence. If it is not to be considered following its revocation the next most robust and accurate demographic based assessment of need is that supplied by the Office of National Statistics which is much higher than the SEP (*Document AD/10*). Whether there is a 5% or 20% flexibility allowance applied a five-year supply of deliverable housing land cannot be demonstrated against the SEP housing targets on either the Council's figures or those of the Appellant. Even the CS targets cannot be met on the Appellant's figures (*Document AD/6, Tables 7.3a and 7.3b*).
92. That means that real people with real housing needs will not be properly housed within Wealden over the next five years and beyond. As the CS was not prepared within the ambit of the duty to co-operate, those real people with real housing needs will not have their needs met anywhere if they are not met in Wealden. For the purposes of the Framework and the presumption in favour of sustainable development policies relating to the supply of housing must be considered out-of-date, notwithstanding the fact that the Council has recently

adopted its CS. The Council's comment about the resilience of its HLS position wholly misunderstands the purpose of the HLS assessment, which relies upon a base date which is updated annually to prevent double counting (*Document AD/6, Paragraphs 7.4, 8.14*).

93. There is no dispute that the housing targets within the SEP and the emerging Local Plan represent the minimum level of housing provision required and there is no planning policy restriction to the provision of housing over and above those targets. Indeed a key priority of Government policy is to boost the supply of housing significantly and without undue delay. In practice the Council treat the housing targets in the CS as a ceiling not a floor which is wholly inconsistent with the aims and objectives of Government policy.
94. Insofar as the Council's adopted and emerging Local Plan fails to meet in full the objectively assessed housing needs, the policies which heavily restrict the location of housing development should also be considered to be out-of-date. In any event, the SEP and emerging Local Plan demonstrate that urban extensions are the intended way to provide for housing during the plan period and the SDAs proposed within the CS all breach the development boundaries for Hailsham and the other settlements in Wealden.

Effect of the proposal on the Pevensey Levels site of international importance for nature conservation

95. There is no dispute that the Pevensey Levels is a Ramsar site and a candidate Special Area of Conservation. As such its environmental protection is of the utmost importance. On 27 January 2012 the Secretary of State issued a Screening Direction that the proposed development was not EIA Development. In making that decision the Secretary of State concluded that it was unlikely that the proposed development would have a significant effect on the Pevensey Levels. Whilst that Screening Direction was for the purpose of EIA similar considerations to those which would apply under the Habitats Regulations were taken in to account by the Secretary of State (*Document AD/8, Paragraph 4.128*).

Environmental Permit

96. The proposed development would be served by a PTW, which would treat the wastewater generated by the development on site and discharge to a nearby watercourse at a point 2.3 km upstream from the Pevensey Levels (*Document ID/16*). The need for a permit to discharge sewage effluent to controlled waters is set out in Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010 (the Regulations). There is no legal requirement to make an application for an Environmental Permit prior to the grant of planning permission. Neither the Council nor the Environment Agency contends otherwise. The Environmental Permit application process must be supported by detailed technical information and this involves significant expense. As such, save where the Environment Agency require the parallel tracking of applications for planning permission and environmental permits it is usual for housing developers to make such permit applications following the grant of outline planning permission.
97. The scope of the application for an Environmental Permit would be limited to the water discharge activity from the PTW as described in Schedule 21 of the

Regulations. In determining the application and if appropriate setting permit conditions, the Environment Agency would address the requirements of relevant national and European legislation, including Part 6 of the Habitats Regulations, which requires Habitats Regulations Assessment. The Environment Agency has repeatedly confirmed this position in correspondence and has repeatedly stated that it cannot prejudge the outcome of the Environmental Permit application process (*Documents AD/13, Appendix SSG3; ID/17*).

98. On the evidence, it is reasonable for the Secretary of State to conclude that, when considering the Appellant's application for an Environmental Permit, the Environment Agency would not grant the necessary Permit unless it is certain that the PTWs would operate effectively for the lifetime of the development, including ensuring that the proper financial provision is in place to ensure the protection of the European site.
99. The Pevensey Levels is afforded legal protection in domestic law by the Habitats Regulations. The requirements relating to Habitats Regulation Assessment and relevant case law is set out in *Document ID/25, Paragraphs 101-120*. As it is agreed that the proposals are not directly connected with or necessary to site management for nature conservation, the first consideration is to determine whether the proposals, alone or in combination with other plans or projects, are likely to have a significant effect on the integrity of the European Site. This is also referred to as the Screening stage to determine whether an Appropriate Assessment is necessary. Paragraph 13 of Circular 06/2005 makes clear that the decision must be taken on a precautionary basis in accordance with the *Waddenzee* judgement (*Document ID/23, Appendix C*).
100. In accordance with the *Hart District Council* judgement the competent authority must take account of any avoidance and mitigation measures which form part of the appeal scheme when undertaking the required assessment under Regulation 61 of the Habitats Regulations (*Document ID/25, Paragraphs 124-125 and Appendix A*). In this case the decision maker can be satisfied based upon uncontested objective information that the proposed development is not likely to have any significant effect on the European site (*Documents AD/11; ID/16*). The imposition of an appropriate planning condition requiring the submission to and approval by the Council of a foul drainage scheme using PTWs will ensure that the integrity of the European Site will be protected. Effectively, should planning permission be granted, no development will commence until such time as an Environmental Permit has been granted by the Environment Agency.
101. The proposed Grampian-style condition concerning foul drainage would not be unlawful. The PTW is part of the development proposal and cannot be ignored. Also the Secretary of State is entitled to have regard to the fact that the Environment Agency must take account of the Habitats Regulations Assessment as a matter of law. It is not contended that the Secretary of State is precluded from undertaking a Habitats Regulations Assessment. When doing so it will be necessary for him to take account of the whole of the evidence, including the uncontested evidence of Capita Symonds.
102. The Environment Agency does not object to a grant of planning permission in the present case. At its highest its objection is to the use of a PTW in an area

that is served by a main sewer. This approach is unnecessarily bureaucratic. As a matter of law, when the Environment Agency determines the Appellant's application for an Environmental Permit, it must take account of all relevant considerations. This includes the fact that, notwithstanding the proximity of the appeal site to the main sewer, insufficient capacity exists at the Hailsham South WWTW to serve the proposed development currently and is not likely to be made available until 2020 at the very earliest.

103. The outcome of the Appellant's application for an Environmental Permit cannot be predetermined as the Environment Agency has stated (**Document ID/17**). The availability or otherwise of an effective mains sewer connection will be a material consideration relevant to the determination of the application. It is quite possible that at Screening stage the Environment Agency will determine that the use of the PTW, whether alone or in combination with other plans and projects, is unlikely to have a significant effect on the European site. In that case an Appropriate Assessment would not be necessary.
104. The Environment Agency has not followed its own guidance in *Guidance for developments requiring planning permission and environmental permits* (**Documents ID/17; ID/23, Page 11**). It has not explained the risk posed by the development with evidence, it has failed to give the Appellant the chance to discuss the issue and it has failed to object to the planning application. The Agency cannot sensibly believe that risks to people and the environment could not be satisfactorily mitigated in this location if it also believes that there would be a viable connection to the mains foul drainage at this location.
105. Having regard to the uncontested evidence submitted by Capita Symonds the Environment Agency appears to be in favour discharging wastewater treated at the Hailsham South WWTW into the European site that will be of a poorer quality and at higher concentrations further downstream than that proposed by the use of a state of the art PTW at the appeal site (**Documents ID/16; AD/11**).
106. None of the Council's concerns, or the evidence upon which it relies, properly addresses the uncontested evidence that demonstrates that the PTW proposed as part of the appeal development is not likely to have a significant effect on the European site (**Documents AD/11, ID/16**). The evidence upon which the Council relies relates only to the Habitats Regulations Assessment of the CS and the evidence submitted by the Environment Agency, Southern Water, Natural England and the Council in support of the CS. None of that evidence was project specific and none of it properly considered the specific PTW solution proposed as part of the appeal development. In finding the CS sound the Examining Inspector did not exclude the possibility of windfall development coming forward that used PTWs (**Document AD/9, Appendix 6**).
107. The Council did not undertake an Appropriate Assessment at application stage taking specific account of the proposed development, including the alternative proposal for a PTW. As a matter of law it could not have done so as it did not take into account the views of Natural England in making its decision. It cannot be said that the appeal scheme is likely to have a significant effect, in combination with other plans or projects, in circumstances where planning permissions continue to be granted for housing development to be served by Hailsham South WWTW without undertaking Appropriate Assessments. An example is the recent permission for residential development at Ersham Farm.

108. In the event that the Secretary of State forms the view that there would be a significant effect then the Environment Agency is the more appropriate competent authority to carry out the Habitat Regulations Assessment of the effects of the PTW on the European site and it would not be necessary for him to consult Natural England. The Secretary of State can be confident that the Environment Agency will consult Natural England as part of any Appropriate Assessment and will only grant the necessary Environmental Permit if satisfied that the use of the PTW will not have an adverse effect on the European site.
109. The issue of foul drainage can be adequately addressed by the imposition of a planning condition. On the evidence the decision maker can be confident that the proposed development will not have any significant effect, let alone any adverse effect, on the integrity of the Pevensey Levels. There is thus no requirement for an Appropriate Assessment in the present case. It follows that Paragraph 119 of the Framework does not apply to the determination of the appeal and the Council's second reason for refusal cannot be sustained.

Whether the proposal would be a sustainable form of development and if so whether there would be a presumption in its favour

110. The proposal accords with those aspects of the development plan that are relevant to the determination of the appeal and planning permission should therefore be granted. The Council's objections are to be found in the first and second reason for refusal. These specify the totality of the development plan policies that the proposal is said to contravene. Following the abolition of the SEP, the references to its policies should be removed. Should the Secretary of State consider that the proposed development fails to accord with a relevant aspect of the development plan the very significant benefits associated with the appeal scheme indicate that planning permission should be granted.
111. The presumption in favour of sustainable development applies in the present case. As the development does not require Appropriate Assessment the Council's second reason for refusal is overcome. The first reason for refusal does not cite any policy from the CS. The remaining policies of the WLP are out of date. Consequently, the Council must demonstrate that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits associated with the appeal proposals. The relevant policies for housing supply in the CS should not be considered up to date. Whether or not the Council can demonstrate a five-year supply of deliverable housing, planning permission should be granted as the benefits of the scheme considerably outweigh the alleged harm.

Other matters

112. Third parties have raised some additional matters but whilst no doubt expressed genuinely they are not expressed in terms that amount to or support any reason to refuse the appeal (*Document AD/8, Paragraphs 4.177-4.183*).
- A gap of over 3 kilometres would be maintained between the Hailsham and Polegate/ Stone Cross settlements. Much smaller gaps would remain between Hailsham and Hellingly and Stone Cross and Polegate as a result of the SDAs.

- The Flood Risk Assessment clearly shows that flooding would not be an issue and the Environment Agency does not object to the proposed use of SuDS. (*Document APP/2*). Road flooding in Coldthorn Lane appears to be because of blocked and inadequate drainage ditches within the highway. The proposal would be required to upgrade such facilities as part of the realignment of Coldthorn Lane and thus would overcome this existing highway problem. These improvement works are a planning benefit secured by the scheme.
- The Transport Assessment concludes that there would be no harm to highway safety and the Highway Authority and Highways Agency have raised no objections to the scheme (*Document APP/1*).
- Large growth areas are proposed to the north and east of Hailsham. The proposal is to develop a modest site for around 195 dwellings on the south side of the town. It would have little or no impact on the overall character of the settlement.

OTHER ORAL REPRESENTATIONS TO THE INQUIRY

113. **Councillor J Bentley** is the Mayor of Hailsham, District Ward Councillor and she lives on the Sandbanks development to the north of the site. Her full representations are at *Document ID/6*. She spoke of the considerable amount of local opposition to the appeal proposal which has already been rejected through the CS. This included identified land for growth to the north and east of the town where there is good access to local infrastructure unlike to the south where the appeal site is located. This will provide sustainable growth in a planned manner within the capacity of the drainage system and including much needed affordable homes. The Cuckoo Trail is unlit and a peaceful place for people to enjoy. There is no easy access to it from the appeal site and providing it with lighting would spoil its tranquillity. Local doctors have said that it is unlikely that a surgery on the site would attract the necessary staff to run it.
114. Councillor Bentley talked about frequent flooding of Coldthorn Lane during periods of heavy rain. She mentioned that land to the north of the site was refused planning permission on flooding grounds and that there was a risk that runoff from the appeal site would increase flooding problems. Coldthorn Lane is very narrow with no passing places and is likely to become a rat run to access the A22. The proposal only includes limited widening at the northern end and this would create a bottleneck. She also spoke of the site's position within a defined rural gap, its countryside character and its conflict with planning policies to protect the countryside.
115. **Councillor C Triandafyllou** is a Town and District Ward Councillor and he lives in Coldthorn Lane. His full representations are at *ID/7*. He also referred to the considerable amount of local opposition. Of particular concern is the traffic that would use the narrow country lanes which can readily become blocked when drivers take short cuts to the A22. The lanes are also used by pedestrians, cyclists and horse riders and there are no pavements. The 400 additional cars arising from the development would make matters impossible.

Ersham Road is also very busy especially during the rush hour and additional traffic would lead to more accidents. Reference is also made to flooding within the vicinity including along Coldthorn Lane. The development would make it a lot worse.

116. Councillor Triandafyllou also comments that the fields and hedgerows on the western part of the appeal site provide an important wildlife corridor. There has been extensive clearing of the woodland marked as a buffer zone on the application plans. There are no shops, schools or other facilities in south Hailsham so new residents would rely on their cars.
117. **Councillor R Thomas** is the local County Councillor and Chair of the Local Government Association's Coastal Special Interest Group and Chair of the Sussex Inshore Fisheries & Conservation Authority. He is concerned about the effects of climate change and particularly the impact of deluge rain storms. Further development would put more strain on foul and surface water drainage in the area, including Hailsham. The use of PTWs as an alternative to mains drainage is questionable and their effectiveness is unknown. The Environment Agency is not happy about them. Traffic problems were also mentioned especially in addition to the Ersham Farm development nearby. The proposal would result in the loss of a recreational facility for local people and contrary to localism because the local community do not want it.
118. **Mr G Rowe** is a Hailsham Town Councillor and the Town Crier. He pointed out that there was often a long queue along Ersham Road of 70-80 cars which led to considerable congestion. Coldthorn Lane and Summerhill Lane are narrow roads with blind bends but would be used as a short cut in the Eastbourne direction. These lanes are unsuitable for further traffic and would become rat runs. These lanes are used extensively for horse riding and by families out walking and there are banks of orchids, primroses and bluebells. This adds to the quality of life and they have great amenity and recreational value for local people. This would be lost if the development is allowed to go ahead.
119. **Mr R Hollister** is a local resident and commented that there is already significant development planned for Hailsham and that further development to the south would be contrary to the recently adopted CS and local views. There was frustration that the matter was outside local control and that whilst further development was needed it had to be properly planned for. The gap between Hailsham and Polegate retains the local identity of the market town. Similar points were made about traffic, flooding, wildlife and risks to the Pevensey Levels through excess drainage.
120. Several speakers live close to the site in Ersham Road. **Mrs S Lemmon** spoke of three accidents this year which had resulted in damage to her property. She also mentioned her pond and her concern that the drains would be inadequate to cope with more development and that additional runoff would result in more flooding. **Mrs C Keate** referred to the drainage culvert along the side of her property and was fearful that more development would result in her garden flooding. She also reiterated her concerns about traffic and that the bend in Ersham Road made this an unsafe place for a roundabout junction. **Mr M Powell** made similar comments about accidents and queuing traffic along Ersham Road. He also spoke about water that pooled in his garden from the higher level Sandbanks development to the rear which caused significant

drainage problems. He made similar comments to other speakers about wildlife and the amenity value of Coldthorn Lane and the Cuckoo Trail. **Mrs J Wanmer** commented that the houses along Ersham Road were unable to be served by mains drainage so she wondered how the additional development would be able to do so.

WRITTEN REPRESENTATIONS

Written representations to the appeal

121. There were objections by **local residents** at both application and appeal stage. The former can be found at **Documents AD/14 and ID/19** and the latter within **Document AD/2**. Generally the same points have been made to those that have been recorded above and these will not be reiterated. Additional points include:
- A lack of infrastructure including doctors, dentists, schools, post offices and hospitals to support further housing. The proposed doctor's surgery would not make the proposal any more acceptable.
 - Disruption from construction activity.
 - There are many badger setts within the locality and it is believed that they are likely to be present on the appeal site.
 - Insufficient affordable housing.
 - Effect on the living conditions of nearby residents including loss of privacy and noise from additional traffic.
 - The loss of a greenfield site when there are other brownfield sites that could be built on.
 - Loss of good agricultural and orchard land.
 - The site was rejected from the SHLAA process.
 - Excessive density of development.
 - Change in character of Hailsham as a small market town.
122. **Hailsham Town Council** strongly objects on the grounds that the land is part of the strategic gap which should be maintained in order for Hailsham to retain its identity. The proposal would also be contrary to the policy in the CS, would not be sustainable and is not identified in the SHLAA. There has already been a reduction in the tree and hedgerow cover of the site contrary to the Design and Access Statement which states that natural habitat would be supported. Similar concerns about highways and flooding to other objectors were raised. The Town Council also pointed out that they own some of the land needed for the Ersham Road/ South Road/ Diplocks Way roundabout improvements.
123. **CPRE Sussex** refers to similar policy and drainage issues as other objectors. It also considers that bringing more people into Hailsham who would commute back out for work was not a sustainable approach.

Consultation responses

124. Consultation responses are in the Questionnaire and summarised in the Council's Committee Report (**Document AD/14**).
125. **East Sussex County Council as Highway Authority** has raised no objections subject to the imposition of planning conditions and legal agreements to secure off-site transport works, accessibility improvements and

the implementation of a Travel Plan. **The Highways Agency** has raised no objections. **The County Archaeologist** initially objected to the proposal. However it was agreed following further information about the archaeological interest of the site that the heritage issues could be adequately protected by a planning condition (*Document AD/9, Appendix 4*).

126. **Southern Water** raised no objection subject to a planning condition. It pointed out that there is currently inadequate capacity in the local network to provide sewage disposal to service the development. Additional off-site sewers or improvements to existing sewers will thus be required. A sustainable drainage system would not be adopted and long term maintenance arrangements would therefore be required. There has been a considerable amount of correspondence with the **Environment Agency** (*Documents AD/9, Appendix 14, AD/13, Appendix SSG3; ID/17*). Its position is that there is no objection to the proposal subject to a condition that surface water drainage disposal is based on sustainable drainage principles. It has though maintained its objection to the use of a PTW and stated that an Environmental Permit would be unlikely to be granted as there is a viable connection to the mains sewerage system.

CONDITIONS

127. There is an agreed list of conditions which were discussed in detail at the Inquiry (*Document ID/18*). The conditions have been considered having regard to this discussion and also advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. The comments in this section and the condition numbers referred to below support and reflect the list produced in Annex C of this Report.
128. The scheme is being put forward on the basis that it would make a useful contribution to short term housing needs. It is therefore reasonable to shorten the implementation period and the Appellant did not disagree. **Conditions 1-3** otherwise reflect the wording in the circular. The evidence suggests that there may be a low level spread of archaeological remains of local significance and adopting a precautionary approach a further programme of investigation would be justified. **Condition 4** has been reworded so that its requirements are proportionate to the importance of the heritage asset.
129. **Condition 5, 6 and 7** relate to the construction period and mitigation of adverse impacts on local residents and the environment. The condition relating to a Construction Management Plan has been reworded as discussed at the Inquiry. **Condition 6** has been worded in a more focussed way. It also requires details of security and external lighting which could have an effect on protected fauna especially in adjoining woodland. **Condition 7** relates to construction traffic and whilst it is notoriously difficult to control lorry movements effectively, good practice measures can help to deter heavy vehicles from using unsuitable routes. These include the narrow lanes to the south of the site.
130. **Condition 8** concerns foul water drainage and is necessary so that harm is not caused to the Pevensy Levels site of nature conservation importance. The wording has been adjusted to make clear that a PTW would be used and should be fully operational before occupation of the development. Any capacity remaining at the Hailsham South WWTW would not be utilised. The

condition also provides for future management, monitoring and maintenance to ensure that the PTW remains effective in perpetuity. The Council did not object to the wording of the condition but one of its core objections is to the use of a PTW in principle as a means of dealing with foul water drainage.

Condition 9 concerns the disposal of surface water. The Flood Risk Assessment indicates that a SuDS system would be employed and the condition has been re-worded to make this clear. Details of long term management and maintenance have been included in the same condition and are necessary to ensure that the system operates effectively in the long term.

131. **Condition 10** requires full details of the new access arrangements including the mini roundabout and widening of the northern end of Coldthorn Lane. Indicative drawings are included in the Transport Assessment. These details are necessary in the interests of highway safety. **Condition 11** is also required to ensure that individual dwellings have a proper link to the public highway. It does not seem necessary to refer to adoptable standards as the Council would control the approval of details. There was also discussion at the Inquiry about the control of street lighting to ensure that it would not have harmful effects on wildlife especially in the adjoining woodland. I have reworded and reduced in number the suggested conditions to reflect these matters and to make them more relevant to the development in question.
132. **Condition 12** is necessary to ensure that the doctor's surgery is provided to serve the new dwellings. It seems reasonable that this should be later in the construction period as it would not be beneficial for it to operate from the middle of a construction site. There would still be about 75 dwellings to be built and so considerable value would remain in the site. The Appellant has proposed that the homes would be built to Level 4 of the Code for Sustainable Homes which would have benefits to occupiers in terms of energy efficiency and water consumption. **Condition 13** is therefore reasonable.
133. The appeal site has a sloping topography and so **Condition 14** requiring details of site and slab levels is necessary in order to ensure the development would not overly impose on its surroundings. **Condition 15** requires that the road works at the northern end of Ersham Road shall be completed prior to the occupation of any dwelling. Whilst these works would have wider benefits they are necessary in order to improve junction capacity to accommodate the development traffic. This is made clear in the Transport Assessment. **Conditions 16 and 17** provide necessary mitigation for impacts on adjoining habitats and wildlife.
134. **Condition 18** deals with phasing which seems reasonable for a development of this size. It is likely that it would be built in at least 2 stages east and west of Coldthorn Lane. The provision of affordable housing allows for a phased approach if this is how the site is to be developed.

PLANNING OBLIGATION BY UNILATERAL UNDERTAKING

135. There is a fully executed Planning Obligation by Unilateral Undertaking dated 6 March 2013. This is made to Wealden District Council and East Sussex County Council (*Document ID/21*). The draft document was discussed in detail at the Inquiry (*Document ID/3*). The Planning Obligation is considered to be fit for purpose. It contains financial contributions towards additional household waste and recycling facilities, additional library infrastructure, additional

primary and secondary school provision, bus service improvements and rights of way improvements. Whilst the payments would be made for most of the above prior to first occupation the education contributions would be staged payments with various trigger points. The payments are all subject to a provision that they would not be paid if the Secretary of State finds that they do not meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations.

136. The Planning Obligation also makes provision for the provision of 35% affordable housing. This would comprise a mix of 80% social rented units and 20% intermediate housing units unless a different mix is agreed with the Council. The transfer to a Registered Provider of the affordable housing land or constructed units would be triggered by 25% of the occupation of market units. There is also the provision for at least 20% of the market houses to be small dwellings of one or two bedrooms.
137. The Planning Obligation includes a provision that development would not start until an Agreement pursuant to Section 278 of the Highways Act has been entered into. This would secure the off-site highway access works, improved bus stop facilities and a new stretch of footway along Ersham Road in accordance with the drawings in the Transport Assessment (*Document APP/1*). There would also be a provision to fund a Traffic Regulation Order to extend southwards the position of the 30 mph speed restriction. All of these works are to be completed before the first occupation of any dwelling. There is provision for a Travel Plan which will aim to minimising car journeys to and from the site.
138. The Planning Obligation includes for Outdoor Playing Space in accordance with a formula relating to the size of the dwellings, including a timetable for its implementation. This would include youth and adult playing space, informal and equipped children's playing space. There is a clause to offer transfer for a nominal sum to the Town Council or to transfer it to the management company to look after. The management company would be set up before the development is first occupied and each dwelling would pay an annual charge. This would also be responsible for the management and maintenance of the woodland, the ecology area and the drainage systems (PTW and SuDS). There is a provision that the obligations relating to the management company and Outdoor Playing Space would not be provided if the Secretary of State finds that they do not meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations.

CONCLUSIONS

The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.

139. Taking account of the oral and written evidence and my site observations the main considerations in this appeal are as follows:
- The effect of the proposal on the character and appearance of the area;
 - Whether the proposal is necessary to meet the housing needs of the district;
 - The effect of the proposal on the Pevensy Levels site of international importance for nature conservation;
 - Whether there is justification for infrastructure contributions;
 - The effect of the proposal on local highway infrastructure;
 - Whether the proposal would be a sustainable form of development.

Introduction

140. The SEP has now been revoked. The development plan for the area comprises the WLP adopted in 1998 and the CS adopted in February 2013. The WLP covered the period 1986-2004 but most of its policies have been saved and will be retained until the full suite of DPDs is adopted. The Strategic Sites DPD and Delivery and Land Allocations DPD are at a very early pre-submission stage and thus can be afforded little weight at the present time. There is also the NSWLP which was published in 2005. This largely carried forward the policies in the WLP and had an end date of 2011 [**14-20**].
141. The Framework provides the national policy context within which this appeal will be considered. The golden thread running through this document is that there is a presumption in favour of sustainable development. Whilst it does not change the statutory basis for decision making it makes clear that the provisions of the development plan can be outweighed by those in the Framework if they are not consistent. This now applies to all policies and not just those that were adopted prior to the 2004 Planning and Compulsory Planning Act 2004 [**21**].

Consideration one: the effect of the proposal on the character and appearance of the area

142. There is no dispute that the site is presently greenfield land that lies outside the development boundary for Hailsham. This was established in the WLP where saved Policies GD2 and DC17 indicate that development, including new housing, will not be permitted except in limited circumstances that are not applicable here. The WNSLP carried these policies forward but no changes were made to the development boundaries either in this document or the recently adopted CS. These therefore originate from a time when a much lower level of housing provision was envisaged through the now defunct Structure Plan. The additional allocations in the WNSLP were accommodated

at least in part on greenfield land. The appeal site is included in the Council's SHLAA and described as suitable, available and viable. However that was an extensive exercise and did not apply any policy filter to the sites in question [6; 19; 20; 66; 121; 122].

143. The three allocated sites in the WNSLP have been carried forward and the CS has identified a number of Strategic Development Areas (SDAs). It is thus fair to conclude that the Council envisages further growth by means of urban extensions on land outside of existing development boundaries. However this is as part of a planned approach to housing provision and does not mean that development boundaries no longer serve a useful purpose. As the Council pointed out they have been drawn up to distinguish the built up areas where all development, not just housing, may take place from the countryside where there is greater restraint. This policy approach is not inconsistent with the Framework where one of the Core Planning Principles is to recognise that different areas have different roles and that the intrinsic character and beauty of the countryside should be recognised [17; 35; 36; 70; 73].
144. I turn now to consider the site itself and how the appeal scheme would impact on the character and appearance of this particular area immediately to the south of Hailsham. The land comprises pasture and paddock and is relatively well contained by hedgerows and trees. It is not within an area where special protective designations apply and contrary to the belief of several objectors it is not part of a strategic gap. Nevertheless the vicinity has a pleasant rural ambience which is clearly valued by local people as was evidenced in their representations. A walk along Ersham Road from the direction of the town reveals that the tightly knit urban area gradually gives way to a looser and more open development pattern. Hedgerows and trees become more important in the streetscape, footways reduce in width and the alignment of the road becomes less straight. Coldthorn Lane is a narrow country lane edged with verges and hedgerows. To the south of the site there is sporadic housing both along Coldthorn Lane and to the west of Ersham Road. In my judgement the area has a semi-rural character [6; 7; 24; 114; 116-120; 122].
145. The development of the appeal site with a housing development of the size proposed would undoubtedly result in a significant change of character from semi-rural to urban. This would be mitigated to some degree by the containment provided by trees and hedgerows along with the proposed further planting and open space. However the land has significant topographic changes so it seems likely that the extent of built form would be noticeable in its surroundings. The proposal includes the insertion of a mini roundabout and quite extensive changes at the existing T-junction. The wide verge that borders the eastern side of Ersham Road would be significantly disrupted and the insertion of footways around its perimeter would be an urbanising influence. In addition the creation of the new main access into the site, its associated visibility splays and the widening and realigning of the upper part of Coldthorn Lane would have a considerable visual impact on what is presently a narrow and relatively tranquil country lane. These effects whilst they may not be apparent in longer views would have a significant and harmful effect on the character and appearance of the semi-rural area beyond the edge of the settlement [6; 7; 10; 25; 68; 69].

146. The Appellant has mentioned the traffic light controlled crossing with associated road markings to the south of the site where the Cuckoo Trail crosses Ersham Road. It is acknowledged that the area at this point is rural but this is a relatively modest piece of infrastructure and is not comparable to the urbanising effect that would ensue from the appeal proposal. Whilst there would be provisions to manage and enhance biodiversity in the ancient woodland and brickfields to the south of the site this would not mitigate the harm arising from the built development itself and particularly the highway improvements that would be necessary in order to accommodate it [66; 69].
147. A number of local objectors were concerned about a change of character to Hailsham which is presently a small market town. However Hailsham is one of the main towns within the district where the CS already envisages substantial growth through the development of 2 SDA's to the north and east of the town. The appeal site would represent a comparatively small additional increase to the planned 1,300 houses and it is not considered that it would impact on the character of the town itself in a negative way. Nevertheless for all of the other reasons given above it is concluded that the appeal proposal would cause significant harm to the character and appearance of the area. It would be contrary to saved Policies GD2 and DC17 in the WLP and the Framework [17; 112 *bullet 4*; 121].

Consideration two: whether the proposal is necessary to meet the housing needs of the district

Housing requirements

148. In order to significantly boost the supply of housing a local plan is expected to meet the objectively assessed needs for market and affordable housing as far as is consistent with its policies, including those relating to nature conservation. Although the SEP no longer exists its evidence base has been tested through public examination. It seems very unlikely that its targets did not take account of earlier shortfalls. It establishes a need for 11,000 houses with 7,000 to be provided within that part of the district falling within the Sussex Coastal sub-region where the appeal site is located. The latter figure does though recognise that phasing of housing delivery may be necessary to allow for the provision of new or improved waste water infrastructure [26; 27; 42; 74; 80; 91].
149. The Inspector examining the CS made quite clear that the only robust demographic based projections were those in the SEP. However he recognised that there were environmental constraints to this level of provision. In south Wealden these comprise the capacity limitations of the Hailsham North and Hailsham South WWTW which discharge into the Pevensy Levels, a Ramsar site and a candidate Special Area of Conservation. The Examining Inspector therefore accepted that for the time being a lower target could be justified which would comprise at least 9,400 dwellings. One of the modifications required to make the CS sound was that it should include a statement that there is no demographic basis for supporting the lower requirement. Another modification required a review of the strategy in 2015 or when a preferred solution to the capacity of the WWTW was identified, whichever was the sooner. The review is to include an assessment of need and demand for

housing to provide an appropriate basis for long term housing provision [16; 17; 28; 30; 80].

150. The review mechanism is clearly a crucial element designed to allow the Council and other responsible authorities time to resolve the infrastructure problems that presently prevent the district from meeting its demographically assessed housing needs. The outcome of the review cannot be known and it will depend on the progress made by the responsible authorities in achieving a solution to the waste water capacity issue. It seems most unlikely that the housing target would be reduced. In the event that it were to increase nearer to the level in the SEP that would be the time to consider whether further land requires to be allocated. This process would be plan-led and subject to consultation, including with neighbouring authorities under the duty to co-operate. Whatever happens there seems to be no justification for departing from the housing requirement set out in the newly adopted CS at the present time even though it may change in 2015. It is also not the case that the CS fails to meet longer term needs. It does so up to 2027 but subject to the infrastructure constraints that presently exist [32; 75; 76; 81; 83].
151. The Examining Inspector did not consider that there was evidence of persistent under delivery of housing. He therefore concluded that a 5% rather than a 20% buffer would be appropriate. He accepted that there had been under delivery in the past but that in the last two years the situation had markedly improved exceeding the SEP annual rate. It is also the case that over the last 5 years the average annual rate exceeded the CS target although this is mainly due to the high rates of delivery between 2010 and 2012. Looking further back the situation in terms of annual delivery is not particularly good. However there is no specific guidance as to how a persistent under delivery is judged, how far back one should look and whether annual or average rates are most appropriate. It is relevant that the CS is a newly adopted document and that the Examining Inspector's Report is only a few months old. It seems to me that he approached the matter in a reasonable way and that there is adequate justification for his conclusion that a 5% buffer would be sufficient to ensure choice and competition in the market for land [42; 85].
152. Since 2006 there has been an under provision of about 41 housing units assessed against CS requirements. There was some debate at the Inquiry about whether this should be met within the next 5 years or spread across the whole CS period. In view of the imperative in the Framework to provide homes to meet housing needs it is reasonable to expect any shortfall to be made good as quickly as possible. On this basis and including the 5% flexibility allowance there would be a requirement for 2404 homes in the next 5 years [43].

Housing land supply

153. In order for the CS to be found sound the Examining Inspector had to be satisfied that there was a sufficient supply of deliverable sites to meet housing requirements in both the long and short term. However apart from the strategic sites there are no specific allocations and this matter will eventually be dealt with in the Delivery and Site Allocations DPD. The evidence suggests that there was no individual scrutiny of sites at the Examination and that the discussion was mainly at a strategic level. However this is not unusual for a

higher level DPD. In any event consideration of the 5 year HLS position will be a snapshot in time and it is quite proper that it should be re-examined in detail through the development management process [42; 82; 83; 86].

154. On the basis of the CS requirement set out above the Council's evidence is that it has a 6.08 year supply of housing land and the Appellant's evidence is that there is only 4.48 years. There was considerable debate at the Inquiry about Footnote 11 to Paragraph 47 of the Framework and whether a site has to benefit from outline planning permission in order to be considered "deliverable". Appeal decisions were produced by the parties to support both sides of the argument. However it seems to me that the matter needs to be considered in the context of a requirement in the Framework for significant short term housing growth. Footnote 11 is clear that sites should be scrutinised to make sure that on a realistic assessment they are immediately available and that the housing anticipated will be achieved within the next 5 years. Footnote 11 also makes clear that sites with planning permission should be considered deliverable unless there is clear evidence that they will not be on grounds of viability or demand for example. There is nothing in this wording that says that sites without planning permission should be excluded as a matter of principle [44; 45; 50; 84].
155. In this case the disputed sites as far as Footnote 11 is concerned relate to 3 allocations from the 2005 NSWLP and these would provide a total of 113 dwellings. Whilst Grovelands School in Hailsham and the Former Army Camp in Isfield both benefit from resolutions to grant planning permission these are subject to the completion of legal agreements. In the case of Grovelands School the resolution dates back to 2008 and in the case of Isfield there are access difficulties. In the case of land south of Howard Close, Hailsham there was a refusal of planning permission in 2008 that arose because there was no progress with signing the legal agreement. There are developers involved in these sites, which indicates they are available. However there is insufficient evidence of positive progress in getting them off the ground to be confident that they are achievable and that the houses will be built within the next 5 years. On the available evidence these 113 dwellings should not be included in the 5 year supply [46; 84; 88].
156. Of the large sites (6 or more dwellings) with planning permission the Appellant disputes the amount of delivery from 11 of them. The Council accepts this criticism in a few cases. Of the others there are several where the availability of the site is called into question. From the submitted information there must be considerable doubt that Hoppits Nursery and St Anthonys in Crowborough are likely to be delivered in the short term. There are sites where viability is cited as an issue. These include the Flour Mill in Hailsham, Land north of Dittons Road, Polegate and 64 Framfield Road, Uckfield. However in these cases there is little clear evidence that viability is an overriding constraint [47; 87].
157. There are 55 extra care units included in the site at Battle Road, Hailsham. However whilst these would provide accommodation for older people it appears from the information provided that the units would fall within Class C3 rather than Class C2 of the Use Classes Order. There was argument as to how many market homes would be delivered but the evidence indicates that about 211 units is the most likely overall outcome. There is a large housing site east of

Shepham Lane, Polegate which is currently being built out. There is insufficient evidence to support the Appellant's view that this is likely to be significantly delayed [47; 87].

158. In Uckfield the land at St Michaels Convent had permission for 31 dwellings granted in 2009. Even though this may have been implemented there is little sign of any building activity. Planning permission was granted in 2013 for 11 units and it is indicated that there is little market interest for a larger scheme. Whilst the site appears to be available it is reasonable to surmise that the development that comes forward would be scaled down accordingly. Bearing all of this in mind the contribution from large sites would be less than the Council anticipates but more than the Appellant has put forward. My estimate based on the above comments is that delivery from this source would be in the region of 1,972 dwellings [47; 87].
159. There are 454 dwellings on small sites (6 or less dwellings) with planning permission. Footnote 11 to Paragraph 47 of the Framework indicates that sites with planning permission should be considered deliverable unless there is clear evidence to the contrary. These sites have not been specifically analysed by the parties in the same way as the larger sites and there is no information that they are likely to suffer from problems of viability or demand. In the absence of such evidence and bearing in mind the Footnote 11 advice there does not seem to be justification for applying a discount of 10% as suggested by the Appellant [47; 87].
160. The Framework allows an allowance to be applied in the face of compelling evidence that windfall sites have consistently become available in the district and will continue to provide a reliable source of supply. The 2012 Annual Monitoring Report indicates that between 2000 and 2012 the average number of windfall completions was 232 dwellings a year. For future projections this has been heavily discounted to 59 dwellings per year to take account of WWTW constraints, omission of garden land, removal of settlement boundaries and the like. However it is the case that windfall completions will comprise small and large sites with planning permission and there is thus considerable scope for double counting. The past windfall rate will also be influenced by the lack of up to date development plan allocations prior to the adoption of the CS. In the circumstances of this case I am not convinced that there is sufficient compelling evidence to justify a windfall allowance even at the heavily discounted rate [49; 89; 90]

Conclusion

161. Drawing together the points raised above I conclude that the Council has a deliverable housing land supply to accommodate about 2,426 dwellings⁷. Based on a requirement for 2,404 dwellings the evidence suggests that the Council can demonstrate a 5 year supply of deliverable sites, albeit by a marginal degree. Nevertheless taking account of Paragraph 49 of the Framework it can be concluded that relevant policies for the supply of housing in the CS are up to date. Whilst the CS does not establish a ceiling on housing numbers it can reasonably be concluded that there is no necessity for the

⁷ This figure is the sum of 1,972 dwellings on large sites with planning permission and 454 dwellings on small sites with planning permission.

appeal site to be released in order to meet the short term housing needs of the district as established in the CS. I will return to this in the final planning balance [93].

Consideration three: the effect of the proposal on the Pevensey Levels site of international importance for nature conservation

162. The Habitats Regulations transposed the EC Habitats Directive into United Kingdom law and provide for the designation and protection of European sites which include Ramsar Sites and Candidate Special Areas of Conservation. Under the Habitats Regulations competent authorities are required before deciding to give any consent, permission or authorisation for a plan or project which is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, to undertake an Appropriate Assessment of the implications for that site having regard to its conservation objectives [52; 99].
163. The Hailsham North and Hailsham South WWTWs discharge effluent into the Pevensey Levels, which is both a Ramsar Site and a Candidate Special Area of Conservation. This site lies to the east of Hailsham and the special ecological interest relates to its outstanding assemblage of wetland plants and invertebrates. The Environment Agency has been very concerned about the relationship between the discharge of treated effluent from the treatment works and the ecological quality downstream. For this reason the Environment Agency will not increase the discharge capacity of the WWTWs so as to ensure that there is no deterioration of the receiving waterbodies at the European site. This effectively means that there is a limit on the number of additional dwellings that can be accommodated within the existing mains drainage system. It is this capacity restriction that has resulted in the lowering of the CS housing requirement as referred to in the previous issue. The Habitats Regulation Assessment underpinning the CS concluded that this level of development could be accommodated without significant harm to the European site [9; 54; 55; 106].
164. In fact the evidence from the Council, which was not challenged, is that there is sufficient capacity for around 65-70 more dwellings to be served by the Hailsham South WWTW over and above those catered for in the CS. It is the Hailsham South WWTW that would provide a mains service for the appeal development. The Council considers that this limited amount of remaining headroom should be reserved for future small scale developments that are permitted on a first come first served basis until the capacity is used up. Whilst I concluded that some of the permitted housing sites were unlikely to come forward within the next 5 years that would not necessarily free up capacity. This is because it is quite possible that this development would occur later in the trajectory which means that capacity must be safeguarded within the mains drainage system. The Appellant does not take issue with the Council's approach to safeguarding capacity within the Hailsham South WWTW to accommodate housing commitments [55; 77-79].
165. Although the CS was found to be sound it is clear that because of the infrastructure constraint it does not address the objectively assessed housing needs of the district. The Examining Inspector reflected upon the uncertainty of the situation and when a solution may be found. He considered that this

should be possible between 2015 and 2020 but identified a number of issues that would need to be resolved first. When the required review of the CS takes place in 2015 it will be subject to a duty to co-operate with neighbouring local authorities. The problem will clearly not go away and a solution is required so that the needs of the district are properly accommodated. However it seems unlikely that further development outside that anticipated in the CS would materialise until after 2020 [30; 31; 77; 83].

166. The position of the Appellant at the close of the Inquiry was that the appeal development would not rely on the small amount of remaining mains capacity referred to above. The proposal is that all of the foul sewage deriving from the scheme would be dealt with by means of an on-site PTW. The Council's objection to this method of disposal has been guided to a large degree by the response of the Environment Agency and Southern Water. Both point out that there is presently capacity within the mains system which should be used in preference to a PTW. This is endorsed by Circular 03/99: *Planning Requirement in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development* and *Pollution Prevention Guidance Note 4* which both favour the use of the public drainage system wherever possible [56; 58; 61; 78; 96].
167. Neither the Environment Agency nor Southern Water has objected to the proposed housing development. The specific objection is to the use of a PTW and the Environment Agency has responded on several occasions that it is unlikely to grant an Environmental Permit for its use when a viable mains sewer connection is available. However this response is made from the perspective of the situation as it exists now and takes no account of the in combination effect arising from the housing requirement over the CS period. The logic is that it is for the local planning authority to decide how the available capacity should be utilised. The problem from the Council's perspective is that if the appeal development were to use up some of the presently available capacity it would displace some of the planned development later in the CS period, which would then fall foul of the Habitat Regulations. If such a scenario came about the spatial strategy in the statutory development plan is likely to be severely compromised [59; 63 bullet 3; 102-104; 126].
168. The Examining Inspector also commented on the use of PTWs. However it should be recognised that this was in the context of the long term planned approach to securing more housing delivery. It was also on the basis of the information that he had available at the time which he considered was insufficient to be satisfied about the environmental risk arising from PTWs given the proximity of the European site. The conclusion was that private sewerage systems were not a desirable alternative to proper infrastructure planning. However it is not the case that the Examining Inspector rejected the use of a PTW for individual developments as a matter of principle [56; 58; 106].
169. The evidence of the Appellant is that the PTW would be effective in preventing a significant adverse impact on the European site either alone or in combination with other plans and projects. It is supported by technical information about the quality, volume and rate of effluent that would be discharged. This has not been challenged by any countervailing technical evidence from the Council or the Environment Agency. A planning condition

would require a PTW to be employed and for this to be fully operational prior to any occupation of the development. The condition would also require prior approval of details, including future management, monitoring and long term maintenance of the system. The Planning Obligation includes a provision to set up a management company before any dwelling is occupied. This would be funded by an annual charge from individual homeowners through a covenant and one of its responsibilities would be the monitoring, management and maintenance of the PTW. Whilst noting the Council's concerns about the use of a management company for this purpose, the Appellant is confident that it would be an effective vehicle in the longer term [100; 101; 103; 105; 106; 130; 138].

170. In order for the development to go ahead the Appellant would be required to apply to the Environment Agency for an Environmental Permit to utilise the PTW. No such application has yet been made and the outcome of such an application cannot be pre-judged at this stage. Whilst the Environment Agency may prefer "parallel tracking" of applications for permits and planning permissions this is not a mandatory requirement. I was told that the collection of detailed technical material to support the permit application is a costly undertaking and that it is not unusual for a developer not to proceed with it until the planning situation is clear [63; 96; 100].
171. The integrity of the European site depends on issues of water quality and flow and the Environment Agency as a competent authority must be satisfied that no significant impact would ensue under the Environmental Permitting regime. The Council consider that an Appropriate Assessment cannot be undertaken after planning permission has been granted. However this ignores the fact that the development could not go ahead until an Environmental Permit has also been issued. The Council believes that a Grampian style condition relating to the PTW would be unlawful. However the planning condition that I have recommended is not a Grampian style condition because the PTW is an integral part of the development proposal. It could be discharged by the local planning authority, subject to satisfactory details, because the planning evidence indicates that the appeal scheme would not have a significant effect on the Pevensy Levels European site. Nevertheless if, as a result of further modelling and assessment in association with the permitting regime, the Environment Agency reached a different view it seems inconceivable that an Environmental Permit for the PTW would be issued [63; 96; 98; 100].
172. Drawing together the above points, the evidence demonstrates that the appeal development would not result in a significant effect on the Pevensy Levels, either alone or in combination with other plans and projects. Following on from that there is no reason to conclude other than that the scheme would comply with the pertinent development plan policies and in particular Policy SPO1 in the CS and the relevant provisions of the Framework [16].

Consideration four: whether there is justification for infrastructure and highway contributions

173. The Council has agreed that its concerns about infrastructure have been adequately addressed through the Planning Obligation by Unilateral Undertaking. This includes financial contributions towards additional household waste and recycling facilities, additional library infrastructure,

additional primary and secondary school provision, bus service improvements and rights of way improvements. The contributions are all subject to a provision that they would not be paid if the Secretary of State finds that they do not meet the requirements of Regulation 122 of the Community Infrastructure Levy Regulations. These require that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question [13; 135-138].

174. The policy context is provided in the CS by Policy WCS7 which concerns the provision of additional or improved community facilities, services and infrastructure in a timely manner where necessary to mitigate its impact. Saved Policy CS1 in the WLP indicates that the capital works directly required to service a development should be provided at the appropriate time. Further information on the contributions required by East Sussex County Council is provided by Supplementary Planning Guidance entitled: *A New Approach to Development Contributions*. This was adopted in 2003 in association with Structure Plan policies which no longer exist although the document is broadly consistent with existing development plan policy. Furthermore it has been regularly reviewed and updated, most recently in March 2012. It sets out particular stress areas and the methodology by which the tariffs are calculated. It is now termed Interim Supplementary Planning Guidance (ISPG) and can be afforded weight as a material consideration [13; 17; 19; 137].
175. The evidence provided by the Council and in the ISPG suggests that by 2016/17 the primary and secondary schools in Hailsham will be operating close to or beyond capacity. As this is an outline proposal the final housing mix is unknown but the contribution assumes there would be 185 houses and 10 flats, which is not unreasonable. The contribution itself is in accordance with the formula established in the ISPG which is based on school building costs. Further information provided by the education authority indicates that the primary school contribution would be used towards funding a new primary school on the SDA north of Hailsham. There is an option agreement being promoted to acquire the site for education purposes by the County Council. The evidence indicates that as Hailsham College is an Academy the secondary school contribution may go towards a new facility east of Battle Road, Hailsham. This does not seem to me to provide sufficient certainty to be satisfied that the contribution is necessary in order for the development to go ahead. In the circumstances it does not meet the requirements of the CIL Regulations and should not be taken into account [13; 135].
176. The evidence in the ISPG indicates that Hailsham Library does not meet the County Council's floorspace standards and needs to be upgraded to serve the additional households. The contribution itself is in accordance with the formula established in the ISPG which is based on the cost of floorspace provision, stocking and equipment. The County Council indicate that this money would contribute to improving the facilities at Hailsham Library [13; 135].
177. With regards to the Rights of Way contribution the ISPG states that stresses and problems remain unchanged. Undoubtedly there would be more pressure on the existing footways, including the Cuckoo Trail which provides an attractive walking and cycling route close to the site and into Hailsham. The ISPG indicates that the tariff is based on the costs of upgrading the rights of way network. During my site visit I noted that the short stretch of footpath

running between the Cuckoo Trail and the eastern side of Ersham Road close to the appeal site boundary was waterlogged and poorly maintained. Upgrading this would directly benefit the new occupiers. However there is no reason why the money should not be used to improve vulnerable structures along the Cuckoo Trail if that is the option favoured by the County Council. [7; 13; 135].

178. The ISPG indicates that the waste and recycling facility in Hailsham is currently operating at full capacity. Clearly the appeal development would generate additional waste. The tariff has been worked out on the basis that on-site improvements could be made to increase capacity and accommodate the additional waste generated. [13; 135].
179. The site is between about 1 km and 1.5 km from most of Hailsham's shops and services. The scheme would include some footway improvements and new footways along the northern section of Coldthorn Lane and Ersham Road. However taking account of the distances involved it seems improbable that walking would be a prevalent travel mode for most residents living on this site. Nevertheless, the site is reasonably close to the Cuckoo Trail and this provides a pleasant walking and cycling route into the town. Bus services run along Ersham Road and there is a relatively good half hourly service to and from the town centre. The route also goes south to Eastbourne and Polegate but its service is less direct and would not be particularly attractive to commuters wishing to use the railway stations. An alternative would be to use the money to provide the route with evening and weekend services. These alternatives have been costed by the County Council at £20,000 per annum and would improve the accessibility of the site by public transport [7; 8; 13; 135].
180. The Planning Obligation also includes a covenant for the provision and operation of a Travel Plan which would be designed to reduce the number of car journeys. This would include bus vouchers, residents' information packs, contributions towards internet shopping delivery and the like. A monitoring fee would be paid to the County Council in accordance with its document entitled: *Guidance on Travel Plans for New Development* [13].
181. The Planning Obligation includes a covenant that development will not commence until a Section 278 Agreement under the Highways Act has been entered into to ensure that the various off-site highway works are undertaken. The Transport Assessment that accompanied the planning application undertook various junction capacity assessments and concluded that with the various works in place a safe access to the site would be provided and that the local highway network would have sufficient capacity to safely accommodate the vehicular movement associated with the development. The Planning Obligation also includes a timetable to ensure that these highway works are completed before first occupation of the appeal development [137].
182. For all of the above reasons it is concluded that there is justification for the infrastructure and highway contributions provided for in the Planning Obligations. There is sufficient evidence for concluding that, save for the obligation relating to secondary education, the various obligations meet the requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and can therefore be taken into account in the consideration of this appeal.

Consideration five: The effect of the proposal on local highway infrastructure

183. There was considerable concern from local objectors about the safety of Ersham Road. Whilst I have no doubt that there are accidents along this stretch the personal injury statistics referred to in the Transport Assessment do not indicate that it is particularly dangerous. Reference was also made to existing congestion. I undertook various site visits to Hailsham including during peak periods but did not witness this myself. This may have been because of a school inset day or as a result of the road works along the A22 and I have no reason to doubt that at some peak times traffic queues are considerable. However the appeal scheme includes a new roundabout at the northern end of Ersham Road and this would considerably increase capacity and ease flows through the junction. It is understood that this improvement is an objective in the Local Transport Plan subject to funding. A small area of the required land is controlled by the Town Council but as there is an agreed need for the improvement it seems unlikely that this would be an impediment to implementation. This element of the appeal scheme would be controlled by means of a Grampian-style condition and also offers a wider benefit for existing road users [12; 112 bullet 3; 114-122; 125; 133].
184. There is local concern that the lanes to the south of the site would be used as a "rat run" by those wishing to find a shorter route to the A22. A planning condition is proposed to discourage this being used as a route for heavy vehicles during the construction period. It is not of course possible to prevent new occupiers from using whichever part of the public highway network they choose but the Transport Assessment shows only minor increases in existing flows travelling south along Coldthorn Lane. It is relevant to note that East Sussex County Council as Highway Authority and the Highways Agency have raised no objections to the appeal development either in terms of its access arrangements or the ability of the local highway network to cope with the additional traffic generated. In the circumstances it is concluded that the proposal would not give rise to harm to highway safety or the free flow of traffic and that relevant development plan policy, including saved Policy TR3 in the WLP, would not be offended in this respect [114; 115; 118; 125; 129].

Other matters

185. There is a serious and longstanding need for affordable housing in Wealden district as is acknowledged in the CS. Policy WCS8 sets out a requirement for 35% provision on sites of 5 or more dwellings. The need far exceeds the provision and so the situation is likely to get worse year on year. The scheme would deliver the full policy level of affordable housing amounting to around 69 dwellings. The Planning Obligation includes the arrangements for delivery which is linked to the occupation of the market units. The mix would be 80% social rented units and 20% intermediate housing in accordance with Policy WCS8 in the CS. The affordable housing element of the appeal scheme is a benefit of significant weight to be added into the planning balance [17; 66; 121; 136].
186. There was a considerable amount of local concern about the impact of the proposed development on local flooding. I observed at my visit that there was a lot of surface water in Coldthorn Lane and overflowing from its ditches. I

also heard concerns about people's gardens flooding. The Flood Risk Assessment accompanying the planning application confirmed that the site itself is not within an area with a high risk of surface water flooding. As the proposal would use a Sustainable Drainage System (SuDS) for the disposal of surface water there would be no increase in the greenfield runoff rates. The development would not be likely to increase surface water flooding in the locality. The surface water drainage system would be controlled by a planning condition and the Environment Agency has raised no objections on these grounds [112 bullet 2; 114-120; 126; 130].

187. The proposal would include a new doctor's surgery. A number of local people considered that there was a shortage of medical facilities in the town although there was also some hearsay evidence that a surgery in this location would not be attractive to local doctors. The Council was critical about the lack of information about the size of the facility or what it was intended to entail. However it seems likely that fuller discussions would take place with local healthcare commissioners at the detailed planning stage. The information provided by the Appellant supports the view that such a facility would be a benefit of the scheme and I see no reason why the lack of detail at this stage should count against it. A condition would require the surgery to be ready for use before the occupation of the 120th dwelling on the site. This seems reasonable as there would be sufficient value left in the site to ensure that the facility would be delivered to serve the needs of new residents as well as the wider population [11; 113; 132].
188. The proposal would include areas of outdoor play space including equipped children's playing areas, youth and adult open spaces. The Planning Obligation makes the necessary provision in accordance with the Council's draft *Open Space* supplementary planning guidance and relevant saved policies in the WLP. The outdoor play space along with the woodland, ecology and drainage areas would be maintained in the future by a management company which would also be controlled through the Planning Obligation. These provisions are necessary in order that the needs of the development and those who occupy it would be met in perpetuity. These obligations thus comply with the CIL Regulations [138].
189. There has been reference in local representations to the presence of badgers on the site but the ecological assessment accompanying the planning application did not record any evidence of such use. A number of ecological mitigation measures are suggested to safeguard ponds, trees and hedgerows which have the potential for greater ecological value. Such measures would be subject to a planning condition [121; 133].

Consideration six: Overall conclusion on whether the proposal would be a sustainable form of development

190. The Framework establishes that sustainable development should be seen as a golden thread running through both plan-making and decision-taking. The presumption applies in view of the conclusion on the nature conservation issue. It has been concluded that the relevant policies, including those relating to the countryside and the supply of housing, are not out-of-date and therefore the appeal scheme should be determined in accordance with the development plan unless material considerations indicate otherwise.

191. The Framework identifies three dimensions to sustainable development – economic, social and environmental. The appeal proposal would be immediately deliverable and increase the supply and choice of housing within a district where the objectively assessed needs of the area are not being met in accordance with demographic projections. It would contribute towards economic growth and fund improvements to infrastructure in the form of a junction improvement that would have wider benefits to the local population. There would be social benefits in the form of a significant contribution to much needed affordable housing and a range of housing units to meet different local requirements. The dwellings would be built to Code Level 4 which would ensure high standards of energy conservation and low water consumption [132].
192. The residential environment would include plentiful open space and also the management of adjoining areas, including ancient woodland and the brickworks, which would result in gains to biodiversity. The provision of a doctor's surgery would have advantages for the local population as well as new residents. The site is relatively accessible being close to the Cuckoo Trail which provides an attractive walking and cycling route. Improvements would be made to local bus services to encourage more travel by public transport [11].
193. However the appeal development would not accord with the newly adopted CS which was subject to a recent Examination and public consultation. The Council has identified sufficient land to meet its housing requirement in the short term. Although this is lower than the objectively assessed target in the SEP it has been accepted as sound by the Examining Inspector. Furthermore there is a review mechanism that will take place in a couple of years time and look again at the matter to see whether housing requirements can be increased and if so how this will be done. As matters stand the appeal site is outside the development boundary for Hailsham within an area of countryside. The development and in particular the necessary highway works, would result in significant harm to the character and appearance of the semi-rural area contrary to saved policies GD2 and DC17 in the WLP.
194. The CS has not changed the position in respect of the development boundary to the south of the town and has determined that development needs can be accommodated through urban extensions to the north and east. The Appellant has compared the appeal site against the greenfield releases of the Hailsham and Stone Cross SDAs but this is not an appropriate test because these development areas have been specifically selected for future growth through robust examination within the development plan process. Conversely the appeal site has not. The scheme would thus be contrary to the spatial distribution set out in Policy WCS2 of the CS [17]
195. I have concluded in the context of my consideration of the planning merits of the proposal before me, that the appeal scheme would not have a significant effect on the Pevensy Levels European site, either alone or in combination with other plans and projects. Nevertheless it would be contrary to up to date development plan policy. Whilst recognising the many advantages that it would have to offer, the benefits would not demonstrably outweigh the harm and would be insufficient to justify the granting of planning permission. If the Secretary of State disagrees with this conclusion and wishes to grant planning

permission he, as competent authority under the Habitats Regulations, would need to satisfy himself that there would be no significant effect on the European site. If he believed that such an effect would ensue, either alone or in combination with other plans and projects, then he would be required to undertake an Appropriate Assessment before he could grant planning permission.

196. In the event that planning permission is to be granted I would commend the planning conditions that are set out in Annex C. Justification has been provided in Paragraphs 127-134 of the Report and there are also references to specific conditions where relevant in these Conclusions. It is considered that the conditions are reasonable, necessary and otherwise comply with the provisions of Circular 11/95: *The Use of Conditions in Planning Permissions*. I recommend that they are imposed if the Secretary of State decides to allow the appeal.

RECOMMENDATION

197. For all of the reasons given above, I recommend that the appeal be dismissed.

Christina Downes

INSPECTOR

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Lyness of Counsel, instructed by the Solicitor of Wealden District Council

He called:

Mr C Bending BA(Hons) MA Senior +Planning Officer with the Major Applications Team of Wealden District Council

FOR THE APPELLANT:

Mr M Beard Of Counsel, instructed by Mr P Hughes, PHD Chartered Town Planners

He called

Mr M Dobson MA MPhil MRTPI MRICS Director of Pegasus Planning Group

Mr P Hughes BA(Hons) MRTPI DipMan MCMI Principal of PHD Chartered Town Planners

INTERESTED PERSONS:

Mrs J Bentley Local resident, Mayor of Hailsham and District Ward Councillor

Mr C Triandafyllou Local resident and Town and District Ward Councillor

Mr R Thomas East Sussex County Councillor for Hailsham and Herstmonceux, Chair of LGA Coastal Issues SIG and Chair of Sussex IFCA

Mr G Rowe Local resident

Mr R Hollister Local resident

Mrs S Lemmon Local resident

Mrs C Keate Local resident

Mrs J Wanmer Local resident

Mr M Powell Local resident

ANNEX B: DOCUMENTS

APP/ Application Supporting Documents

APP/1	Transport Assessment
APP/2	Flood Risk Assessment
APP/3	Ecological Assessment
APP/4	Draft Travel Plan
APP/5	Landscape Strategy
APP/6	Arboricultural Report
APP/7	Planning Support Statement incorporating Design and Access Statement
APP/8	Heritage Desk-Based Assessment
APP/9	Archaeological Geophysical Survey

AD/ Appeal Documents

AD/1	Recovery letter
AD/2	Questionnaire
AD/3	Proof of Evidence of Mr Bending
AD/4	Appendices of Mr Bending
AD/5	Supplementary Proof of Evidence of Mr Bending addressing the adoption of the Wealden Core Strategy and Revocation of the SEP
AD/6	Proof of Evidence of Mr Dobson
AD/7	Appendices of Mr Dobson
AD/8	Proof of Evidence of Mr Hughes
AD/9	Appendices of Mr Hughes
AD/10	Supplementary Proof of Evidence of Mr Hughes addressing the adoption of the Wealden Core Strategy and Revocation of the SEP
AD/11	Written Evidence of Capita Symonds
AD/12	Statement of Common Ground
AD/13	Supplementary Statement of Common Ground
AD/14	Local representations to the appeal

ID/	Inquiry Documents
ID/1	Council's notification of the appeal and Inquiry and list of persons notified
ID/2	Housing land supply note prepared by Mr Bending
ID/3	Draft planning Obligation by Unilateral Undertaking
ID/4	Extract from Regulatory & Audit Committee Minutes relating to planning application for residential development on land adj Grovelands School, Dunbar Drive, Hailsham
ID/5	Flow chart relating to consideration of development proposals affecting internationally designated nature conservation sites from Circular 06/2005
ID/6	Statement and attachments delivered orally to the Inquiry by Councillor J Bentley
ID/7	Statement delivered orally to the Inquiry by Councillor C Triandafyllou
ID/8	Plans of the extra care units at the site off Battle Road, Hailsham
ID/9	Appeal decision: land off Long Moss Lane, New Longton Preston
ID/10	Appeal decision: Land at Widham Farm, Station Road, Swindon
ID/11	Appeal decision: land off Foley Way, Newent
ID/12	Land Registry extracts relating to the appeal site
ID/13	Further information about East Sussex County Council's requirements for contributions
ID/14	Suggested additional conditions prepared by Mr Hughes
ID/15	Maps of housing sites drawn up by the Appellant and referred to by number in Supplementary Statement of Common Ground (Appendix SSG2)
ID/16	Further information from Capita Symonds and Mr Hughes on the Package Sewage Treatment Works
ID/17	Further response to the Package Sewage Treatment Works information from Mr Bending and the Environment Agency (letter dated 28 February 2013)
ID/18	List of conditions
ID/19	Letter of objection from Ms M Green handed into the Inquiry on 7 March 2013

ID/	Inquiry Documents
ID/20	Extract from " <i>Guidance on Travel Plans for new development</i> "
ID/21	Fully executed Planning Obligation by Unilateral Undertaking (6 March 2013)
ID/22	Opening statement by Mr Lyness
ID/23	Closing Statement by Mr Lyness
ID/24	Opening Statement by Mr Beard
ID/25	Closing Statement by Mr Beard

PLANS

A/1-A/19	Application plans
B	A3 booklet of selected application plans

ANNEX C: 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 begins 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 two years from the date of this permission.
- 3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 5) No work shall be carried out on site until a detailed management plan for reducing construction waste during the building process in the form of site management, waste management and project design and planning has been submitted to and approved in writing by the Local Planning Authority. The approved waste management plan shall be implemented throughout the construction period.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) wheel washing facilities
 - v) security and other external lighting
 - vi) protection of surface water bodies and control of surface water runoff
- 7) No development shall take place until details of access points to the site and the routes for construction traffic have been submitted to and approved in writing by the local planning authority. Construction traffic shall visit and access the site only in accordance with the approved details.
- 8) No development shall take place until full details of the foul water drainage system to serve the development have been submitted to and approved in writing by the local planning authority. This shall be by means of a Package Sewage Treatment Works and the details shall include the design, installation, management, monitoring and long term maintenance of the system during the lifetime of the development. The approved scheme shall be implemented in accordance with the approved details and fully operational before any dwelling is first occupied.
- 9) No development shall take place until details of a sustainable drainage scheme for the disposal of surface water, which shall include the provision and implementation of a surface water regulation system and storage facility, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The details shall include:

- i) The arrangements for implementing the scheme;
 - ii) A timetable for the implementation of the scheme;
 - iii) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
- 10) No development shall take place until full details of the junction arrangements between Ersham Road and Coldthorn Lane, including the mini roundabout and the re-alignment of Coldthorn Lane have been submitted to and agreed in writing by the local planning authority. These details shall be substantially in accordance with the details shown in the Transport Assessment. The details shall include levels and construction details, surface water drainage, street-lighting, finishing materials and the cross falls and longitudinal falls. The approved details shall be completed before the first occupation of any dwelling and the sightlines maintained free of all obstruction to visibility above 1.0 metres.
 - 11) No development shall take place until details of the estate roadways including street lighting has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and no dwelling shall be occupied until it has been provided with access to the public highway along an estate road constructed to binder course surfacing level.
 - 12) The Doctors' Surgery shall be completed and made available for occupation prior to the occupation of the 120th dwelling constructed on the site. The building shall be used for that purpose and for no other purpose including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987) (as amended) or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that order with or without modification.
 - 13) The dwellings shall achieve Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 has been achieved.
 - 14) No development shall take place until details of existing and proposed ground levels and ground floor slab levels of the buildings relative to Ordnance Datum Newlyn have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 15) No development shall take place until the local planning authority has approved in writing a full detailed scheme of works for improvements to the South Road/ Ersham Road/ Diplocks Way junction in accordance with the details shown in the Transport Assessment. No dwelling shall be occupied until those works have been completed in accordance with the approved details.
 - 16) No development shall take place until a landscape strategy for the long term management and maintenance of the non-developed land in the control of the Appellant to the south of the developed area has been submitted to and approved in writing by the local planning authority. This shall include a timetable for implementation and shall be consistent with the Landscape

Strategy prepared by David Clarke and dated April 2012. The development shall be carried out in accordance with the approved strategy and timetable.

- 17) No development shall take place until an ecology and habitat management strategy for the protection, management and maintenance of the non-developed land in the control of the Appellant to the south of the developed area has been submitted to and approved in writing by the local planning authority. This shall include a programme timetable and shall be consistent with Section 6 of the Ecology Assessment prepared by Aspect Ecology Limited and dated April 2012. The development shall be carried out in accordance with the approved strategy.
- 18) If it is intended to develop the site in more than one phase a phasing scheme shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The scheme shall include details of the phasing of the construction of development including the means of access, layout of buildings, car parking and servicing arrangements. The development shall be carried out in accordance with the approved details.

End of conditions.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.