



Department for
Communities and
Local Government

Simon Packer
Director
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Southampton SO14 0TB

Our ref: APP/P1425/W/16/3145053
Your ref: LW/15/0607

14 March 2017

Dear Mr Packer

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 - APPEAL MADE BY BOVIS HOMES LTD - ERECTION OF UP TO 95 DWELLINGS AT LAND EAST OF DITCHLING ROAD, WIVELSFIELD, EAST SUSSEX - APPLICATION REF: LW/15/0607

1. I am directed by the Secretary of State to say that consideration has been given to the report of Terry G Phillimore, MA MCD MRTPI, who held a public local inquiry on 14-16 September 2016 into your clients' appeal against the decision of Lewes District Council ("the Council") to refuse planning permission for an application for planning permission for the erection of 95 new dwellings with the provision of two new bus stops, associated pedestrian and cycle access via Blackmores, landscaping and parking at Land East of Ditchling Road, Wivelsfield, in accordance with application ref: LW/15/0607, dated 17 July 2015.
2. On 6 September 2016 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 the appeal involves a proposal for residential development of over 25 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local authority but the relevant plan has not yet been made.

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 recommendation and dismisses the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

4. Following the making of the Wivelsfield Parish Neighbourhood Plan (WNP) and the publication of the Written Ministerial Statement on Neighbourhood Plans, the Secretary of State invited additional comments from the main parties to the appeal on 6 January 2017. A list of the representations received is at Annex A and copies may be obtained on written request to the address at the foot of the first page of this letter. The Secretary of State has given careful consideration to all representations received but, for the reasons given below, does not consider that they raise any further issues on which he requires additional information before proceeding to a decision on this case.

Policy and statutory considerations

5. In reaching his decision, 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.
6. In this case the development plan comprises the saved policies of the Lewes District Local Plan (LP) adopted in March 2003; the Lewes District Local Plan Part 1: Joint Core Strategy (JCS) 2010-2030, adopted by Lewes District Council on 11 May 2016 and by the South Downs National Park Authority on 23 June 2016; and the Wivelsfield Parish Neighbourhood Plan (WNP) made on 7 December 2016. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR18-28 and, following the making of the WNP, those policies set out at IR31-34.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

Agreed matters

8. The Secretary of State notes that, ahead of the inquiry, a Planning Statement of Common Ground was agreed between the appellant and the Council as described in the Inspectors report IR 35-38.

Main issues

9. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR 254.

The relationship of the proposal to the development plan

10. For the reasons given at IR 255–257 the Secretary of State agrees that the scheme is in conflict with saved policy CT1 and that there is no dispute on this. Like the Inspector, the Secretary of State considers the weight that should be attached to this policy is considered later in this decision letter (IR258-259). The Secretary of State has considered carefully the Inspector's analysis at IR260-264, and agrees that, despite the degree of compliance with other policies, and given the fundamental nature of the conflict with policy CT1, the proposal was not in accordance with the development plan as considered at the inquiry (IR264). The Secretary of State notes that, following the close of the inquiry, the WNP has been made and now forms part of the development plan. Having considered carefully the representations received following the making of the WNP, and noting that none of the relevant policies referenced by the Inspector at IR267-

269 have changed from the emerging WNP to the made WNP, the Secretary of State agrees with the Inspector that the proposal is in breach of the `made` WNP (IR270).

11. Overall, and despite the degree of compliance with a number of policies in the LP, JCS and WNP, given the fundamental nature of the conflicts with policy CT1, and WNP Policy 1, the Inspector concludes that the proposal is not in accordance with the development plan as a whole.

Five year land supply

12. The Secretary of State notes that whether the Council can demonstrate a five year land supply is in dispute, with the Council calculating the existing supply as 5.6 years, and the appellant at 2.6 years (IR274). The Secretary of State has considered the Inspector's analysis and approach at IR275-296 and the further representations received from the appellant. The Secretary of State notes that the additional representations, and the main parties position regarding the 5 year land supply, effectively mirror the evidence considered by the Inspector at the inquiry. He agrees with the Inspector that the appropriate buffer should be set at 5% and that the `Liverpool method` should be applied in this case.
13. The Secretary of State considers like the Inspector, and based on the evidence before him and the representations received, that the Council can demonstrate a five year land supply – and given this there is no reason to find the agreed policies for the supply of housing should be considered out of date (IR297-299).

Sustainable development

14. For the reasons set out at IR317-321, the Secretary of State agrees with the Inspector that, overall, the site is one that performs relatively well in environmental terms and within a constrained district with an extensive housing requirement, this is a factor in favour of the appeal scheme and significant weight should be given to this in the balancing exercise (IR322). He further agrees that substantial weight should be given to the housing gain that would result from the proposal (IR323-325).

Plan-led

15. The Secretary of State has considered the Inspector's analysis around whether the appeal proposal is genuinely plan-led and the weight to be given to the identified conflict with the current development plan (IR326). For the reasons set out at IR327-328, the Secretary of State agrees that LP policy CT1 is not out of date (either by operation of paragraph 215 or paragraph 49 of the Framework) and that the conflict with it should be given significant weight in the decision. While he notes and agrees with the Inspector's analysis at IR331-335, the position has now changed as the WNP is now part of the development plan. Having considered the representations made following the inquiry, he concludes that there is a clear conflict with the WNP.

Planning conditions

16. The Secretary of State has considered the proposed conditions at IR Annex B, the Inspector's analysis at IR300-309, the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligation

17. Having had regard to the Section 106 Agreement and submitted at the Inquiry, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusions (IR310-315), the Agreement complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligation overcomes his reasons for deciding that the appeal should be dismissed.

Planning balance and overall conclusion

18. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with saved policies CT1 and WNP Policy 1, that these policies should be considered up to date, and is therefore not in accordance with the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State attaches significant weight in favour of the appeal to the delivery of housing, including affordable housing. While recognising the benefits of the scheme in terms of the economic and social roles of sustainable development the Secretary of State concludes that the material considerations weighing in favour of the appeal scheme are not sufficient to outweigh the conflict with the development plan.

Public Sector Equality Duty

19. In accordance with section 149 of the Equality Act 2010, due regard has been given to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The Secretary of State has considered the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. In this regard and in coming to this decision, the Secretary of State has considered the negative impact that would arise given that affordable homes will not be built.

Formal decision

20. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for up to 95 dwellings (including affordable housing), with the provision of two new bus stops, associated pedestrian and cycle access, landscaping and parking in accordance with application ref: LW/15/0607, dated 17 July 2015.

Right to challenge the decision

21. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an

application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

22. A copy of this letter has been sent to Lewes District Council and Wivelsfield Parish Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Ray Colbourne

Ray Colbourne
Authorised by Secretary of State to sign in that behalf

Annex A Schedule of representations

Party	Date	Nature of response
Mrs Sarah Sheath Senior Planning Officer Lewes District Council	10/01/17	Response to reference back of 06/01/2017 consultation
John Kay CPRE Sussex	11/01/17	Response to reference back of 06/01/2017 consultation
Jason Stoner	13/01/17	Response to reference back of 06/01/2017 consultation
Wivelsfield Parish Council	13/01/17	Response to reference back of 06/01/2017 consultation
Simon Packer Director Turley	13/01/17	Response to reference back of 06/01/2017 consultation
Mrs Sarah Sheath Senior Planning Officer Lewes District Council	18/01/17	Response to Final reference back of 16/01/2017 consultation
Simon Packer Director Turley	20/01/17	Response to Final reference back of 16/01/2017 consultation
Wivelsfield Parish Council	20/01/17	Response to Final reference back of 16/01/2017 consultation

Report to the Secretary of State for Communities and Local Government

by Terry G Phillimore MA MCD MRTPI

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

Date: 25 October 2016

TOWN AND COUNTRY PLANNING ACT 1990

LEWES DISTRICT COUNCIL

APPEAL MADE BY

BOVIS HOMES LTD

Inquiry held on 14-16 September 2016

Land East of Ditchling Road, Wivelsfield, East Sussex

File Ref: APP/P1425/W/16/3145053

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File Ref: APP/P1425/W/16/3145053
Land East of Ditchling Road, Wivelsfield, East Sussex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bovis Homes Ltd against the decision of Lewes District Council.
- The application Ref LW/15/0607, dated 17 July 2015, was refused by notice dated 22 January 2016.
- The development proposed is erection of 95 new dwellings with the provision of two new bus stops, associated pedestrian and cycle access via Blackmores, landscaping and parking.

Summary of Recommendation: The appeal be dismissed.

PROCEDURAL MATTERS

1. Determination of the appeal was recovered by the Secretary of State shortly before the inquiry opened, by way of a direction dated 6 September 2016. The reason given for the recovery is that *"the appeal involves a proposal for residential development of over 25 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local authority but the relevant plan has not yet been made."*
2. The inquiry proceeded on the basis of the plans and supporting documentation identified in the Statement of Common Ground.¹
3. At the inquiry a completed Section 106 Agreement between the appellant, the Council and East Sussex County Council was submitted.²
4. With the agreement of the main parties I led a round table discussion of housing land supply matters on the first day of the inquiry. This followed an agenda prepared in advance of the inquiry.³
5. I carried out an unaccompanied site visit on 16 September 2016 which took in the site and the footpaths across it and the surrounding area.

THE SITE AND SURROUNDINGS⁴

6. The appeal site is located on the southern edge of the parish of Wivelsfield. The majority of the local services in the settlement of Wivelsfield Green lie some 1.1-1.6km to the east. The outskirts of Burgess Hill are approximately 2km to the south-west of the site, and the outskirts of Haywards Heath approximately 2.5km to the north. The town centres of these two larger settlements which provide a range of services and facilities are some 4-5km away. Bus routes link to these centres and to Wivelsfield railway station.⁵
7. The site extends to 5.4 hectares and broadly comprises three separate parcels of land currently used for grazing separated by bands of mature trees and hedging.

¹ Document CD20 Section 3

² CD19

³ CD21

⁴ Location plan and aerial photograph at LPA4 Appendices 1 and 2

⁵ CD20 paras 7.2-7.6

- The only existing structures are a large barn in the north-east corner, with an area of hardstanding and some smaller outbuildings to the rear of the barn.⁶
8. The northern boundary of the site abuts a cul-de-sac of residential development known as Blackmores, along with Wyndalls, which is the southern most of three detached dwellings fronting Ditchling Road to the south of Baldocks Garage. The eastern boundary adjoins the rear gardens of residential properties fronting Green Road.
 9. The western edge of the site is bounded by the Ditchling Road (B2112) and mature hedging, with an access along the western boundary approximately 50m from the north-west corner of the site.
 10. The southern boundary of the site is marked by mature hedgerows and trees, with agricultural fields beyond.
 11. Public footpath 10b passes through the site in an east/west direction. Public footpath 22b passes along the eastern boundary of the site and exits near the south-east corner.

THE PROPOSAL

12. A new vehicular access is proposed along the western boundary of the site from the B2112 Ditchling Road. Pedestrian and cycle links at the north-east corner would be maintained onto Blackmores, and access to the public footpaths 10b and 22b which pass through the south-east corner and provide access onto Green Road would be safeguarded.⁷
13. All of the dwellings would be two storeys in height, with a mix of detached, semi-detached and terraced houses and a two-storey apartment building. The dwellings would be of a traditional design incorporating a mix of brick, tile hanging and render, and tiled roofs.⁸ 40% of the units would be provided as affordable housing. The mix is proposed as 2, 3, 4, and 5-bedroomed market units, and 1, 2 and 3-bedroomed affordable units.
14. Areas of public open space are proposed within the central part of the site and along the boundaries, with a large block within the south-west part. This open space would incorporate the retained existing vegetation, and along the southern boundary would provide a substantial landscape buffer to the countryside beyond.
15. Two new bus stops are proposed on the B2112 immediately outside the appeal site.⁹

PLANNING POLICY

Adopted development plan

16. The development plan for the area currently comprises the saved policies of the Lewes District Local Plan adopted in March 2003; and the Lewes District Local

⁶ CD20 section 2

⁷ CD20 section 3

⁸ CD20 para 7.8

⁹ CD20 paras 7.5 & 7.7

Plan Part 1: Joint Core Strategy 2010-2030, adopted by Lewes District Council on 11 May 2016 and by the South Downs National Park Authority on 23 June 2016.¹⁰

17. The following are relevant policies in these two adopted plans.

Local Plan

18. In the Local Plan¹¹, policy CT1 sets out that development will be contained within the Planning Boundaries as shown on the Proposals Map. Planning permission will not be granted for development outside these, other than for that specifically referred to in other chapters of the Plan or in listed categories. The policy adds that the retention of the open character of the countryside is of heightened importance where it separates settlements and prevents their coalescence; development referred to above may not be acceptable where its scale would significantly erode the gap between settlements and detract from their separate identities.
19. Policy ST3 on the design, form and setting of development lists design criteria with which development will be expected to comply. Policy ST11 sets out requirements on landscaping.
20. Policy ST14 requires that developments should not result in deterioration in the quality and potential yield of surface water and groundwater resources. Requirements for the protection of air and land quality are set out in policy ST30.
21. Policy RES19 deals with the provision of outdoor playing space with residential development. Policy RE1 sets out standards on provision for sport, recreation and play.
22. Policy H3 gives protection to buildings of local, visual or historic interest.

Joint Core Strategy

23. In the Joint Core Strategy (JCS)¹², Spatial Policy 1 deals with the provision of housing and employment land. It sets out that in the period between 2010 and 2030 a minimum of 6,900 net additional dwellings will be provided in the plan area (this is the equivalent of approximately 345 net additional dwellings per annum).
24. On the distribution of housing, Spatial Policy 2 sets out how 3,597 net additional dwellings will be distributed, which is the remainder after part of the minimum total will be met by way of completions up to April 2015, existing commitments, and allowances for unidentified small-scale windfall sites and rural exception sites. The distribution will be through: (1) identified strategic site allocations; (2) planned housing growth at settlements (with a minimum of 30 net additional units at Wivelsfield Green); and (3) about 200 net additional units in locations to be determined. The policy adds that, for the housing growth identified in (2) and (3), individual sites to meet the planned levels of housing provision will be identified in either the District Council's Site Allocations and Development

¹⁰ CD20 section 5

¹¹ CD3

¹² CD4

Management Policies DPD or the National Park Authority's Local Plan; neighbourhood plans could also be used to identify the individual sites.

25. Core Policy 1 sets out a district wide target of 40% affordable housing for developments of 10 or more units. Core Policy 2 provides requirements on housing type, mix and density.
26. Core Policy 7 identifies ways in which needs for infrastructure will be met. Core Policy 8 deals specifically with green infrastructure. Core Policy 9 sets out objectives on air quality. Requirements on conserving and enhancing the natural environment and landscape character are given in Core Policy 10. Means by which a high quality design in all development will be secured are given in Core Policy 11.
27. Core Policy 12 deals with flood risk.
28. Core Policy 13 identifies ways in which sustainable travel will be supported.

Emerging development plan

29. The Wivelsfield Parish Neighbourhood Plan 2015-2030 (WPNP)¹³ is currently in preparation. It was submitted to the Council in January 2016 and Regulation 16 consultation took place between 8 February and 21 March. An independent examination has subsequently been carried out and the Examiner's report has been received by the Council.¹⁴ This concludes that, subject to making some recommended modifications, the Plan meets the basic conditions and should proceed to a referendum. The Council in a Decision Statement dated September 2016 confirms that in consent with Wivelsfield Parish Council it has decided to accept the modifications, and that the Plan may proceed to referendum.¹⁵ This is scheduled to take place on 27 October 2016.¹⁶
30. The following are relevant policies in the WPNP.
31. Policy 1 on a Spatial Plan for the Parish sets out that the Plan defines development boundaries at Wivelsfield Green and Theobalds (east of Burgess Hill) for the purpose of directing future housing, economic and community related development to within those settlements to enhance their role as sustainable communities and encouraging the re-use of previously-developed land and of land of a similar character that currently detracts from the appearance of a settlement. Proposals for housing development outside the boundaries will only be granted if they are consistent with the countryside policies of the development plan.
32. Policy 2 deals with housing site allocations. Development proposals for housing on identified sites will be supported, subject to them having regard to development principles which are outlined. The sites are Land at Springfield Industrial Site, West of B2112 (approximately 30 dwellings) and two sites on

¹³ CD13

¹⁴ CD17

¹⁵ CD18

¹⁶ Oral advice given at the inquiry

Land at Hundred Acre Lane (each of approximately 2 dwellings). The revised Development Boundaries as shown in the Plan incorporate these sites.¹⁷

33. No modifications affecting these policies were recommended by the Examiner, and no amendments are proposed prior to the referendum.
34. Policy 5 deals with design, and policy 6 with green infrastructure and biodiversity. The Examiner recommended a minor modification to the wording of the former policy.

AGREED MATTERS

35. A Planning Statement of Common Ground has been agreed between the appellant and the Council.¹⁸ This describes the site, the proposal, planning history, and the policy context. The following points can also be noted as agreed:
- a. The site is outside any planning boundary (Wivelsfield Green West¹⁹) but immediately adjacent to the southern and western (part) settlement boundary as defined by saved policy CT1 of the adopted Local Plan and carried forward by the Joint Core Strategy.²⁰
 - b. The proposal conflicts with policy CT1. However, the planning boundaries were set within the context of a strategy to deliver housing up until 2011 and will need to be altered to ensure that the planning growth up until 2030 as set out in the Joint Core Strategy is delivered.²¹
 - c. The site is not subject to any technical constraints that would prevent its development coming forward. Whilst this is subject to the submission of suitable condition details, there is no suggestion these matters cannot be resolved with agreed and approved mitigation.²²
 - d. Financial contributions towards recycling and highway provisions along with affordable housing can easily be addressed through an undertaking.²³
 - e. A number of financial contributions sought by consultees will no longer be sought following the implementation of the Council's CIL Charging Schedule (1 December 2015) and are no longer applicable accordingly.²⁴
 - f. The Highway Authority is satisfied that the site is within walking distance of the local facilities such as the local shop.²⁵
 - g. The provision of the two upgraded additional bus stops on the B2112 immediately outside the site would serve the existing bus routes along here and would provide opportunities to access higher order settlements

¹⁷ CD13 p49 Plan H

¹⁸ CD20

¹⁹ CD5

²⁰ CD20 para 6.2

²¹ CD20 para 6.2

²² CD20 para 6.3

²³ CD20 para 6.4

²⁴ CD20 para 6.5

²⁵ CD20 para 7.3

such as Burgess Hill and Haywards Heath by alternative means of transport.²⁶

- h. The design of the proposal is appropriate having regard to the prevailing character in the surrounding area.²⁷
 - i. The scheme is compatible with the prevailing urban grain of the existing built up edge and the site location on the edge of the settlement.²⁸
 - j. The site is relatively well-contained within the wider landscape, and is largely hidden from long range public views notwithstanding the views possible from the public footpaths which pass through the site.²⁹
 - k. The development would have no significant adverse transport impacts either in terms of queues or delays at junctions or highway safety, and would provide suitable parking, cycle provision, bin storage and internal access arrangements to meet required standards.³⁰
 - l. There is no objection on ecological grounds subject to appropriate conditions.³¹
 - m. The proposal includes sufficient separation distance and boundary treatments where appropriate to ensure that there would be no material harm to the amenity of surrounding residential properties.³²
 - n. There is no objection on flood risk or drainage grounds subject to appropriate conditions.³³
 - o. There is no objection to the mix of affordable housing need subject to appropriate provision in the section 106 agreement.³⁴
 - p. There is no objection on archaeological grounds subject to appropriate conditions.³⁵
36. A separate Five Year Housing Land Supply Statement of Common Ground was prepared for the round table session on this matter.³⁶ This records the following points of agreement.
- a. The relevant period for testing five-year housing land supply for the appeal is 1 April 2016 to 31 March 2021. The base date is therefore 1 April 2016.³⁷
 - b. The starting point for testing the five-year supply is the housing requirement figure set out in Spatial Policy 1 of the Joint Core Strategy. That sets out a requirement for a minimum of 6,900 new homes over the

²⁶ CD20 para 7.5

²⁷ CD20 para 7.8

²⁸ CD20 para 7.9

²⁹ CD20 para 7.11

³⁰ CD20 para 7.12

³¹ CD20 para 7.13

³² CD20 para 7.14

³³ CD20 para 7.16

³⁴ CD20 para 7.18

³⁵ CD20 para 7.19

³⁶ CD21

³⁷ CD21 para 2.1

20 year plan period (2010-2030), equating to an annual requirement of 345 new homes.³⁸

- c. The buffer should be applied to both the initial housing requirement and any shortfall in delivery accrued to date.³⁹
 - d. The under-delivery that has accrued in the plan period to date (since 2010) is 767 new homes.⁴⁰
 - e. If it is found that the Council is not able to demonstrate a five-year supply, paragraph 14 of the NPPF would be engaged.⁴¹
 - f. Relevant policies for the supply of housing include Local Plan policy CT1, JCS Spatial Policies 1 and 2, and draft Wivelsfield Parish Neighbourhood Plan policies 1 and 2.⁴²
 - g. If it is found that the Council is not able to demonstrate a five-year supply, the contribution of the proposal towards housing delivery should be considered a benefit which carries very significant weight.⁴³
37. With regard to the anticipated five-year contributions from individual named sites, the respective positions of the parties as they stood following the round table discussion are summarised in the table attached at Annex A.
38. The summaries of cases of the parties put forward at the inquiry now set out below are based on closing submissions⁴⁴, as supplemented orally, and the written and oral evidence, with references given to relevant sources.

THE CASE FOR LEWES DISTRICT COUNCIL

Housing Land Supply

39. The JCS Examining Inspector's report was issued only in March 2016, and was based on the housing land supply position as at 1 October 2015.⁴⁵ Since then, up to the agreed base date of 1 April 2016, the shortfall has decreased from 859 to 767 units and the supply as calculated by the Council has remained broadly the same.⁴⁶
40. There is no reasonable basis to support the appellant's suggestion that "*pressure*" on the Inspector to find the plan sound led him to adopt a 5% buffer and the 'Liverpool' approach in assessing the Council's five-year supply.⁴⁷ He explains why he has done this in his report.⁴⁸
41. A challenge to the Council's ability to demonstrate a five-year housing land supply was made and dismissed as recently as an Inspector's appeal decision on

³⁸ CD21 para 2.2

³⁹ CD21 para 2.3

⁴⁰ CD21 para 2.4

⁴¹ CD21 para 2.5

⁴² CD21 para 2.6

⁴³ CD21 para 2.7

⁴⁴ LPA6; APP10 & APP11

⁴⁵ CD7; CD9

⁴⁶ CD9 & CD11 [345x5.5-1039=858.5; 345x6-1303=767]

⁴⁷ APP1 paras 4.1.5 & 4.1.12

⁴⁸ CD7 paras 38-40

6 June 2016.⁴⁹ The appellant's case must therefore show what has changed since then.

The Buffer

42. The 5% buffer as the Council has applied is in accordance with paragraph 47 of the NPPF. This is because the JCS Inspector clearly found that "*there has not been a persistent record of under-delivery...*".⁵⁰ It was within the Inspector's power to have assessed historic delivery rates against the subsequently adopted and higher requirement figure of the JCS rather than the lower figure of the previous South East Plan (SEP), as the appellant advocates, but he decided not to do so.
43. It must be correct to make an assessment of housing completions against the adopted target then in place. That is what having a plan-led system means. The JCS Inspector consciously followed this approach in assessing supply in earlier years against the SEP target rather than the JCS. The Council could not be expected to have planned in 2010 (the start date of the JCS plan period) for future unknown targets, and there is no basis for the claim made by the appellant that its approach is "*disingenuous*"⁵¹.
44. The NPPF clearly seeks to boost significantly the supply of housing. However, equally significant is the time taken to set a revised housing figure. The first draft of the JCS proposed a lesser figure of a minimum of 5,600 dwellings. This is what the JCS Inspector was referring to in stating that:

"Based on the former South East Plan figures for new housing there has been no material failure to deliver the necessary numbers over recent years in the district, with the average (235 dwellings per annum) being slightly above the target (220 dpa) since 2006/7... The increased requirements arising from the NPPF and the recent work on this Plan have only been fully clarified in the last year or so and there is inevitably a time delay involved in planning a significant uplift in new housing delivery in any area.

*Therefore, based on the Council's uncontested figures for the number of new dwellings built in the district over the last 10 years or so, taken in the round, I am satisfied that there has not been a persistent record of under delivery that would involve...a 20% buffer provision in relation to the 5 year housing land supply from October 2015. A 5% buffer is therefore sufficient for consistency with national policies/guidance in this particular instance."*⁵²

45. The 6,900 requirement figure in the adopted JCS does not equate to the full objectively assessed need for the district because of the extraordinary constraints on the area (in particular the presence of the sea and the South Downs National Park), which the Inspector recognised.⁵³ He therefore did not assess performance of housing delivery against a back-dated JCS target.

⁴⁹ LPA2 Appendix NC2 para 22

⁵⁰ CD7 para 38

⁵¹ APP1 para 6.1.15

⁵² CD7 paras 37-38

⁵³ CD7 para 31

46. Examining past delivery over a ten year period is consistent with advice in the Planning Practice Guidance (PPG).⁵⁴ This is because it provides a more robust assessment that allows for both peaks and troughs of the housing market. The depth and duration of the downturn post-2008 illustrates the value of this advice. The rate of housing completions fell below the SEP target only in 3 of the 10 years (2009/10, 10/11 and 13/14), the first two of which were immediately after the economic downturn.⁵⁵

'Liverpool' or 'Sedgefield'

47. The PPG generally advocates the 'Sedgefield' approach, which is to make up the shortfall in the first five years.⁵⁶ However, that is not always correct, and the reasons why it is not appropriate in the case of Lewes are set out clearly by the JCS Inspector:

"In a district where the main town and most sustainable location for new housing is within the National Park and many of the other larger settlements are also constrained by their proximity to the sea and the capacity of the coastal road network, it is not practical or realistic to seek to increase new housing delivery over and above recent planned rates to the extent necessary to meet the full shortfall that has developed during the recent recession entirely within the first 5 years of the plan period."⁵⁷

"This also takes into account that the Plan's housing trajectory from 2015 onwards is already front loaded, to a degree. Accordingly, I am satisfied that, in all the relevant circumstances in this district at this time, there is a specific local justification for the Councils to seek to meet the shortfall in this area over the full plan period (the Liverpool method), rather than having to try (and probably fail) to do so over the first 5 years (the Sedgefield method)."⁵⁸

48. This explanation emphasises the particular and unusual constraints acting on the Council, and is an eloquent and recent exposition of the circumstances that apply in Lewes which allow for the application of the 'Liverpool' methodology notwithstanding the PPG advice. Obviously, none of those circumstances has changed since the Inspector wrote his report in March 2016. The 'step change' in delivery sought by the NPPF that the appellant refers to is not a new factor that has come into play since March this year, since the NPPF was published in 2012.

Specific Sites

49. The Council's ability to meet its adopted housing target, as shown above, should be noted. This should give confidence that, notwithstanding the considerable uplift in housing provision now required, the Council has been and remains able to deliver this, and its site-specific observations should be accepted.

⁵⁴ LPA1 para 4.30; PPG 3-035-20140306

⁵⁵ LPA1 p12 Table 1

⁵⁶ PPG 3-035-20140306

⁵⁷ CD7 para 39

⁵⁸ CD7 para 40

50. Three sites (totalling 72 units) identified in the 1 October 2015 five-year supply have actually already come forward to planning application or permission being granted⁵⁹, indicating the accuracy of the Council's methodology.
51. The assessment of individual sites made by the Council's housing land supply witness⁶⁰ is realistic. The fact that the Council has been consistently meeting its adopted plan targets should give comfort that the Council is aware of the importance of providing the required housing sites, and is responding positively to the increased housing targets in the JCS.

Windfalls

52. The Council's windfall figure of 50 dwellings per year⁶¹ comes from a suggestion made by the JCS Inspector in his Initial Findings report of 10 February 2015. He stated with respect to a previously proposed allowance of 37dpa that:

*"However, bearing this in mind, I am prepared to accept that a slightly less cautious assessment of the total number of new homes reasonably likely to be delivered through "windfalls" over the plan period might reasonably be applied, such as 50 per year. This would take into account the evidence of previous delivery and realistic prospects in an improving national and local economy."*⁶²

Overall five-year position

53. As at 1 April 2016 the five-year supply is calculated at 5.6 years, based on a requirement of 2,099 units and a supply of 2,349 units (a surplus of 250 units).⁶³

Planning Issues - adopted policies

54. The NPPF sets out that planning should:

"Be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area".⁶⁴

55. That is the first of the Core Principles identified by the NPPF.
56. It is common ground that the proposal is not in accordance with saved policy CT1 of the Local Plan.⁶⁵ Such is the significance of policy CT1 to a rural district which has to accommodate quite a lot of housing, it is the key countryside policy.⁶⁶ Notwithstanding the compliance of the proposal with other policies of the development plan, conflict with policy CT1 means that there is not compliance with the development plan as a whole.⁶⁷

⁵⁹ LPA1 para 4.62

⁶⁰ Ms Carpenter; LPA1 paras 4.36-4.57

⁶¹ LPA1 para 4.59; CD11 para 19 [145 units are included in the five-year supply after applying a stepped approach up to the full amount in years 4 & 5]

⁶² CD6 3rd page last para

⁶³ LPA1 p30 Table 7 & para 4.74 [Inspector's Note: 2,349 is a reduction from the figure of 2,360 included in Table 7 to reflect the Council's acceptance at the round table session that one disputed site of 11 units is not deliverable – see CD21 Appendix 1]

⁶⁴ NPPF para 17

⁶⁵ CD20 6.2

⁶⁶ LPA3 para 7.3

⁶⁷ LPA3 paras 9.4 & 11.3

57. The circumstances of the current appeal where the issue is purely an 'in principle' one not involving any other traditional development management issues are unusual but not unique. A similar position arose with a recent proposal for 90 houses on a site in Ringmer.⁶⁸
58. In accordance with the NPPF and the statutory requirements⁶⁹, the starting point in this case is therefore one of a refusal of planning permission unless material considerations indicate otherwise. The material considerations need to be additionally compelling to overcome the scales starting as tilted against approval as a result of the conflict with policy CT1⁷⁰.
59. The appellant's case is that policy CT1 (together with Spatial Policies 1 and 2 of the JCS and Policies 1 and 2 of the Wivelsfield Parish Neighbourhood Plan) are out-of-date⁷¹, so that the 2nd bullet of 'decision taking' (the 'tilted balancing exercise') in paragraph 14 of the NPPF applies, and the planning balance is weighted in favour of permission.⁷²
60. However, policy CT1 comes through the various assaults on it unscathed. It should also be afforded full weight in terms of paragraph 49 of the NPPF on account of the Council being able to demonstrate a five-year supply of deliverable housing sites.
61. Even if the demonstration of a five-year supply is not accepted, considerable weight should nonetheless still be given to policy CT1 for three reasons.
62. First, any shortfall is likely to be small bearing in mind that the Council was found by an Inspector to be capable of delivering a five-year supply as recently as June 2016 in another appeal, despite a challenge to its housing land supply figures.⁷³ Any change must therefore have happened since then.
63. Second, the steps taken to reduce/prevent the shortfall should be considered.⁷⁴ This has involved the Council allocating additional strategic sites at Old Malling Farm, Lewes and Lower Hoddern Farm, Peacehaven, and making full allocations of previously proposed strategic sites at Harbour Heights, Newhaven and Land North of Bishop's Lane, Ringmer. In addition to this has been the progress being made on the preparation of Local Plan Part 2 and neighbourhood plans.⁷⁵
64. Third, policy CT1, notwithstanding those parts which are not in accordance with the NPPF, is generally in accordance with its objectives to protect the countryside

⁶⁸ Cross-examination of Ms Sheath [it was advised that a decision on this Secretary of State recovered appeal was awaited]

⁶⁹ NPPF para 12

⁷⁰ South Northamptonshire Council and Another v SSCLG and Another [2013] EWHC 11: HHJ Mackie at para 20: "*I conclude from all this that the section requires not a simple weighing up of the requirement of the plan against the material considerations but an exercise that recognises that while material considerations may outweigh the requirements of a development plan, the starting point is the plan which received priority. The scales do not start off in even balance.*"

⁷¹ APP3 para 4.37

⁷² APP3 paras 6.2 & 5.8

⁷³ CD15

⁷⁴ LPA1 para 4.6

⁷⁵ LPA1 paras 4.7-4.8

by defining settlement boundaries and restricting development outside those boundaries in the countryside.⁷⁶ The NPPF states that planning should:

*"take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it."*⁷⁷

65. An Inspector in a recent appeal found policy CT1 to be consistent with the NPPF.⁷⁸

66. Guidance about weight to be given to an out-of-date policy where there is found not to be a five-year housing land supply is not found in the NPPF, but the point was addressed by the Court of Appeal in Hopkins Homes:

*"The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the LPA to address it, or the particular purpose of a restrictive policy..."*⁷⁹

67. The appellant also argues that the planning boundaries referred to in policy CT1 will have to be changed to reflect the housing figure now planned for, which is higher than when policy CT1 was adopted. This point necessitates consideration of Spatial Policy 2 of the JCS, in which indications of the distribution of the higher housing figures now planned for are given, including 30 dwellings for Wivelsfield Green.⁸⁰

68. The JCS Inspector did not suggest amending allocations for smaller settlements when he increased the overall housing target to 6,900.⁸¹

69. Spatial Policy 2 is already being fulfilled in so far as a minimum 30 net additional units have already been identified at Wivelsfield Green through the Neighbourhood Plan.⁸² The 95 dwellings proposed in the appeal scheme are in addition to the 30 already identified, leading to a total of 125. This is in excess of the upper limit of what is regarded as being sustainable for the Service Village of Wivelsfield Green in the JCS settlement hierarchy.⁸³

70. It cannot therefore be said that the additional housing proposed here, even if it comprises part of the 200 additional units in locations yet to be determined under part (3) of Spatial Policy 2, is *"being distributed in the most sustainable manner"* as is the JCS's intention⁸⁴. This is because more housing would be built at

⁷⁶ LPA3 paras 9.22-9.23

⁷⁷ paragraph 17, 5th bullet

⁷⁸ LPA4 Appendix 15 para 5

⁷⁹ Suffolk Coastal DC v Hopkins Homes a SSCLR [2016] EWCA Civ 168 para 47

⁸⁰ CD4

⁸¹ CD7 paras 34-35

⁸² CD13 policy 2 [Inspector's Note: Policy 2 provides for approximately 34 units in total on 2 allocated sites]

⁸³ CD4 para 6.5 & Table 2

⁸⁴ CD4 paras 6.5 and 6.37

Wivelsfield Green than is identified at even the upper limit of what is regarded as sustainable.

71. The appellant's planning witness relies on Spatial Policy 2 not specifying a maximum.⁸⁵ That is correct, but the figures in the JCS must mean something. The alternative is that there would be no value at all in the work done broadly to assess the sustainability of various settlements and to place them in a hierarchy.
72. Nor could it be said that this way of allocating 95 units is at all plan-led. If the 'minimum 30' is to be regarded as sending a signal about roughly the appropriate level of development at Wivelsfield Green, as a similar policy was described by an Inspector on an appeal in West Sussex (at Hambrook, Chichester)⁸⁶, that signal is being entirely ignored.
73. While it is correct to acknowledge that the figures in JCS Spatial Policy 2 are a minimum rather than a maximum, these numbers still must mean something, in that they give a 'signal' or direction.⁸⁷ The converse position is that the numbers have no meaning, and all that matters in the policy is the word 'minimum'. That cannot be what the plan-led system intends, even in light of the requirement to boost significantly the supply of housing.
74. In this way it is perfectly reasonable and correct to argue that, in effect, the letter of Spatial Policy 2 is not breached by the proposal, but what the policy says about the Council's preference on how to distribute housing in a sustainable way - its aims and aspirations - would be breached.⁸⁸
75. The development as proposed amounts to an attempt to cash in the "*blank cheque*" referred to by the Inspector in the Hambrook appeal.⁸⁹ The numbers were not so different in that case as to render the principle inapplicable to this one.
76. The proposal is therefore contrary to the development plan as a whole, notwithstanding the compliance with other relevant development plan policies.⁹⁰ This is because CT1 is the fundamental policy dealing with the broad pattern of development across the district, as indicated by its title of "*Planning Boundary and Key Countryside Policy*". It is the Council's key countryside policy.⁹¹
77. Such is the importance of policy CT1, it should therefore be given determinative weight under the normal balancing exercise of the NPPF. Under the tilted balancing exercise (if the policy is found to be out-of-date), it should be given weight that is somewhere more than moderate but less than significant.⁹²

Neighbourhood Plan

78. The proposal is contrary to Policy 1 of the emerging Wivelsfield Parish Neighbourhood Plan (WPNP) in that the policy defines development boundaries
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⁸⁵ Cross-examination of Mr Packer

⁸⁶ LPA4 Appendix SS10 Inspector's Report para 126

⁸⁷ Cross-examination of Ms Sheath

⁸⁸ Cross-examination of Ms Sheath; LPA3 paras 9.27-9.33

⁸⁹ LPA4 Appendix SS10 Inspector's Report para 126

⁹⁰ Cross-examination of Ms Sheath; LPA3 para 7.22

⁹¹ LPA3 para 7.3

⁹² Cross-examination of Ms Sheath

for Wivelsfield Green and directs housing (and other development) to within the settlement.⁹³ Housing outside the boundary is resisted unless consistent with countryside policies in the development plan, that is policy CT1. The appeal proposal is for housing outside the defined development boundary and it is common ground that it is not consistent with policy CT1.⁹⁴

79. The appellant's planning witness accepted that the proposal is in breach of WPNP policy 1, but pointed to the compliance with JCS Spatial Policy 2 and a conflict between these two policies.⁹⁵
80. Criticisms made of the WPNP in a letter sent by Turley to Wivelsfield Parish Council⁹⁶ are not a matter for this appeal. Notwithstanding the criticisms, it is important to note that the development boundaries in the WPNP appear to have been amended in light of the increased district housing requirement of 6,900 dwellings. That is clear from an analysis of the chronology: the submission draft of the WPNP is dated January 2016; it is clear that it was drafted with a version of the JCS dated September 2015 in mind⁹⁷; this draft of the JCS was published after and in response to the JCS Inspector's Initial findings letter of February 2015⁹⁸ in which he proposed the higher figure of 6,900.
81. Because the proposal is in breach of WPNP policy 1 it does not therefore reflect the shared vision of the neighbourhood as sought by the NPPF⁹⁹, nor would it ensure that local people get the right type of development for their community¹⁰⁰, nor empower local people to shape their surroundings¹⁰¹.
82. The WPNP must attract more weight now, having been approved by the Examiner as ready for referendum¹⁰², than the weight it was given by Inspectors in recent appeals at Springfield Industrial Estate and Gyllyngdune in Wivelsfield¹⁰³. The plan has been found to meet the basic conditions, one of which is it must be in general conformity with the strategic policies of the development plan.¹⁰⁴
83. The recommendations for modification of the WPNP made by the Examiner do not concern either the policy for the number of units (Policy 1) or that for any of the housing sites it identified (Policy 2).¹⁰⁵
84. The outstanding objection which was mentioned by the Inspector in the Gyllyngdune appeal¹⁰⁶, involving a Strategic Environmental Assessment (SEA) matter, must now be considered resolved¹⁰⁷.

⁹³ CD13

⁹⁴ CD20 para 6.2

⁹⁵ Cross-examination of Mr Packer

⁹⁶ APP6

⁹⁷ CD13 p45

⁹⁸ CD6

⁹⁹ NPPF para 183

¹⁰⁰ NPPF para 184

¹⁰¹ NPPF para 17 first bullet

¹⁰² CD17

¹⁰³ CD14 & CD15

¹⁰⁴ CD17 para 2.17

¹⁰⁵ CD17 paras 5.7 & 5.17

¹⁰⁶ CD15 para 6

¹⁰⁷ CD17 para 2.31

85. It cannot be said that the WPNP acts as a cap on development. It allows for redevelopment of sites within the settlement boundary, barn conversions and sites outside the settlement boundary that comply with policy CT1.¹⁰⁸ The recent approval of the redevelopment of the Royal Oak pub for housing outside the settlement boundary illustrates this.
86. The question now is not whether the WPNP will change (to support the proposal), but how much weight can be given to the conflict with it before a referendum is held, which is likely to say "yes". The indications are that housing elements of the WPNP certainly were strongly supported (70% at Regulation 14 stage¹⁰⁹), and support for the plan overall at Regulation 14 stage was 60%¹¹⁰.
87. 95 houses is a considerable increase on anything anticipated in the WPNP, and the appellant's planning witness accepted that approval of the scheme would undermine that plan¹¹¹. This point is illustrated by the appellant's stance, which appears to be that the weight to be given to the WPNP is much reduced even before it has come into effect.
88. The appellant's approach on Policy 1 has been to attack it first as not complying with the basic conditions and then, following the Examiner's finding that it does, to pursue the criticisms through the Turley letter to the Parish Council.¹¹² However, as things stand the WPNP has been examined successfully and is on the brink of being made (indeed this will almost certainly be before the Secretary of State's decision is made in this case). This position must be given far more weight than a putative legal challenge, made too late, that may or may not take place elsewhere.

Other material considerations

89. The proposed development is not sustainable. This is because it is in conflict with the development plan overall and does not therefore comply with the social aspect of the NPPF's definition.¹¹³ This includes by way of conflict with an emerging Neighbourhood Plan, as found in other appeal cases.¹¹⁴
90. The proposal cuts across the desire for the planning system to be plan-led. There being no cap on housing numbers is not the same thing as allowing a development that is way in excess of the figures in the recently adopted JCS and soon to be adopted WPNP policies; the absence of a cap is not a "*blank cheque*"¹¹⁵, if the plan-led system is to have any meaning.
91. This approach has received a lot of recent support in decisions by Inspectors and the Secretary of State¹¹⁶, underlining the importance of the plan-led system; that it means something, and to approve large numbers of houses beyond the JCS figure and that in the emerging WPNP would be to undermine it.

¹⁰⁸ Cross-examination of Ms Sheath

¹⁰⁹ CD17 para 5.3

¹¹⁰ CD17 para 2.9

¹¹¹ Cross-examination of Mr Packer

¹¹² APP6

¹¹³ LPA3 para 9.25

¹¹⁴ LPA3 paras 9.34-9.41; LPA4 Appendices SS10 & SS11

¹¹⁵ LPA4 Appendix SS10 Inspector's Report para 126

¹¹⁶ LPA3 paras 9.33 -9.41

92. This is in accordance with paragraphs 183-185 and 198 of the NPPF. These paragraphs are included in the definition of what the Government regards as 'sustainable development'¹¹⁷ to which the presumption in favour at the first part of paragraph 14 applies. Therefore for a proposal to be sustainable development it must incorporate a community's vision for its own neighbourhood as articulated through a Neighbourhood Plan prepared in the context of a recently adopted strategic Local Plan. If it does not, this counts against a proposal being found to be sustainable development, offending in particular against the social dimension.¹¹⁸
93. The criticisms made by the appellant based on the wording of NPPF paragraph 184 do not add anything. Paragraph 184 essentially repeats the basic conditions which the Neighbourhood Plan Examiner has found are met.¹¹⁹

Overall Balance

94. The benefits of the scheme are acknowledged¹²⁰ but they are outweighed by the conflict with the recently adopted development plan and emerging Neighbourhood Plan. Whether on the tilted or the normal paragraph 14 balancing exercise, these conflicts point clearly to a refusal in the plan-led system.

THE CASE FOR BOVIS HOMES LTD

95. Planning permission should be granted for the proposal for the following 7 reasons:
- The primary aim of Government and local policy is to deliver more housing.
 - The proposal is for sustainable development.
 - The Council does not comply with paragraph 47 of the NPPF and needs to find more housing.
 - The proposal would bring forward material benefits.
 - The proposal accords with the development plan.
 - The proposal does not conflict with the emerging neighbourhood plan.
 - The balancing exercise supports the grant of planning permission.

Reason 1: The primary aim of Government and local policy is to deliver more housing

96. Lewes is an authority with a massive requirement for housing over the next 15 years. The Objectively Assessed Need policy-off figure is for more than 10,000 units over the plan period.¹²¹ The Council successfully sought a much lower policy-on figure in the JCS. The position therefore is a housing requirement over

¹¹⁷ NPPF para 6

¹¹⁸ LPA4 Appendices SS10 (Decision para 15 Inspector's Report paras 165-167) & SS11 (paras 14-16)

¹¹⁹ CD17 para 7.2

¹²⁰ LPA3 paras 9.42-9.46

¹²¹ CD4 para 6.13; CD7 para 21

the plan period of a minimum of 6,900 units as set out in both Spatial Policy 1 and Spatial Policy 2 and paragraph 6.19 of the JCS.¹²²

97. However, what underpins the policy context is that these figures are not a cap on development but a minimum. This must by definition be the least amount that can be provided, and the approach taken by the Inspector in the appeal decision on Springfield Industrial Estate is endorsed.¹²³
98. The position of the Government is that the planning system must boost significantly the supply of housing.¹²⁴ This has been recognised by the Courts as effecting a radical change to the delivery of housing.¹²⁵ Therefore both the Government and the Council place a significant emphasis on the provision of housing.
99. The planning system has taken this approach since to buy a house and build a life around that home provides certainty, security and comfort to those who occupy it. The importance of this experience is often ignored or forgotten by those who oppose new housing, despite such objectors typically owning their homes themselves.
100. The Wivelsfield Parish Neighbourhood Plan (WPNP) seeks to strangle any future material housing growth in Wivelsfield. At best it makes provision for only 33 units in the Parish over the next 15 years¹²⁶, which amounts to 2 houses per annum over the plan period. This is not compatible with the minimum targets of the JCS.
101. The Examiner's report is completely wrong in finding the policies in the WPNP sound¹²⁷ when it so patently flies in the face of the guidance of paragraph 184 of the NPPF. This requires the WPNP to be compatible with the strategic policies of the JCS. The WPNP brings planning into disrepute because it completely ignores the desire of the Council for a minimum delivery across the district of 6,900 units and when as a result of its Policies 1 and 2 does not allow any more than 33 units in reality in Wivelsfield.
102. In a heavily constrained district the appeal site is one where 95 units (including 38 affordable units) could be provided with no development control objections, and no harm of any kind on the ground on the Council's own case.¹²⁸ In addition to that compelling reason as to why planning permission should be granted are the real benefits of new housing in providing homes for people.

Reason 2: The proposal is for sustainable development

103. In making a judgment as to whether or not a development is sustainable the principal reference is to the criteria set out in paragraph 7 of the NPPF.

¹²² CD4

¹²³ CD14 para 22

¹²⁴ NPPF para 47

¹²⁵ For example APP3 Appendix 3 para 16

¹²⁶ CD13 policy 2

¹²⁷ CD17

¹²⁸ CD20 sections 7 & 8; LPA3 para 9.46

104. The Council accepts without qualification that the proposal meets the economic role of the guidance.¹²⁹ That is not unsurprising considering there would be:
- £15.5 million invested in the construction of the development;
 - 60 gross direct full-time equivalent jobs created during the construction period;
 - a GVA economic output of £9.2 million;
 - a New Homes Bonus of £850,000 to the Council.¹³⁰
105. Consequently the proposal would contribute greatly to building a strong, responsive and competitive economy as sought by paragraph 7.
106. In terms of the environmental role the proposal meets the guidance on the basis that there is no allegation of harm to the natural environment, the built environment, the historic environment, biodiversity, ecology, landscape or visual amenity and flooding.¹³¹ The development unquestionably to an exceptional degree would meet the aspirations of environmental sustainability.
107. In terms of the social role the proposal meets the guidance because:
- it supports the supply of housing required to meet the need for both market housing and affordable housing;
 - the mix of units is completely agreed with the Council, providing 2,3,4 and 5 bed market housing and 1,2 and 3 bed affordable housing;¹³²
 - it would be of a high quality design, with no objection at all to this.¹³³
108. The scheme therefore again complies unquestionably with the paragraph 7 criteria.
109. The only way the proposal is alleged not to be sustainable by the Council is through reliance on paragraph 17 of the NPPF based on the empowerment of local people. That however has to be read in the context of the rest of the NPPF. Neighbourhood plans cannot survive in the absence of compliance with paragraph 47. If there is a conflict the dispute should be resolved in favour of the provision of housing, as is set out in paragraph 49 of the NPPF.
110. This is a highly sustainable site following a fair and objective audit against paragraph 7 of the NPPF.
111. In addition to the points above, the site is in a sustainable location and fully complies with paragraph 32 in offering a range of alternative means of transport. There is no objection from the Highway Authority.¹³⁴

¹²⁹ LPA3 para 9.45

¹³⁰ APP3 para 5,65 & Appendix 12

¹³¹ CD20 section 7

¹³² CD20 para 3.3; APP3 para 1.2

¹³³ CD20 paras 7.8-7.9; LPA para 9.46

¹³⁴ CD20 paras 6.7 & 7.12; CD1

Reason 3: The Council does not comply with paragraph 47 of the NPPF and needs to find more housing

112. The only way the Council can satisfy paragraph 47 on a need for a five-year housing land supply is if its case is accepted on all the issues in dispute, that is 'Sedgefield' or 'Liverpool', the application of a 5% or 20% buffer, and the extent of the supply.¹³⁵ Its defeat on any of these points means that the Council does not have a five-year supply.
113. The Council should be taking a positive approach on housing land. That means aiming to meet the Objectively Assessed Need and making proper provision for housing, not seeking at every turn for the least amount of housing to be provided, as its arguments on each issue appear to do. The policy aspiration is to significantly boost the supply of housing.
114. As a matter of approach it is completely right and proper that scrutiny is applied to the JCS Examining Inspector's report, despite that this was only published on 22 March 2016¹³⁶. It is noteworthy that the Council does not claim or seek to allege that such matters should not be the subject of consideration in this appeal. Indeed the PPG requires it, in ensuring that consideration of the housing land supply position is based on an up-to-date and sound evidence base.
115. That approach has been endorsed in a number of recent appeal decisions.¹³⁷
116. The picture has moved on since the Inspector's report, with a further year of under-delivery by the Council and a reduction in the claimed supply.¹³⁸ Those amount to material changes in the circumstances that influence the housing land supply debate. In that light the picture is unquestionably of an authority which cannot comply with paragraph 47 of the NPPF.
117. The Council has a woeful record of delivery of housing. The period of the past 6 years has required delivery of 2,070 units. The Council accepts that only 1,303 units have been provided in that time.¹³⁹ This amounts only to 217 units per year, even though 4 of those years are post-NPPF. Those 6 years are also representative of a range of economic conditions, including both strong years and years after the credit crunch.
118. There has therefore been an agreed under-delivery of 767 units on a *minimum* requirement figure.¹⁴⁰ Every year the Council has failed to provide 127 additional units that it should have.¹⁴¹ That is a record which can give no confidence about delivery over the next 5 years, which require a massive step up in housing delivery.
119. On the Council's position, with 'Liverpool' and a 5% buffer, there is a need to provide 2,099 units, which amounts to 420 units per year. This therefore needs

¹³⁵ APP1 paras 6.1.124-6.1.127

¹³⁶ CD17

¹³⁷ APP1 paras 4.1.14-4.1.20

¹³⁸ CD11; APP1 section 5.1

¹³⁹ APP1 p25 Table JRT1; LPA1 p12 Table 1

¹⁴⁰ APP1 p25 Table JRT1, para 6.1.39; CD21 para 2.4

¹⁴¹ $767/6=127.8$

- an increase in the historic delivery (of 217 units per year) by over 200 units, which means almost a doubling of delivery on the Council's case.¹⁴²
120. If the appellant's position of 'Sedgefield' and a 20% buffer is taken, then the requirement is 598 units per annum, which amounts to 2,990 units over the next five years.¹⁴³
121. In either scenario the requirement is massive.
122. In deciding what buffer should be applied, the purpose of the buffer as set out in paragraph 47 should be considered, which is to provide a realistic prospect of achieving the planned supply. The past provides the answer to this. The failure of the Council to hit the requirement for the past 6 years is an absolute indication of persistent under-delivery. There is a 100% record of failure in delivery in that time frame, and 20% should be imposed both on the requirement and the shortfall.
123. The only special pleading in the Council's case is that it met the old South East Plan target.¹⁴⁴ That is simply wrong, because the Council's own evidence base shows that the correct Objectively Assessed Need from 2010 was not just 220 units but at least 345.¹⁴⁵ It cannot be right to rely on an old South East Plan target that was established many years ago.
124. It is noteworthy the Council accepts the imposition of the buffer against both components of the requirement.¹⁴⁶
125. The only basis for not imposing a 20% buffer is the JCS Inspector's conclusions.¹⁴⁷ Those have to be viewed in the context of his understandable judgment that the harm of not having an up-to-date development plan was greater than approving a development plan which had a significantly reduced requirement.¹⁴⁸ In the context of this decision now, 20% is the correct buffer.
126. In terms of 'Sedgefield' or 'Liverpool', the right starting point is patently that the aim should be to provide the undersupply within the first 5 years of the plan period whenever possible.¹⁴⁹ The undersupply has resulted from the non-delivery of houses that should have been provided during 2010-2016, so that need has already arisen. To endorse 'Liverpool' would mean that a need which arose in 2010 might only be met at the end of the plan period, i.e. in 2029, which is a hopeless attempt to meet a need from 19 years earlier. The Council has taken no effective steps to meet the shortfall.
127. It is also ironic that the special pleading relied on by the Council relates to the environmental constraints that exist in Lewes¹⁵⁰, whereas in this case there are no such environmental constraints. Therefore in the context of this appeal it

¹⁴² LPA1 p30 Table 7

¹⁴³ APP1 para 7.7, Appendix JRA7

¹⁴⁴ LPA1 paras 4.31-4.32

¹⁴⁵ CD21 para 2.2; APP1 para 6.1.17; LPA1 p30 Table 7

¹⁴⁶ CD21 para 2.3

¹⁴⁷ CD7 paras 37-38

¹⁴⁸ CD7 para 43; APP1 4.1.5-4.1.12

¹⁴⁹ PPG ID: 3-035-20140306

¹⁵⁰ CD7 paras 39-40; APP1 section 4

would be completely wrong to allow the Council to rely on this argument when it is so patently not valid. There are obviously sites that can be developed in the short term without environmental impacts, which raises doubt about the reduction of the policy-off Objectively Assessed Need and the application of 'Liverpool' in those circumstances. The Inspector's endorsement of 'Liverpool' has been shown to be erroneous by this inquiry.

128. Therefore the conclusion should be that the requirement applying 'Sedgefield', 20% and the JCS figure gives a five-year total of 2,990 units or 598 units per annum.¹⁵¹

129. In terms of supply the Council cannot get close to that requirement. Footnote 11 of the NPPF is key. Sites need to be available now, offer a suitable location for development now and be achievable with a realistic prospect that housing will be delivered on the site within 5 years. Therefore a site needs to have a planning permission; be allocated in a development plan; or have up-to-date evidence of deliverability that is robust. That evidential burden falls on the Council which is relying on a site's deliverability.¹⁵²

130. The Council's windfall figure should be reduced by 63 units to reflect actual delivery over the period 2004-2015 and avoid double counting with existing small sites.¹⁵³ Together with the lower delivery assessed from large sites, the Council's total supply figure should be reduced by 811 units.¹⁵⁴

131. Therefore on the appellant's figures only 1,558 units will be supplied in the next 5 years¹⁵⁵, which amounts to a significant undersupply whichever requirement scenario is adopted. The correct conclusion is that the Council has only a 2.6 year supply.¹⁵⁶ That amounts to a compelling need for more housing, and more housing provided now by the grant of permission in this case.

Reason 4: The proposal would bring forward material benefits

132. There are 8 material benefits that should weigh in favour of the grant of planning permission.

a) The provision of market housing

133. The proposal would provide 57 market houses. In the absence of a five-year housing land supply this should be given very significant weight in the balancing exercise.

b) The provision of affordable housing

134. The proposal would provide 38 affordable housing units. It is a key element of the JCS to provide for more affordable housing.¹⁵⁷ There is a significant

¹⁵¹ APP1 para 7.7 & Appendix JRA7 [2990/5=598]

¹⁵² Wainhomes v SSCLG JRB 17

¹⁵³ APP1 paras 6.1.94-6.1.100

¹⁵⁴ APP1 paras 6.1.101-6.1.124 & p52 Table JRT4

¹⁵⁵ APP1 para 6.1.124 [Inspector's Note: 1,558 is an increase on the figure of 1,549 in para 6.2.124 to reflect the appellant's acceptance at the round table session that one disputed site of 9 units is deliverable - see CD21 Appendix 1]

¹⁵⁶ APP1 p53 Table JRT5

¹⁵⁷ CD4 Core Policy 1

affordable housing need in the district, which the historic work of the Council identified as 549 additional households assessed to be in need per year.¹⁵⁸ There is a significant specific affordable housing need in Wivelsfield of 41 households¹⁵⁹, which this proposal is perfectly suited to deal with.

135. The provision of affordable housing in a district with over 1,000 households on the housing register¹⁶⁰ should be given significant weight in the balancing exercise.

c) The provision of housing in a sustainable location

136. There is no allegation by the Council that the provision of housing here would not be at a sustainable location.¹⁶¹ This was readily accepted by the Council's planning witness.¹⁶² Many essential and day-to-day services are located within 1,200 metres of the site¹⁶³, which is clearly within the threshold of the distance people will walk.

137. The provision of development, and particularly housing development, in a sustainable location should be given significant weight in the balancing exercise.

d) The provision of material economic benefits

138. The proposal would provide 58 direct full time jobs through construction. The residents would provide additional expenditure in the area. The Council would benefit from the new homes bonus.¹⁶⁴

139. All these factors fully comply with the aspirations of the NPPF and should be given significant weight.

e) The provision of material social benefits

140. A variety and range in type of housing is proposed in both the market and affordable housing.¹⁶⁵

141. Significant weight should be given to this factor in the balancing exercise.

f) The provision of material improvements to public transport

142. Qualitative provision would be improved by way of two new bus stops in close proximity to the site access.¹⁶⁶

143. This would benefit existing and proposed residential occupiers in this location.

¹⁵⁸ APP3 para 5.20

¹⁵⁹ APP3 para 5.22

¹⁶⁰ APP3 para 5.20

¹⁶¹ CD20 paras 7.2-7.7

¹⁶² Cross-examination of Ms Sheath

¹⁶³ APP3 p33 Table 5.1

¹⁶⁴ APP3 para 5.76

¹⁶⁵ CD20 para 3.3; APP3 para 1.2

¹⁶⁶ APP3 para 5.71

g) The provision of housing without any material environmental harm and the protection of more valuable and designated land

144. There is no specific development control issue raised by the Council in the appeal. There would be no adverse impact on the landscape character or visual amenity of the site, which has no environmental, landscape or ecological designation.¹⁶⁷

145. The provision of housing here would inevitably lessen the pressure to provide 95 residential units elsewhere within the district on land which is of a higher quality, designation or location.

146. Significant weight should be given to this in the balancing exercise.

h) The provision of open space provision which is well in excess of required standards

147. The proposed open space¹⁶⁸ would be of great benefit to the new residents and those that live in the proximity of the site.

148. Individually and cumulatively these benefits provide compelling weight towards granting planning permission for the proposal.

Reason 5: The proposal accords with the development plan

149. The correct approach is to consider all the relevant policies in the development plan, which comprises the Local Plan and the JCS.

150. There is agreement that 19 policies of the development plan are relevant.¹⁶⁹

151. In the LP, these are policies CT1 (Development Boundaries); ST3 (Design, Form and Setting of Development); ST11 (Landscaping of Development); ST14 (Water Supply); ST30 (Protection of Air and Land Quality); RES19 (Provision of Outdoor Playing Space); H3 (Buildings of Local, Visual or Historic Interest (Setting of); RE1 (Provision of Sport, Recreation and Play).¹⁷⁰

152. In the JCS, these are Spatial Policy 1 (Provision of Housing); Spatial Policy 2 (Distribution of Housing); Core Policy 1 (Affordable housing); Core Policy 2 (Housing Mix); Core Policy 7 (Infrastructure); Core Policy 8 (Green Infrastructure); Core Policy 9 (Air Quality); Core Policy 10 (Natural Environment and Landscape Character); Core Policy 11 (High Quality Design); Core Policy 12 (Flood Risk and Sustainable Drainage); Core Policy 13 (Sustainable Travel).¹⁷¹

153. It is accepted by the Council that 18 of these policies are complied with by the proposal.¹⁷² Therefore these must be put in the mix as policies which support the grant of permission. Significant weight should cumulatively be given to those 18 policies.

154. In contrast the Council relies on one policy alone (policy CT1 of the Local Plan) as justifying putting aside all of those other policies, and giving it determinative

¹⁶⁷ CD20 sections 7 & 8

¹⁶⁸ APP3 para 5.65

¹⁶⁹ APP9

¹⁷⁰ CD3

¹⁷¹ CD4

¹⁷² LPA3 para 9.4; APP9; cross-examination of Ms Sheath

weight in the balancing exercise¹⁷³. The Council effectively ignores and puts no weight on the other policies.¹⁷⁴ It is a judgment of great ambition to assert that one policy alone trumps the weight and consequence of complying with 18 other policies.

155. This is completely unjustified when considering the weight to be given to that policy, which should be greatly reduced for the following reasons.

- a. If there is no paragraph 47 compliance then it is out-of-date and must be given significantly reduced weight. It is a policy relating to the supply of housing¹⁷⁵ and is being engaged solely to stop housing provision in the context of a shortfall. That is an outcome which is opposite to what paragraphs 47, 49 and 14 of the NPPF are seeking to achieve in such circumstances.
- b. It does not comply with the NPPF, which was the clear conclusion of the Inspector in the Springfield Industrial Estate appeal decision.¹⁷⁶ Therefore the weight must be reduced as set out in paragraph 216 of the NPPF.
- c. Non-compliance with the NPPF was also the clear conclusion of the Council's witness in the Springfield Industrial Estate appeal.¹⁷⁷
- d. It is a policy relating to a housing requirement which is completely superseded by the updated housing requirement.¹⁷⁸ The boundaries were fixed in the context of meeting that earlier housing requirement. In the light that the Council now accepts a much greater requirement, it cannot be right to assert the boundary should still have substantial weight.
- e. The boundary was only intended to last until 2011.¹⁷⁹ There was never any expectation that it would still be applied as a development control tool in 2016.
- f. The Council has accepted that it needs revision and has set in motion Part 2 of the Local Plan which will review the extent of the boundary.¹⁸⁰
- g. The Parish Council does not believe that the settlement boundary is correct and seeks to amend it in the WPNP.¹⁸¹
- h. Decisions have been taken which supersede it, such as the grant of permission at the Springfield Industrial Estate¹⁸², thus making the boundary controlled by policy CT1 out-of-date in any event.

156. For all those reasons little weight can be placed on the policy, and certainly nowhere near enough weight to credibly assert that the proposal can be judged to

¹⁷³ LPA3 para 9.4; cross-examination of Ms Sheath

¹⁷⁴ LPA6 para 15

¹⁷⁵ CD21 para 2.6

¹⁷⁶ CD14 para 16

¹⁷⁷ CD14 para 16

¹⁷⁸ CD21 para 2.2

¹⁷⁹ CD20 para 6.2

¹⁸⁰ LPA1 para 4.7

¹⁸¹ CD13 policies 1 & 2

¹⁸² CD15

be contrary to the overall development plan. To submit that full weight should be given¹⁸³ to a policy that the Council has willingly accepted is not fully compliant with the NPPF is not credible. It is extraordinary for the Council to contend that it should be given considerable weight even if paragraph 49 is operative. To allow a policy to have considerable weight when it will restrict the supply of housing in such circumstances turns the aspirations of the NPPF on its head and it becomes a completely emasculated piece of Government policy.

157. The far better judgment is that of the appellant's planning witness, which is that overall the proposal does accord with the development plan because of the combined weight of all the policies complied with and the reduced weight that can be given to policy CT1.¹⁸⁴

158. In those circumstances it is therefore incumbent upon the Council to show that there are other material considerations to justify setting aside the primacy of the development plan and the presumption in favour of granting permission for a development that accords with the development plan.

Reason 6: The proposal does not conflict with the emerging neighbourhood plan

159. The whole case of the Council therefore resides on an alleged breach of Policy 1 of the emerging WPNP.

160. No criticism is made by the appellant of the endeavour, hard work or intentions of those who have been involved in the production of the WPNP. They have been entrusted with powerful tools by the planning system.

161. However, the plan has major problems as set out below and is not fit for purpose in its current form.

162. It has been said that the neighbourhood planning system would be discredited if planning permission is granted. On the contrary, the neighbourhood planning system would be seriously compromised if plans are adopted which are unlawful, inconsistent with strategic policies, vague for uncertainty, ambiguous and out-of-date as soon as they are adopted.

163. The WPNP should be given very little weight in the balancing exercise for the following reasons.

164. The plan is not yet adopted. It is therefore some way from being part of the statutory development plan. It needs to pass a referendum, and no-one can know or speculate at this time what the result of that referendum will be. Obviously the Government considers the need for a referendum to be important since it is a requirement in law. It could well be that the population of Wivelsfield Parish do not accept a plan which only allows for 2 houses a year for the next 15 years. It is in essence a neighbourhood plan of stagnation and contraction.

165. The plan is not lawful. The SEA failed to consider the increased housing requirements of the district as set out in the JCS.¹⁸⁵ The only assessment that

¹⁸³ LPA6 para 20

¹⁸⁴ Mr Packer

¹⁸⁵ APP3 paras 3.49-3.53; APP6

has been carried out has been on the historic figures. The WPNP relies on the original JCS environmental report of September 2014 when the Council was seeking to provide only 5,600 units, in contrast to the 6,900 now set out in the adopted JCS. The WPNP therefore cannot begin to come close to having considered reasonable alternatives as it is legally required to do. European Guidance makes clear that an Environmental Report must be updated in the light of changed circumstances and this simply has not happened.

166. The plan does not comply with the requirements relating to paragraph 184 of the NPPF.¹⁸⁶ Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. There cannot be any doubt that Spatial Policy 2 is a strategic policy, as stated in its title. The policy on its correct interpretation sets no upward limit but only a minimum. The Council's planning witness accepted the policy is not breached by this proposal¹⁸⁷, which is the clearest confirmation that the addition of 95 units here is compatible and in accordance with Spatial Policy 2. In contrast, Policy 1 of the WPNP seeks to limit housing to only those sites which effectively fall within Policy 2. Fundamentally this is a restriction to around 33 units, which is the express amount allocated in Policy 2. Developments within the settlement boundary as set out in the WPNP could only comprise the addition of 1 or 2 units at best.¹⁸⁸ There is no evidence of the existence of any other site which could make any contribution to the provision of housing. Consequently, when Policy 1 and Policy 2 are read together they preclude developments other than those in Policy 2. The WPNP patently fails to meet the requirements of paragraph 184, and it is remarkable how a serious Examiner could conclude that it does meet these.
167. Policy 1 is nonsensical. The policy is riddled with uncertainty. It precludes residential development but makes no comment on any B class, D class or A class uses. A developer could promote a large retail scheme or business park of 20,000 square metres and not breach the policy, which is a nonsense.
168. Policy 1 does not provide clarity in relation to how the policy is breached or complied with. What the wording relies on is that a breach comes about if a proposal is not consistent with the countryside policies of the development plan. What comprises these policies is not defined or set out anywhere, potentially leading to confusion and litigation. For example, is it only policy CT1 or does it include other policies? Again, that an Examiner could find it acceptable shows the complete failings of the system, given that the policy will in time have the force of Section 38(6).
169. Two of the policies in the WPNP are complied with in any event. The Council's planning witness accepted that Policies 5 and 6 are complied with¹⁸⁹, so again a balancing exercise is required.
170. The appeal site was never considered in the assessment process. Only a much larger site of 12.2 hectares was considered¹⁹⁰, with a much bigger capacity than

¹⁸⁶ APP3 paras 3.51-3.53; APP6

¹⁸⁷ Cross-examination of Ms Sheath

¹⁸⁸ APP3 para 3.43

¹⁸⁹ Cross-examination of Ms Sheath

¹⁹⁰ APP3 paras 3.54-3.68

the current appeal site. It is a serious omission that the appeal site was not considered on its own as a reasonable alternative.

171. The larger site including the appeal site was discounted for unsatisfactory reasons.¹⁹¹ The site was considered to be negative in relation to transport, yet this appeal has shown there would be no transport impact of any kind. The view of the highway authority that the proposal would have an unacceptable traffic impact has been subsequently to be shown to be completely without foundation. It also concluded that the Springfield Industrial Estate site was neutral, which is perverse. There are numerous other concerns about the assessment relating to heritage, landscape and acceptability criteria.
172. The Examiner's report made a serious omission in refusing to accept the representations submitted by Turley¹⁹². There are two major legal consequences here. Firstly, the evidence is that the Examiner did not consider these representations sent on 8 August 2016, which was well before the production of the report on the 21 August 2016. There will be a serious issue of whether the Examiner's report is lawful when he has completely ignored a material representation prior to producing his report. That is another ground of challenge. Additionally the Parish Council has not bothered to correspond in any way with the appellant to inform them that was the approach of the Examiner. The first time that was revealed was in oral evidence at the inquiry¹⁹³, which is an odd way for a statutory administrative body to behave. The Parish Council did not and have not taken the time to inform the appellant that was the approach that had been taken.
173. There is a real likelihood of the WPNP being subject to a legal challenge. For all the reasons set out above, the WPNP is likely to be the subject of substantial legal proceedings if the District Council proceeds to make it in the future. Strong legal advice would be given to progress such a challenge. There are at least 5 substantive grounds for a challenge, covering failure to comply with the SEA, failure to comply with the strategic policies, failure to have understandable policies, an Examiner who failed to consider representations, and finally a plan that relies on an assessment process which is completely flawed. It would be wrong to reach any conclusion on sustainability based on an unlawful stance in an emerging WPNP. The time for challenging any neighbourhood plan is when it is made by the local planning authority, which has not yet arisen.
174. Consequently the WPNP cannot be relied on to disturb the presumption in favour of the development plan under the proper application of Section 38(6) of the Planning and Compulsory Purchase Act 2004.

Reason 7: The balancing exercise supports the grant of planning permission

175. It is rare in a planning inquiry such as this for there to be no development control issue alleged to justify refusal by the local planning authority. Rather than opposing the development, the Council should have grasped the opportunity of providing 95 units with no harm in a district which has historically, presently and in the future great problems in making adequate housing provision because

¹⁹¹ APP3 paras 3.54-3.68

¹⁹² APP6

¹⁹³ Cross-examination of Ms Stoner

- of environmental constraints. The district has a massive requirement for housing in the next 5 years, amounting to at least 420 units per annum.
176. The Council cannot comply with the requirements of paragraph 47. Therefore it is incumbent upon it to show impacts that significantly and demonstrably outweigh the benefits of the proposal. The Council relies on three.
177. The breach of policy CT1 can be given very little weight because it is out-of-date for the purposes of paragraph 49.
178. There is no actual breach of the JCS, as became apparent during the cross-examination of the Council's planning witness.¹⁹⁴ The Hambrook decision relied on by the Council¹⁹⁵ is materially different, since in that case the strategic policies established an indicative figure as opposed to a minimum figure of housing provision for the relevant settlement.¹⁹⁶
179. The weight to be given to the WPNP is very little.
180. In contrast the benefits are powerful and compelling. This is a proposal for 95 units which would make a material contribution to the provision of both market and affordable housing. There is no allegation of any harm beyond the breach of policies, which is very unusual with the development of a 5 hectare site for housing. None of the allegations of harm raised by the third parties are supported by professional evidence or the judgment of the Council's officers.¹⁹⁷ The benefits are not properly acknowledged or weighed in the balance by the Council.
181. The proposal falls fully within the aspirations and desires of Government in seeking to significantly boost the supply of housing. On the tilted balancing exercise of paragraph 14 of the NPPF the benefits clearly outweigh any impacts. On the normal balancing exercise this is a proposal for sustainable housing that should be granted permission, as the presumption in favour of sustainable development is the golden thread throughout the NPPF. 'Plan-led' should only mean something if the plan provides enough housing, so that the plan is fit for purpose. If it is out-of-date the plan is effectively set aside and the presumption in favour of granting permission is strongly activated.
182. The proposal is commended and planning permission should be granted.

THE CASE FOR JUDY STONER ON BEHALF OF WIVELSFIELD PARISH COUNCIL¹⁹⁸

Introduction

183. Judy Stoner is the Vice Chair of Wivelsfield Parish Council (WPC) and has been nominated to make representations on its behalf. She has served on the Neighbourhood Plan Steering and Working Groups.

¹⁹⁴ Cross-examination of Ms Sheath

¹⁹⁵ LPA3 paras 9.33-9.37; LPA4 Appendix SS10

¹⁹⁶ LPA4 Appendix SS10 Inspector's Report para 126

¹⁹⁷ CD1; APP3 paras 5.77-5.82

¹⁹⁸ TP1; INSP1

184. Key elements of the District Council's case are endorsed and supplemented, rather than simply repeating its objections.

185. The basis of the Parish Council's case is that the proposal is contrary to the Development Plan and the potential harm of the proposed development outweighs any potential benefits of additional housing provision.

Policy

186. The Development Plan for this area currently consists of the Lewes District Local Plan Part 1 - Joint Core Strategy (JCS), which retains a number of the policies of the Local Plan.

187. The proposal is contrary to retained Policy CT1 because the appeal site is outside of the defined planning boundary of Wivelsfield Green.

188. Spatial Policy 2 of the JCS states that a minimum of 30 net additional units will be planned at Wivelsfield Green for the period up to 2030, and the WPNP meets this requirement. The appeal site is not included within any of the site allocations to meet this requirement.

189. The proposal is not consistent with the countryside policies of the development plan, and therefore is contrary to WPNP Policy 1. The appeal site is not one of those identified for development in WPNP Policy 2.

The Neighbourhood Plan Examiner's Report of 23 August 2016

190. The case for the District and Parish Councils is further strengthened by the publication of the Examiner's Report of the WPNP dated 23 August 2016. He has decided that the Wivelsfield Neighbourhood Plan meets the Basic Conditions subject to modifications and should proceed to a referendum.

191. It is clear from the Examiner's report that the appellant's representations in respect of Strategic Environmental Assessment do not now carry any weight whatsoever. It states that "*The Basic Conditions have been met in contributing to sustainable development*".¹⁹⁹

192. It is also clear from the report that WPNP Policies 1 and 2 do not need modification.²⁰⁰ Consequently, these are the policies which must now be given substantial weight in the appeal decision.

Land Availability

193. The Council claims a 5.62 years housing land supply and the appellant claims up to 3.7 years supply.²⁰¹ The standpoints of the main parties indicate that there is, at worst, only a modest shortfall below a five-year supply. The Inspector in the Springfield Industrial Estate appeal decision accepted that the Council had demonstrated a five-year housing land supply.²⁰²

¹⁹⁹ CD17 para 2.31

²⁰⁰ CD17 paras 5.7 & 5.17

²⁰¹ APP1 para 5.1.3 and table JRT5 p53

²⁰² CD14

Environmental Harm

194. In addition to breaches of policy the proposal amounts to actual harm.

Impact on Character of the Area

195. It is agreed with the appellant and the Council that the site is relatively well enclosed by vegetation.²⁰³ However, inadequate attention has been given to the loss of hedgerow proposed along the eastern side of Ditchling Road in order to safely gain access to and from the site.

196. The appellant's response to the Road Safety Audit (Drawing 4983.RSA1) at APP TAA3 of the Transport Assessment Addendum helps an assessment of this aspect of the proposal. The hedgerow lining the northern part of the western site boundary is substantial in height and width and it aligns with the carriageway edge of B2112. The drawing illustrates proposals to provide:

- a new 2m wide footway alongside Ditchling Road
- a 4.5m x 60m vision splay to the north
- 4.5m x 101m vision splay to the south
- a new bus shelter behind the new footpath.

197. It is estimated that at least a 100m length of substantial hedgerow would be removed.

198. The character and appearance of the village would be adversely affected. Rather than seeing the hedgerow signifying the countryside to the south of Wivelsfield, the proposed housing and substantial highway engineering work to complete a safe access would be plainly visible to passing motorists along Ditchling Road. The development would also be apparent above the eastern boundary hedgerow when viewed from the Recreation Ground to the east.

199. The west-east footpath across the site emerges at Ditchling Road²⁰⁴, and care is required to cross the road to the footpath along the western edge of the carriageway enabling access to the range of Public Rights of Way further west. Nevertheless, it is evident from walking the route across the site²⁰⁵ that it is well used. There is a very clear view of the whole site from that route and the one southwards along the east edge of the site²⁰⁶ including from the attractive bridge over the stream. It is evident from site inspection that the only development readily visible from the site is that to the north. Consequently, the extent to which the character of the countryside dominates is even greater than implied by a plan because trees and hedgerows are very prominent in the overall perspective. The same overall character is evident when walking on the routes to the south and east of the site.

200. Notwithstanding the appellant's plans for tree retention and landscaping, the proposed erection of 95 dwellings over such a large area would be extremely detrimental to the countryside character. The overall character of the village would also be adversely and significantly harmed by such a large development,

²⁰³ CD1

²⁰⁴ TP2 point A

²⁰⁵ TP2 points A-B

²⁰⁶ TP2 points B-C

which would be starkly different to the small groupings and ribbons of development which characterise the distinct part of the village west of the Recreation Ground.

201. Taking these factors into account, the proposal would not respond sympathetically to the site nor contribute to the character of the site, its surroundings and the village as a whole. Consequently, it is contrary to Core Policy 11 of the JCS and to paragraphs 17 (5), 57 and 61 of the NPPF.

Sustainability

202. Inspectors for the Springfield Industrial Estate and North Common Road sites gave weight to the presence of some village services and relatively close proximity of higher level services at Burgess Hill and Haywards Heath.
203. Nevertheless, it is a valid material consideration that a 4-mile round trip by car is necessary to, for example, gain access to supermarkets for major shopping for the household. The thrust of the NPPF to reduce vehicle trips and carbon emissions is still relevant, and another 95 dwellings in this rural location is inconsistent with key Central Government policy.

The Planning Minister's Letter dated 27 March 2015

204. The core principles of paragraph 17 of the NPPF in respect of landscape and beauty are cited as an important consideration in the letter of 27 March 2015 from the Minister of State for Housing and Planning to the Planning Inspectorate. The thrust of the ministerial policy direction is that impact of development on the landscape can be an important material consideration even in areas outside AONBs and National Parks, notwithstanding the extent of housing shortage in any one area.
205. This current Ministerial advice further supports the Parish Council's case, even if the conclusion were to be reached that there is not a five-year supply of housing land.

Major Developments on Alternative Sites and Precedents for Development

206. Permission has been granted recently on appeal for the net increase of 29 dwellings on the Springfield Industrial Estate site to the west on the other side of Ditchling Road.²⁰⁷ The following differences from the current proposal are relevant:
- The Springfield Industrial Estate development is broadly one-third the scale of the current proposal.
 - It is a brownfield rather than greenfield site.
 - The site is allocated for development in the WPNP.
 - It is well screened on all sides by existing development to the east and the surrounding countryside to the north, west and south.
 - Development at the Springfield site will have minimal impact on the character of the village and countryside surroundings.

²⁰⁷ CD14

207. For these reasons the potential development of Springfield Industrial Estate does not set a precedent for development of the current site.
208. The development of 75 dwellings on land off North Common Road (LW/13/0720) adjoining the eastern edge of the village was permitted on appeal on 17 November 2014. That site is also very well enclosed from views outside by existing development on 3 sides and substantial landscaping at the site fringes. Furthermore, at the time of the appeal decision, the WPNP and the JCS had only reached relatively early stages in the statutory processes and the relevant policies in those plans could only be given very limited weight. Consequently, that site, where development has commenced, also does not serve as a precedent for the development of the current appeal site.

Potential for further development outside the Plan-led system

209. Each planning application has to be treated on its individual merits, but previous planning decisions can also be material planning considerations. Consequently, it is relevant to point out those substantial areas of adjoining land to the east and south that can be accessed from the appeal site, or from a separate access off Ditchling Road.²⁰⁸
210. These sites do not contain distinguishing features that might warrant a refusal which does not apply to the appeal site. Consequently, it follows that a grant of permission in this instance might also serve as a precedent for further development outside the plan-led system.
211. For those people who have given so much voluntary time to guide the WPNP through the labyrinthine statutory process, it would be distressing to find that the work not only failed to prevent the current appeal development but also gave a green light to further development in Wivelsfield outside the plan-led system.

The Planning Balance and Conclusion

212. The supposed shortfall against the five-year of housing land supply is marginal at worst, and is a temporary state of provision which may improve.
213. Counter to this, the potential harm to the character of the village and its surrounding countryside is very significant and adverse, notwithstanding the appellant's landscaping proposals, and there would be substantial and permanent harm.
214. Despite the close proximity of the site to some village services and the location of Burgess Hill and Haywards Heath, it would be unsustainable to locate a major residential estate in a village where there is a heavy reliance on the car to make 4-mile round trips to obtain basic services such as supermarket shopping.
215. Consequently, there is a strong planning balance against allowing the appeal.
216. Even were it to be judged that the current Development Plan could not be relied upon due to being "*absent, silent, or relevant policies are out of date*", the latest Ministerial Guidance points to the appeal being dismissed on the above planning balance alone.

²⁰⁸ TP2 diagonal hatching

217. However, the crucial point is that the proposal is contrary to up-to-date Development Plan policies, and contrary to the policies of the Neighbourhood Plan which also carry considerable weight because it is very likely to become part of the Development Plan in the near future.

218. All these factors lead to the conclusion that the appeal should be dismissed.

THE CASE FOR JASON STONER²⁰⁹

219. Mr Stoner is a local resident. He is a past Chair of Wivelsfield Parish Council and of the Wivelsfield Parish Neighbourhood Plan steering group.

220. The local community have actively engaged in the neighbourhood planning process and shown support for the WPNP, with a majority indicating that they would vote for the plan at Regulation 14 stage.

221. The appellant put forward the appeal site at the 'call for sites' stage, and the site was reviewed by the steering group against the local community's site assessment criteria. It did not meet these and was not taken forward into the WPNP. The landowner was not willing to consider a smaller volume of houses.

222. The public consultation carried out by the developer was not easy for local residents to access.

223. The WPNP is not a block to development but seeks to ensure that Wivelsfield remains sustainable and a thriving parish for residents and businesses, meeting local needs for new homes and affordable homes. It has a very positive approach to development, with the Parish due to grow significantly. From a start of 854 dwellings it is to grow by way of a strategic site of 175 homes in the northern part of the parish²¹⁰, 100 homes in the western part and a minimum of 30 in Wivelsfield Green. It will also have 75 homes allowed on appeal in Wivelsfield Green and 26 at the west end of the parish.²¹¹ There are also two small plots on South Road, and the redevelopment of the Royal Oak pub, both of which were supported by the Parish Council.

224. This gives a total of an additional 412 houses, which is a growth of 50% to 1,266 dwellings. It will also produce 106 affordable homes.

225. The Core Strategy Examiner commented that additional houses should not be drawn from the surrounding low weald villages.

226. The proposal is therefore not part of the WPNP, is outside the settlement boundary, and would cause significant harm to the environment. There is considerable local opposition, the site is highly visible and its impact on the community would be hugely detrimental.

227. The WPNP has been found by the Examiner to meet the basic conditions and recommended to proceed to referendum.²¹² Both the Parish Council and the District Council have accepted his recommendations.

²⁰⁹ TP4

²¹⁰ CD4 policy SP2 (1) Land at Greenhill Way, Haywards Heath

²¹¹ CD4 p53 Table 5

²¹² CD17

228. The appellant's five-year housing land supply arguments and sustainability appraisal/SEA arguments have already been considered and rejected.
229. The scale of the proposal is of concern. Although there are a primary school, post office and shop, and recreation ground, the great majority of residents have to go out of the village for work, supermarket shopping, secondary school and most leisure activities. The bus service is infrequent and/or non-existent, and this is not the site to have even more people commuting outside the village.
230. Were the proposal to be allowed against the local effort to implement 'Localism' it would be an enormous disappointment. The major plank in the neighbourhood planning process would effectively be taken out of local hands and local people would think that all the hard work and expense of neighbourhood planning would have been wasted.
231. The WPNP is at Regulation 19 stage, should be given considerable weight and not be ignored.

THE CASE FOR DR JOHN KAY ON BEHALF OF CPRE SUSSEX²¹³

232. Wivelsfield Green has an advanced Neighbourhood Plan. It has completed its examination and been found to meet the basic conditions subject to modifications that have been agreed.²¹⁴ While the plan is still to complete the referendum stage, all of the 200 neighbourhood plans that have progressed to this stage have been approved and the WPNP is at no risk of becoming the first exception. At this stage the WPNP carries substantial weight.
233. The WPNP allocates more than sufficient sites to meet any local housing need and the requirements of Spatial Policy 1 of the JCS. The appeal site was considered but dismissed as a candidate site.
234. The Government seeks to encourage communities to develop neighbourhood plans and thus to give local communities the power to shape their own futures.
235. The proposed housing would be exclusively for new out-commuters and Wivelsfield Green is not a sustainable location for such housing. There may be bus stops but the service is not adequate for travel to work and public transport is inoperative in the evenings and at weekends. It is therefore of no use for those with employment in shops in the local towns, the hospitality industry or the 7-day NHS. Nearly 14% of Wivelsfield residents use public transport to travel to work, but the majority of these drive to local railway stations and commute onwards. Wivelsfield has a very high car ownership rate. A car is needed for even basic shopping in nearby towns. There is no GP surgery anywhere in the parish.
236. Wivelsfield Green is not a sensible location for the affordable housing the district needs. The existing local need is already met, through exception schemes and the affordable element of other developments already approved. It is very important for affordable housing to be at the right location, which for the majority means in Lewes town or other coastal towns.

²¹³ TP5

²¹⁴ CD18

237. Were the appeal to be allowed the new housing would not be additional to other housing planned in the district but delivered as an alternative to new homes planned for far more sustainable locations such as large brownfield sites in Lewes town and Newhaven. Recent research provides evidence of this process and that the increase achieved in planning permissions is largely translated into housebuilder land banks rather than higher building rates.²¹⁵

238. There is a local five-year housing land supply, much of it comprising sustainably located urban brownfield sites. Additional approval of rural greenfield housing sites as proposed here would compromise delivery and lead to an outcome directly contrary to that required by the NPPF paragraphs 17 and 111.

THE CASE FOR MARTIN DAVENPORT

239. Mr Davenport is a local resident.

240. The extent of local concern at the proposal can be seen from the number attending the inquiry. There are concerns about sustainability, which is important to local people.

241. Wivelsfield is a small village with limited facilities. It would not cope with 97 additional houses. The site is on a main road.

WRITTEN REPRESENTATIONS

Representations Made at Appeal Stage

242. There are some **23 individual written representations**²¹⁶ on the appeal. These raise objections to the proposal on grounds similar to those made at the inquiry.

Representations Made at Application Stage

243. The representations received by the Council as a result of its consultation on the planning application were summarised in the Delegated Officer report.²¹⁷ The report records that **149 third party objections** were received. It provides an analysis of the matters raised in the objections, which are generally on grounds repeated at appeal stage. **One letter of support** is noted.

244. The report also sets out the responses from **consultative bodies** to the application.

CONDITIONS

245. The Statement of Common Ground includes a list of recommended conditions in the event of the appeal being allowed.²¹⁸ The suggested conditions were discussed at the inquiry, with a number of minor points of amendment agreed. Also agreed was the addition of some further conditions relating to contamination.²¹⁹

²¹⁵ TP5 para 4

²¹⁶ INSP1

²¹⁷ CD1

²¹⁸ CD20 para 7.20 & Appendix 2

²¹⁹ CD23

OBLIGATIONS

246. The submitted Section 106 Agreement²²⁰ is between the Council, East Sussex County Council, the owner and the developer.
247. The Agreement contains planning obligations for the following index-linked financial contributions in its Third Schedule:
- £24,000 bus stop contribution towards 2 new bus stops and real time passenger information system (payable to the County Council);
 - £1,805 recycling contribution (based on £19 per dwelling) (payable to the District Council).
248. Part 3 of the Third Schedule deals with highway works, requiring no commencement until a Section 278 Agreement is entered into and no occupation until the works are completed. The works are set out to comprise 2 new bus stops and associated works on the B2112, a new uncontrolled crossing on the B2112 and new/extended footways, and the proposed site access.
249. The Fourth Schedule sets out requirements for preparation of a Travel Plan, with payment of an auditing fee for this of £6,500 required under the Third Schedule.
250. Requirements for provision of 38 of the proposed units as affordable housing are contained in Part 2 of the Third Schedule. These cover timing of provision and occupation, standards, nomination agreement, future use, and terms and rights.
251. Clause 7 in the Introduction to the Agreement sets out agreement that the requirements of the Community Infrastructure Levy Regulations 2010 and of the NPPF are met. This was confirmed at the inquiry, including with respect to Regulation 123 on pooling. Agreement on the obligations is also recorded in the Statement of Common Ground.²²¹ The Council's evidence explains calculation of the contributions, including by reference to its supplementary guidance on kerbside recycling.²²²
252. The Statement of Common Ground and evidence also record that a number of contributions sought by consultees are covered by implementation of the Council's CIL Charging Schedule on 1 December 2015, and are therefore not the subject of obligations. These include provision of additional primary school capacity and school transport.²²³

²²⁰ CD19

²²¹ CD20 paras 6.4-6.7 [It was confirmed orally that the dispute regarding the recycling contribution implied by the 3rd bullet point of para 8.1 is incorrect and should be disregarded]

²²² LPA3 paras 9.53-9.62; LPA4 Appendices SS5 & SS6

²²³ CD20 para 6.5; LPA3 paras 9.54-9.56; LPA4 Appendix SS13

CONCLUSIONS

253. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.

Main Considerations

254. Having regard to the Council's reasons for refusal of the application, the relevant policy context and the evidence to the inquiry, the main considerations that need to be addressed are as follows:

- a) the relationship of the proposal to the adopted development plan and the emerging neighbourhood plan;
- b) whether or not there is a five-year supply of housing land in the area and the implications of this for relevant policies of the adopted development plan and the emerging neighbourhood plan;
- c) whether infrastructure needs arising from the development could be satisfactorily provided for including by way of planning obligations and conditions;
- d) the correct approach to be taken to the overall balance of harm and benefits that would result from the proposal, including whether or not it amounts to a sustainable development, and where the balance should be drawn.

a) The relationship of the proposal to the adopted development plan and the emerging neighbourhood plan

Adopted development plan

255. The development plan for the area currently comprises the saved policies of the Lewes District Local Plan adopted in March 2003; and the Lewes District Local Plan Part 1: Joint Core Strategy 2010-2030, adopted by Lewes District Council on 11 May 2016 and by the South Downs National Park Authority on 23 June 2016. [16]

256. Saved policy CT1 of the Local Plan indicates that development will be contained within the Planning Boundaries as shown on the Proposals Map. Planning permission will not be granted for development outside these Boundaries, other than for that specifically referred to in other chapters of the Plan or in listed categories. [18]

257. The site is immediately adjacent to the Planning Boundary of the Wivelsfield Green West settlement as drawn in the Local Plan. However, being outside that and any other Planning Boundary, and with the proposed relatively large-scale residential development not falling within any of the categories of development indicated in policy CT1 as acceptable outside the Boundaries, the proposal conflicts with that policy. There is no dispute on this. [35a&b,56,187]

258. The policy states that the retention of the open character of the countryside is of heightened importance where it separates settlements and prevents their coalescence. There is no suggestion that concern about potential coalescence applies in this case. However, that point in the policy is directed at circumstances where the normally acceptable categories of development outside

Planning Boundaries might not be acceptable. Despite the absence of a landscape objection by the Council to the current proposal, the appeal site in effect falls within countryside, and the conflict with the fundamental terms of policy CT1 arises. [18]

259. The appellant raises arguments about the degree of consistency of policy CT1 with Government policy in the National Planning Policy Framework (NPPF) and on whether the policy is up-to-date. These matters relate to the weight that should be given to the policy rather than the degree of compliance of the proposal with the development plan, and I deal with them later. [155]
260. In the Joint Core Strategy (JCS), Spatial Policy 1 specifies that in the period between 2010 and 2030 a minimum of 6,900 net additional dwellings will be provided in the plan area. Spatial Policy 2 sets out how 3,597 net additional dwellings will be distributed, which is the remainder after part of the minimum total will be met by way of completions up to April 2015, existing commitments, and allowances for unidentified small-scale windfall sites and rural exception sites. According to the policy, the distribution will comprise: (1) identified strategic site allocations; (2) planned housing growth at listed settlements; and (3) about 200 net additional units in locations to be determined. The policy adds that, for the housing growth identified in (2) and (3), individual sites to meet the planned levels of housing provision will be identified in either the District Council's Site Allocations and Development Management Policies DPD or the National Park Authority's Local Plan; neighbourhood plans could also be used to identify the individual sites. [23,24]
261. Category (2) in the policy includes a minimum of 30 net additional units at Wivelsfield Green. Permission has recently been granted at appeal for a scheme of 30 units at Springfield Industrial Estate in Wivelsfield Green. The effect of allowing the appeal proposal would be to take the total of additional permitted units at the settlement to 125. This is clearly well in excess of the number of 30 cited in Spatial Policy 2. However, on the basis that the figures for additional dwellings in the policy are expressly stated as minima, no specific breach of the policy by the proposal has been alleged by the Council. [24,97,166,178,188]
262. Notwithstanding this, the Council suggests that what the policy says about the preference on how to distribute housing in a sustainable way, described as its "*aims and aspirations*", would be breached. Support is drawn from an appeal case at Hambrook in Sussex where the housing figure in a development plan distribution policy was taken to be a 'signal' about the appropriate level of development at a settlement. It is certainly evident from the JCS that there is intended to be a sustainability basis to the distribution of additional dwellings set out in policy Spatial Policy 2. However, as pointed out by the appellant, there is a distinction from the Hambrook decision in that the figures in the relevant policy in that case were labelled as 'indicative', rather than being minima as in the wording of Spatial Policy 2. A clear meaning can be derived from the term 'a minimum' without needing to interpret the figures as implied maxima. As such, the number of dwellings in the appeal scheme does not lead to a breach of the policy. [65-75,178]
263. Conversely, there is no explicit direction arising from Spatial Policy 2 that an overriding of Planning Boundaries should be allowed in order to achieve housing development in excess of the minimum figures. The means given in the policy to

achieve its specified levels of housing provision is by way of Part 2 of the Local Plan or neighbourhood plans, that is through a plan-led approach. The Planning Boundaries to be applied through policy CT1 of the Local Plan remain a part of the development plan. The absence of an identified specific conflict with Spatial Policy 2 does not therefore affect the overall compliance or otherwise of the appeal proposal with the development plan, but is essentially neutral in that respect.

264. A total of 19 policies in the development plan (8 in the Local Plan and 11 in the JCS) have been cited as relevant to the proposal. Of these, a conflict only with policy CT1 has been identified. The degree of conformity with the other 18 policies carries weight in support of the proposal and is an important factor to be taken into account in assessing whether or not there is overall compliance with the development plan. However, other than Spatial Policies 1 and 2 of the JCS, dealt with above, the remaining policies cited generally relate to the form of development on a site or specific issues arising on particular sites. In contrast, policy CT1 provides a firm direction on the broad pattern of development across the district and on protection of countryside outside defined Planning Boundaries. The scale of the proposed development on greenfield land amounts to a substantial breach of that policy. As such, despite the degree of compliance with other policies, and given the fundamental nature of the conflict with policy CT1, I consider that the proposal is not in accordance with the development plan as a whole. [56,76,149-154,157]

265. A decision in favour of the proposal therefore depends on other material considerations that override the conflict with the development plan. [58,158,174]

Emerging Wivelsfield Parish Neighbourhood Plan

266. The Wivelsfield Parish Neighbourhood Plan 2015-2030 (WPNP) is currently in preparation. It was submitted to the Council in January 2016, Regulation 16 consultation has taken place and an independent examination has been held. The Examiner's report has recently been received by the Council. This concludes that, subject to making some recommended modifications, the Plan meets the basic conditions and should proceed to a referendum. The recommendations have been accepted, and advice was given at the inquiry that the referendum is scheduled to take place on 27 October 2016. Assuming that it does, the outcome will be known by the time of the Secretary of State's decision on this appeal. [29,190]

267. In the emerging WPNP, policy 1 sets out that the Plan defines development boundaries at Wivelsfield Green and Theobalds (east of Burgess Hill) for the purpose of directing future housing, economic and community related development to within those settlements. This is to enhance their role as sustainable communities and encourage the re-use of previously-developed land and of land of a similar character that currently detracts from the appearance of a settlement. The policy adds that proposals for housing development outside the boundaries will only be granted if they are consistent with the countryside policies of the development plan. [31]

268. It is alleged by the appellant that this policy lacks clarity, including in that "*countryside policies of the development plan*" are not defined. However, no suggestion has been made that the current proposal is consistent with any such

policies, and there appears to be no basis for believing that it is, given the thrust of Local Plan policy CT1. [78,167,168]

269. Policy 2 of the emerging WPNP deals with housing site allocations, giving support to proposals on the identified sites, which are Land at Springfield Industrial Site, West of B2112 (approximately 30 dwellings) and two sites on Land at Hundred Acre Lane (each of approximately 2 dwellings). The development boundary of Wivelsfield Green as shown in the WPNP has been amended from the Planning Boundary of the Local Plan to incorporate these sites. [32,100]
270. There are no amendments proposed to these two policies arising from the examination of the WPNP. The appeal site is not one of the allocations in policy 1, and remains outside the development boundary. Despite compliance with other policies in the WPNP, the proposal is therefore in breach of the emerging neighbourhood plan. [32,33,78,79,159,169,189,192]

b) Whether or not there is a five year supply of housing land in the area and the implications of this for relevant policies of the adopted development plan and the emerging neighbourhood plan

271. The NPPF sets out an aim in paragraph 47 to boost significantly the supply of housing. It requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. They should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. The NPPF indicates that the buffer should be increased to 20% where there has been a record of persistent under delivery of housing.
272. According to paragraph 49 of the NPPF, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
273. It is common ground that relevant policies for the supply of housing include Local Plan policy CT1, JCS Spatial Policies 1 and 2, and emerging WPNP policies 1 and 2.
274. It is in dispute whether or not the Council is able to demonstrate a five-year housing land supply. The Council calculates the existing supply at 5.6 years and the appellant at 2.6 years. [53,131,193]
275. Before examining the areas of disagreement, other matters of common ground on housing land supply can be noted. These are that:
- The relevant period for testing five-year housing land supply is 1 April 2016 to 31 March 2021.
 - The starting point for testing the five-year supply is the housing requirement figure set out in Spatial Policy 1 of the JCS, which is a requirement for a minimum of 6,900 new homes over the 20 year plan

period (2010-2030). This equates to an annual requirement of 345 new homes.

- The buffer should be applied to both the initial housing requirement and any shortfall in delivery accrued to date.
- The under delivery that has accrued in the plan period to date (since 2010) is 767 new homes. [36]

276. The JCS Examining Inspector found in his report published on 22 March 2016 that the Council was able to demonstrate a five-year supply, albeit he noted that there was little flexibility at present.²²⁴ [39,114] The national Planning Policy Guidance (PPG) advises that:

"The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position."

277. Nevertheless, there is no disagreement that it is appropriate to assess the current five-year position through this appeal. The base date of 1 April 2016 is later than that of 1 October 2015 considered by the Inspector, and specific up-to-date evidence is put forward relating to the pertinent matters. At the same time, where relevant the Inspector's findings are of important weight. [39,114-116]

278. The following matters are in dispute: whether the buffer should be 5% or 20%; how to deal with the previous shortfall in delivery, by way of adding it to the whole plan period (the 'Liverpool' approach) or to the requirement for the next five years (the 'Sedgefield' approach); the size of a windfall allowance; and the extent of delivery that can be expected from named individual sites. I consider these areas in turn.

Buffer

279. The purpose of the buffer as set out in paragraph 47 of the NPPF is to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land. [122]

280. There has clearly been significant under-delivery against the new JCS target of 345 dwellings per annum from the start of the JCS plan-period in 2010. As time goes by it will be increasingly relevant to measure past delivery against that target. However, the JCS Examining Inspector expressly considered the former South East Plan target to be an appropriate basis on which to measure performance for a period extending beyond 2010. He noted average annual delivery as being slightly above this target since 2006/7. The Inspector gave cogent reasons as to why a higher requirement arising from the NPPF and the then emerging JCS should not be applied as the relevant measure, relating to the timing of these factors and the period in which an uplift in delivery could reasonably be expected. There is no firm ground therefore to believe that his

²²⁴ CD7 para 43

conclusion on this matter was reached on the basis of a wish to find the plan sound. [40,42-46,117-119,122-125]

281. Despite the important concerns raised by the appellant about performance against the current JCS target, the evidence base has moved on only to a minor extent since the date of the Inspector's findings. I consider that there is no compelling reason to depart from his conclusion that, based on the last 10 years or so, there has not been a persistent record of under delivery which would warrant a 20% buffer. Therefore, while the situation could change in the future, I find that a 5% buffer at present remains appropriate, having regard to the advice of the PPG on the relevant time period and taking into account individual circumstances. On this matter I am in agreement with the Council. [42-46,117-119,122-125]

'Liverpool' or 'Sedgefield'

282. With respect to dealing with past shortfalls, the PPG states that: "*Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible.*" [47,126]

283. The JCS Examining Inspector found that there was a specific local justification for seeking to meet the shortfall over the full plan period (the 'Liverpool' approach). As factors in this he cited the area's constraints of the National Park, proximity to the sea and the capacity of the coastal road network. Due to these he considered that it was not practical or realistic to seek to increase new housing delivery over and above recent planned rates to the extent necessary to meet the full shortfall that has developed during the recession entirely within the first 5 years of the plan period. He also noted that the Plan's housing trajectory from 2015 onwards is already to a degree front loaded. [40,47,48,126,127]

284. There is no strong basis now to warrant finding that these factors no longer apply. The significant implications of a delay in dealing with under supply in terms of the timing of meeting needs would have been apparent to the Inspector. The agreed absence of environmental constraints applicable to the appeal site is relevant to the merits of the particular proposal but does not amount to firm evidence on the likely wider availability of such sites. [47,48,126,127]

285. Again, I follow a view consistent with that of the JCS Inspector, and conclude that the 'Liverpool' method should apply in this case, as advocated by the Council.

Windfalls

286. The NPPF in paragraph 48 advises that an allowance may be made for windfall sites in the five-year supply 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.

287. The Council's proposed allowance of 50 dwellings per year arises from the findings of the JCS Examining Inspector. This was based on the evidence available to him on the contribution of windfalls including of likely future prospects. There is no new evidence provided with the current appeal that justifies a different figure. I consider that the Council's stepped approach towards calculating the windfall contribution over the five-year period (none in year one, up to the full contribution for years 4 and 5) adequately mitigates the

risk of double counting for small sites with permission. I therefore accept its total windfall figure of 145 units for the five-year period. [52,130]

Site contributions

288. Following the round table session at the inquiry, the anticipated contribution from 12 individual sites remains in dispute. The respective positions of the parties on these are set out in Annex A. In assessing the deliverability of the sites, I take into account the advice given in paragraph 47 of the NPPF (with its footnotes 11 and 12) and in the PPG. [4,37,51,129]

Sites with planning permission

289. Site 1 and 2, Newhaven Eastside: The appellant raises viability and timing issues on this site. However, the Council's evidence, including of continuing discussions, the submission of a new application for modification of the previous planning obligation, and implementation of the access road, overall provides a firm indication that the site is deliverable. The Council's estimate of 150 units from 2018 onwards is a realistic prospect.

290. North Street, Lewes: This is a complex town centre scheme, with extensive planning conditions and pre-commencement work requirements. Nevertheless, the Council provides evidence of progress on these matters. While the appellant seeks to limit the five-year contribution to the number of units in the first phase (243), given the progress and that most of the infrastructure would be provided with that phase, it would be reasonable also to include part of phase 2. However, a total of 350 units would appear to be more realistic than the Council's figure of 415.

Sites without planning permission

291. Three sites are retained allocations from the Local Plan. On two of these (Newhaven Marina and Caburn Field), the appellant identifies issues that could slow progress, but the evidence indicates clear scope for these to be overcome, with current interest in pursuing schemes. The amounts the Council suggests appear to be capable of being delivered within the five-year period.

292. On the third site (South of Valley Road), doubt is again raised by the appellant, but this does not amount to clear evidence that there will not be some delivery. However, the contribution should be reduced from 24 to 9 units as being a more realistic amount likely to be delivered based on the most recent application.

293. Two sites are allocations in Neighbourhood Plans (Land East of Telephone Exchange, Newick and Diplocks Yard). There appear to be no significant constraints on these that would prevent a realistic prospect of delivery in the five-year period.

294. Two sites are JCS strategic allocations (Lower Hoddern Farm and Land at Harbour Heights). The uncertainty raised about timing again does not preclude a reasonable expectation of some delivery towards the end of the five-year period. However, with the anticipated timescale for a planning application on the former site, it would be more realistic to reduce the contribution from 126 units to 63.

295. Of the remaining three disputed sites without permission, the Police Station, South Road has no significant constraints identified and appears to be capable of delivery. Conversely, on Newlands Primary School there are evidently a number of constraints to overcome. While some desire for progress is apparent, there is insufficient evidence to establish deliverability given the degree of uncertainty, and therefore the Council's figure of 50 units should be discounted.

296. Finally, on the Former Roche Site there is a question of whether or not there is an extant permission, but no significant constraints are identified. Delivery of the Council's estimate of 14 units some time within five years appears reasonable.

Overall five-year position

297. With the appellant's contended reductions to cover a lower contribution from windfalls and differences on large sites, the appellant suggests that the Council's supply figure in its April 2016 assessment (2,360 units equating to 5.62 years supply) should be reduced by 811 units, giving a revised supply of 1,549 units. I consider that the Council's windfall figure is reasonable, but that 193 units should be deducted from the large sites supply as set out above, plus 11 units the Council has agreed to deduct. This gives a revised supply of 2,156 units. [53,128,130,131]

298. Based on my previous conclusions, the assessment should be undertaken on the basis of a 5% buffer (applied as agreed to both the initial housing requirement and the shortfall in delivery accrued to date) and using the 'Liverpool' approach, which gives a five-year requirement of 2,099 units. A supply of 2,156 units equates to 5.14 years supply (a surplus of 57 units). While this is a very marginal outcome, it is based on the evidence provided for the appeal and represents a sound demonstration of a five-year supply. [112,119,120,128,130,131,238]

299. On this basis there is no reason to find that the agreed policies for the supply of housing should be considered out-of-date on the ground of an absence of a five-year supply of deliverable housing sites.

c) Whether infrastructure needs arising from the development could be satisfactorily provided for including by way of planning obligations and conditions

Conditions

300. Recommended conditions in the event of the appeal being allowed have been agreed between the main parties. The conditions as set out in Annex B include the amendments agreed at the inquiry and other minor changes to improve wording and ordering. [245]

301. A standard condition on commencement is required, together with a condition specifying the approved plans for the avoidance of doubt.

302. Various conditions on drainage are necessary to ensure that appropriate provision is made for this within the site and that the development is acceptable in flood risk management terms. [35n]

303. Requirements on landscaping and trees are needed to ensure a high quality development that is in keeping with the appearance of the area. Boundary

treatments and materials to be used in the development should be approved for the same reason.

304. Given the scale of the development, a condition relating to control of construction details is needed to safeguard the environment and local amenity.
305. Requirements on various aspects of highway infrastructure and public footpaths are necessary to safeguard highway conditions and local rights of way.
306. The archaeology of the site should be investigated in recognition of the potential interest. [35p]
307. A requirement on ecology is needed to protect and enhance biodiversity. [35l]
308. Open space should be secured as part of the development in accordance with the proposal and to ensure appropriate provision. [14]
309. The previous use of the site and adjoining land warrants requirements on contamination. These are expanded from the originally proposed condition dealing only with unsuspected contamination in order to reflect the existing information and likelihood of contamination. [245]

Obligations

310. A Section 106 Agreement has been submitted. The NPPF sets out policy tests for the seeking of planning obligations, and there are similar statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations (2010) which must be met for obligations to be given weight. Policies RES19 and RE1 of the Local Plan and Core Policies 1, 7, 8 and 13 of the JCS and the contents of a local guidance document on recycling are also relevant. [3,21,25-27,246]
311. The obligations in the Agreement on highway works, including contributions towards bus stops, and on a Travel Plan would help meet the transport infrastructure needs resulting from the proposal and encourage the use of sustainable transport modes. The recycling contribution would also meet needs arising from the new residential occupiers. [247-249]
312. With respect to affordable housing, provision towards this is required under local and national policy. [25,35o,250]
313. The evidence indicates that the contributions would not lead to a breach of the limit for pooled contributions in Regulation 123. [251]
314. The obligations all meet the relevant policy and statutory tests of being necessary, directly related to the development and fairly and reasonably related to it, and can be accorded weight in support of the proposal. [251]
315. Provision towards meeting infrastructure needs would also be made through the district's Community Infrastructure Levy. Taken together, the suggested conditions, the planning obligations and the Levy would deal satisfactorily with the impact of the development on infrastructure and the environment. [35d&e,252]

d) The correct approach to be taken to the overall balance of harm and benefits that would result from the proposal, including whether or not it amounts to a sustainable development, and where the balance should be drawn

316. The NPPF sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. It states that the policies in its paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means in practice.

Dimensions of sustainable development

317. Paragraph 7 identifies three dimensions to sustainable development: economic, social and environmental. [103]

318. In economic terms, the development would generate a number of undisputed benefits. These are quantified as: £15.5 million invested in construction; 60 gross direct full-time equivalent jobs created during the construction period; a GVA economic output of £9.2 million; a New Homes Bonus of £850,000 to the Council. [104,105,138,139]

319. These benefits would support economic growth in accordance with the NPPF and can be accorded significant weight.

320. In terms of the environmental role, it is agreed between the main parties that the site is in a sustainable location, with a range of services within walking distance. There is no objection from the Highway Authority. The proposed provision of two new bus stops adjacent to the site would serve the existing buses along this route which provide public transport links to higher order settlements such as Burgess Hill and Haywards Heath. This would also benefit existing residential occupiers in this location. As pointed out by third parties, the proposal would no doubt lead to extensive car use by future occupiers, but the location offers opportunities for use of sustainable transport modes in accordance with paragraph 32 of the NPPF. [6,15,35&g,111,136,142,143,202,203,214,229,235,236, 241]

321. There are no natural or built environment, landscape character, visual amenity, or other site constraint objections raised by the Council to the proposal. It would involve an encroachment of development on a greenfield site that is part of the countryside adjacent to the settlement. However, this location has no particular landscape value, and the site is relatively well contained within the wider landscape, notwithstanding the views possible from the public footpaths which pass through the site. Additional views would be opened up by way of hedgerow removal to provide the access, and the development would be apparent from surrounding positions. However, it would be visually intrusive to only a localised degree, and the requirements on design of Core Policy 11 of the JCS could be met. [11,12,14,35,57,102,106,195-201,204,226]

322. Overall the site is one that performs relatively well in environmental terms. Within a constrained district which is affected by designations and has an extensive housing requirement, this is a factor in the development's favour. Significant weight should be given to it in the balancing exercise. [102,137,144-146]

323. In terms of the social dimension, the proposal would provide a significant gain in housing, with a total of 95 units including 38 affordable units. The units would be of an agreed range of sizes with a good standard of design and open space provision, and infrastructure needs arising from the development would be met. Such provision is in accordance with the general boost to the supply of housing sought by national policy, and with the identified local requirement. The district's Objectively Assessed Need at over 10,000 units over the plan period is considerably larger than the requirement of 6,900 units provided for in the JCS. Despite the finding above that there is a five-year housing land supply, this is a marginal position, and there is a substantial shortfall against the annual requirement which remains needing to be met. [13,35,45,96,107,133,140,141,147]
324. With respect to affordable housing, the JCS seeks to provide for this, and there is a significant affordable housing need both across the district and identified more locally. [134,135]
325. Substantial weight should be given to the housing gain that would result from the proposal. [102,113,135,137,180]

Plan-led

326. Whether the proposal can be regarded as meeting the aims of the NPPF also needs to take account of the principle in paragraph 17 that planning should "*be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area*". I turn now to the weight to be given to the conflict with the adopted development plan and emerging neighbourhood plan identified above. [54,81,109,234]
327. With respect to the adopted plan, there is conflict only with one policy, CT1 of the Local Plan, but this leads to an overall conclusion that the proposal is not in accordance with the development plan as a whole.
328. The defined Planning Boundaries as the means through which policy CT1 operates are related to development requirements that no longer apply, with an end date for these of 2011. This is reflected in a review of the Boundaries which is being effected through the development plan process by way of the future Local Plan Part 2 and neighbourhood planning. While policy CT1 gives blanket protection to countryside, the NPPF directs specific protection to valued landscapes. Nevertheless, a core planning principle of the NPPF includes recognising the intrinsic character and beauty of the countryside. Policy CT1 is expressed as the 'key countryside policy' in the Local Plan. The proposal would involve the incursion of development on a greenfield area of countryside. Taking into account also the finding above that a five-year housing land supply is demonstrated, I consider that policy CT1 is not out-of-date for the purposes of paragraph 14 of the NPPF, and that the conflict with it should be given significant weight in the decision. [35b,56,60,64-68,77,155,156,177]
329. With respect to the appellant's reference to the view reached on policy CT1 in the Springfield Industrial Estate appeal decision, the Inspector noted that the policy is not fully in accordance with the NPPF rather than concluding that it is

- out-of-date or should be given no weight.²²⁵ In addition, that case involved a site allocated for housing development in the emerging WPNP. [155,206,207]
330. I have found that the present proposal is not in accordance with the emerging WPNP as a result of conflict with its Policy 1.
331. Paragraph 183 of the NPPF refers to neighbourhood planning as giving communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. According to paragraph 198, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. [92]
332. In this case the WPNP has not yet been brought into force but has reached an advanced stage, with a referendum due to take place soon after the time of writing this Report. A referendum is an important part of the neighbourhood planning process, and the outcome of this is not certain. However, based on the degree of support to date there appears to be a strong likelihood that the WPNP will shortly be successful at referendum, and thereafter become part of the development plan. This is anticipated to be known by the time of the decision. [29,86,88,164,190,220,226,232]
333. Criticisms have been put forward by the appellant of the WPNP, and suggestions made that if brought into force would be the subject of a legal challenge. There are alleged to be a lack of conformity with strategic policy and shortcomings in relation to strategic environmental assessment, the site selection process, and the degree of certainty and clarity in policies. These points largely relate to matters that have been considered through the independent examination, and the Plan was found with proposed modifications, which have been agreed, to meet the basic conditions. Contentions relating to the non-acceptance of representations as part of the examination process do not alter this position. Were the plan to be made and then this to be followed by a legal challenge before the decision on this appeal, clearly that would need to be taken into account as a material consideration. At present there is no challenge, and the outcome of the examination process has statutory status. I have taken into account the criticisms made of the plan and the suggested likelihood of a challenge, but I find no reason not to accord the successful testing of the plan due weight in accordance with the statutory status of the examination. That is the position on which this Report is based. [80-85,87,88,92,100,101,163-174,190,227]
334. A decision to allow the appeal could be expected to be viewed as an undermining of a neighbourhood plan that has been widely supported by the local community and lead to an erosion of local confidence in neighbourhood planning. That would be a significant harmful negative outcome having regard to the importance placed on neighbourhood planning in national policy. It is also notable that the basic conditions for the WPNP against which it was assessed include that it must contribute towards the achievement of sustainable development. [81,87,91,162,211,230,231,240]
335. In the context of the emphasis given by the Government to the plan-led system including neighbourhood planning, and the stage that the emerging WPNP has reached, the conflict with it carries substantial weight. [86,87,91,167,179]

²²⁵ CD14 para 16

336. In the plan-led system the conflict with the adopted development plan and emerging neighbourhood plan can be regarded as a negative social aspect of the proposal in terms of sustainable development. [89-92]

Overall balance

337. Paragraph 14 of the NPPF indicates that, for decision-taking, the presumption in favour of sustainable development means, where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. [59,66,181]

338. I have found that relevant policies of the development plan are not out-of-date, and the development plan is not absent or silent. The tilted balance to decision-taking set out in paragraph 14 therefore does not apply in this case. [59,94,181]

339. The proposal would provide significant benefits, with the gain in housing in particular carrying substantial weight. In many respects the proposal would contribute positively to sustainable development objectives as set out in the NPPF. However, the NPPF also as part of sustainable development aims for planning to be genuinely plan-led and emphasises the important role of neighbourhood plans. The conflict with the adopted development plan and the emerging neighbourhood plan prevent the proposal overall being sustainable development. Having regard to the NPPF as a whole, the benefits of the proposal do not warrant a decision other than in accordance with the adopted and emerging development plan, and the balance is against the grant of permission. [58,89,90,92,94,102,108-110,148,175-182,215-218,237]

RECOMMENDATION

340. I recommend that the appeal be dismissed. If, however, the Secretary of State disagrees with me and decides to grant permission, I recommend that the conditions set out in Annex B below are applied.

T G Phillimore

INSPECTOR

ANNEX A: Summary table of disputed five-year housing land supply sites²²⁶

Site	Council figure	Appellant figure
Sites with planning permission		
Site 1 and 2, Newhaven Eastside, The Drove, Newhaven	150	0
North Street, Lewes	415	243
Retained Local Plan allocations		
Newhaven Marina, Fort Road, Newhaven	50	0
Caburn Field, Ringmer	40	0
South of Valley Road, Newhaven	24	0
Neighbourhood Plan allocations		
Land east of Telephone Exchange, Newick	30	0
Diplocks Yard, Bishops	12	0
Strategic Housing allocations		
Lower Hoddern Farm, Peacehaven	126	0
Land at Harbour Heights	50	0
Sites with no planning permission/allocation		
Police Station, South Road, Newhaven	10	0
Newlands Primary School, Seaford	50	0
Former Roche Site, Bell Lane, Lewes	14	0

²²⁶ Extracted from table at Document CD21 Appendix 1. Note that 2 sites in this source table have been excluded: The Old Rectory, Heighton Road, South Heighton [Council agrees removal from supply]; Magistrates Court Car Park, Court Road, Lewes [Appellant agrees should be included in supply].

ANNEX B: RECOMMENDED CONDITIONS

Implementation and plans

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) Unless varied by other conditions of this decision, the development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan - Drawing No. WIDR-000
 - Existing Site Plan (Block Plan) - Drawing No. WIDR-001
 - Proposed Site Layout - Drawing No. WIDR-002 Rev D
 - Site Section 1 of 3 - Drawing No. WIDR-003-1 Rev A
 - Site Section 2 of 3 - Drawing No. WIDR-003-2 Rev A
 - Site Section 3 of 3 - Drawing No. WIDR-003-3 Rev A
 - Materials Disposition Layout - Drawing No. WIDR004 Rev A
 - Affordable Housing Location Plan - Drawing No. WIDR005 Rev A
 - Refuse Collection Strategy - Drawing No. WIDR006 Rev A
 - House Type 'A' Plans and Elevations- Drawing No. WIDR 010/1 Rev A
 - House Type 'B' Plans and Elevations - Drawing No. WIDR 011/1
 - House Type 'C' Plans and Elevations - Drawing No. WIDR 012/1 Rev A
 - House Type 'C.1' Plans and Elevations - Drawing No. WIDR 012/2
 - House Type 'D' Plans and Elevations - Drawing No. WIDR 013/1 Rev A
 - House Type 'E' Plans and Elevations - Drawing No. WIDR 014/1
 - House Type 'F' Plans and Elevations - Drawing No. WIDR 015/1
 - House Type 'G' Plans and Elevations - Drawing No. WIDR 016/1
 - House Type 'H' Plans and Elevations - Drawing No. WIDR 017/1
 - House Type 'J' Plans and Elevations - Drawing No. WIDR 018/1
 - House Type 'K' Plans and Elevations - Drawing No. WIDR 019/1
 - House Type 'X' Plan and Elevations - Drawing No. WIDR 050/1
 - House Type 'X.1' Plans and Elevations - Drawing No. WIDR 050/2
 - House Type 'Y' Plans and Elevations - Drawing No. WIDR 051/1 Rev A
 - House Type 'Z' Plans and Elevations - Drawing No. WIDR 052/1
 - Flat Block Type BLK A Plans - Drawing No. WIDR-060-1
 - Flat Block Type BLK A Elevations - Drawing No. WIDR-060-2
 - Single Garage (Detached) - Drawing No. WIDR 090/1
 - Single Garage (Detached Twin) - Drawing No. WIDR 090/2
 - Double Garage (Detached) - Drawing No. WIDR 091/1
 - Double Garage (Semi-detached) - Drawing No. WIDR 091/2
 - Strategic Landscape Proposals - Drawing No. WIVE-900 Rev A
 - Contract Plan - Drawing No. HH CON 2 Rev A
 - Drainage Strategy - Drawing No. 4983.012 Rev A
 - Flood Flow Analysis - Drawing No. 4983.013
 - Proposed Development Access - Drawing No. 4983.005 Rev D

Drainage

- 3) No development shall commence until a surface water drainage scheme for the site, including details of the long term maintenance and management, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved

details before the development is occupied or in accordance with phasing which has first been submitted to and agreed in writing by the local planning authority.

- 4) The surface water management proposals formulated for the detailed design stage shall be supported by detailed hydraulic calculations which take into account the connectivity of the different drainage features. They should show a 'like for like' discharge rate between the existing and proposed scenarios during the 1 in 1, 1 in 30 and 1 in 100 (plus an allowance for climate change) rainfall events. If it is not practical to limit the runoff volume to the existing, the excess volume during a 6 hours 1 in 100 years storm should be discharged at a rate of 2 l/s/ha.
- 5) No development shall commence until details of the proposed means of foul sewerage disposal have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details.

Landscaping and trees

- 6) No development shall take place until specifications of a landscaping scheme together with full specifications of all proposed tree, shrub and hedge planting shown on the approved Strategic Landscape Proposals Drawing No. WIVE-900 Rev A, have been submitted to and approved in writing by the local planning authority. The specifications shall include the quantity, size, species and positions or density of all trees and shrubs to be planted, how they will be protected and the proposed time of planting.
- 7) If within a period of 5 years from the date of its planting any tree or shrub (or any tree or shrub planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree or shrub unless the local planning authority gives written consent to any variation.
- 8) No demolition, site clearance or building operations shall commence until details of a scheme and method of implementation, relating to all stages of development, for the protection of all trees, hedges and shrubs to be retained on site, and those trees off-site where root protection areas extend into the site, have been submitted to and approved in writing by the local planning authority. These details shall follow the principles set out in BS5837:2012 *Trees in relation to design, demolition and construction – Recommendations*. The approved scheme shall be implemented prior to any works commencing on site, including demolition, site clearance or building operations, and shall be fully adhered to during the course of development. In particular, the following restrictions shall be strictly observed:
 - No bonfires shall take place within the root protection area (RPA) of any tree or within a position where heat could affect foliage or branches;
 - No trenches, drains or service runs shall be sited within the RPA of any retained trees;
 - No changes in ground levels or excavations shall take place within the RPA of any retained trees.

- 9) A landscape management plan, including long-term objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.

Design details

- 10) No development shall take place until there has been submitted to and approved in writing by the local planning authority, details indicating the positions, design, materials, height and types of boundary treatment to be erected throughout the site, including separation between dwellings and on the edge boundaries of the site, the design and composition of which should respect this edge-of-settlement location. The boundary treatment shall be completed before the dwellings are occupied or in accordance with a timetable to be first agreed in writing with the local planning authority. The development shall be carried out in accordance with the approved details.
- 11) No development shall take place above the ground floor slab level until details and samples of all external facing, roofing and surfacing materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and samples.

Construction management

- 12) No development shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The approved CEMP shall set out the arrangements for managing all the environmental effects of the development during the construction period, including traffic management and routing (to include timings between school hours and size of vehicles), workers' travel plan, details of contractors parking, vibration, dust suppression, noise impacts, hours of operation, air pollution and odour, lighting, wheel washing and site security. The CEMP shall be implemented in full throughout the duration of the construction works.

Highways and access

- 13) No dwelling shall be occupied until the site accesses, mains services, foul and surface water drainage, estate roads, footways, casual parking areas, cycle parking areas and vehicle parking and turning spaces serving that dwelling have been constructed, surfaced and drained in accordance with plans, phasing timetables and other details which shall be submitted to and approved in writing by the local planning authority in advance of their construction. Parking and turning spaces shall thereafter be retained for their designated use.
- 14) No works in association with the approved development and which will affect public footpaths Wivelsfield 10a, 10b and 22b, shall take place until details of the diversion and/or upgrading of the public footpath through the site and a timetable for implementation of those works have been submitted to and approved in writing by the local planning authority. The upgrading of the footpath shall be carried out in accordance with the approved scheme and timetable.

- 15) The access shall not be used until visibility splays of 2.4m x 60m to the north and 101m to the south are cleared of all obstructions exceeding 600mm in height and these shall be kept clear thereafter.

Archaeology

- 16) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the local planning authority.
- 17) The development hereby permitted shall not be brought into use until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 16 and that provision for analysis, publication and dissemination of results and archive deposition has been secured, unless an alternative timescale for the submission of the report is first agreed in writing with the local planning authority.

Ecology

- 18) No development shall take place until a detailed scheme of ecological enhancements and mitigation measures, to include ongoing management as necessary, based on the recommendations of the Ecology Report (July 2015) by AA Environmental Ltd has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out and managed thereafter in accordance with the approved details.

Open space

- 19) The 60th dwelling hereby approved shall not be occupied unless and until the public open space has been provided in accordance with details which shall be submitted to and approved by the local planning authority. The submitted particulars shall include details of its on-going management and maintenance. The development shall be carried out, managed and maintained thereafter in accordance with the approved details.

Contamination

- 20) Prior to the commencement of development the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the local planning authority:
- a) A preliminary risk assessment including a site walkover which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
 - b) A site investigation scheme (if required), based on (a), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

- c) The site investigation results and the detailed risk assessment (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.

- 21) Prior to occupation of any part of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy (if required) and the effectiveness of the remediation (if required) shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.
- 22) Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan (if required) shall be submitted to the local planning authority as set out in that plan. On completion of the monitoring programme a final report (if required) demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the local planning authority.
- 23) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until the developer has submitted, and obtained written approval from the local planning authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson of Counsel Instructed by Head of Law, Lewes District Council

He called:

Natalie Carpenter BA MA Senior Planning Officer, Strategic Policy Team,
MRTPI Lewes District Council

Sarah Sheath BSc DipTP Senior Planning Officer, Development
MRTPI Management Team, Lewes District Council

FOR THE APPELLANT:

Sasha White QC Instructed by Turley

He called:

Jeffrey Richards Office Director, Turley
BA(Hons) MTP MRTPI

Simon Packer BA(Hons) Director, Turley
DipTP MRTPI

INTERESTED PERSONS:

Judy Stoner Wivelsfield Parish Council
Jason Stoner Local resident
Martin Davenport Local resident
John Kay CPRE Sussex

CORE DOCUMENTS

- CD1 Delegated officer report
- CD2 Decision notice (January 2016)
- CD3 Saved policies from 2003 Lewes Local Plan
- CD4 Lewes District Local Plan Part 1 – adopted Joint Core Strategy (May 2016)
- CD5 Inset Maps 23a and 23b: Wivelsfield Green (May 2016)
- CD6 Joint Core Strategy Inspector’s Initial Findings (February 2015)
- CD7 Joint Core Strategy Inspector’s Report (March 2016)
- CD8 Joint Core Strategy Inspector’s Report – Appendix – Main Modifications
(March 2016)
- CD9 Lewes Council Housing Land Supply Position as at 1 October 2015
(January 2016)
- CD10 Appendix 1 – JCS Housing Trajectory as at 1 October 2015
- CD11 Housing Land Supply Position for the Lewes District as at 1 April 2016
- CD12 Lewes District Council’s SHLAA (October 2015) (Extracts)
- CD13 Wivelsfield Parish Neighbourhood Plan Submission Plan 2015-2030
(January 2016)
- CD14 Appeal Decision Springfield Industrial Estate, Ditching Road, Wivelsfield

- (12 April 2016)
- CD15 Appeal Decision Land adjacent to Gyllyngdune, South Road, Wivelsfield Green (17 May 2016)
- CD16 Appeal Decision Land North of Bishops Lane, Ringmer (5 January 2016)
- CD17 Examiner's Report on Wivelsfield Parish Neighbourhood Plan August 2016
- CD18 Lewes District Council Decision Statement on Wivelsfield Parish Neighbourhood Plan September 2016
- CD19 Section 106 Agreement dated 9 September 2016
- CD20 Statement of Common Ground
- CD21 Five Year Housing Land Supply Statement of Common Ground and Agenda for Round Table Discussion
- CD22 Policy RES10 from Local Plan
- CD23 Agreed conditions on contamination

INQUIRY EVIDENCE AND SUBMISSIONS – LOCAL PLANNING AUTHORITY

- LPA1 Ms Carpenter's Proof/Summary
- LPA2 Ms Carpenter's Appendices NC1-NC11 (2 vols)
- LPA3 Ms Sheath's Proof/Summary
- LPA4 Ms Sheath's Appendices SS1-SS15 (2 vols)
- LPA5 Environmental Health response to planning application dated 12 August 2015
- LPA6 Closing submissions

INQUIRY EVIDENCE AND SUBMISSIONS – APPELLANT

- APP1 Mr Richards's Proof/Summary/Appendices JRA1-JRA10 (2 vols)
- APP2 Mr Richards's Appendices JRB1-JRB19
- APP3 Mr Packer's Proof/Summary/Appendices 1-13
- APP4 Opening statement
- APP5 Plans for North Street Lewes
- APP6 Letter from Turley to Wivelsfield Parish Council dated 8 August 2016
- APP7 Wivelsfield Neighbourhood Plan Sustainability Appraisal (incorporating a Strategic Environmental Assessment) January 2016
- APP8 Note on Wivelsfield Neighbourhood Plan timeline
- APP9 Note on development plan policy compliance
- APP10 Closing submissions
- APP11 Additional submissions in response to Council's closing

INQUIRY EVIDENCE AND SUBMISSIONS – THIRD PARTIES

- TP1 Ms Stoner's statement
- TP2 Ms Stoner's site visit plan
- TP3 Ms Stoner's contamination document
- TP4 Mr Stoner's statement
- TP5 Mr Kay's statement

INSPECTOR'S DOCUMENT

- INSP1 Folder of appeal representations