



Ministry of Housing,  
Communities &  
Local Government

Our ref: APP/C3810/V/17/3166900

P Roberts / J Larner  
Lichfields  
14 Regents Wharf  
All Saints Street  
London  
N1 9RL

12 February 2018

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY CHURCH COMMISSIONERS FOR ENGLAND  
LAND WEST OF NEW BARN LANE, BERSTED, WEST SUSSEX PO21 5DN  
APPLICATION REF: BE/77/16/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Kenneth Stone BSc Hons DipTP MRTPI who held a public local inquiry on 26 and 27 September 2017 into your client's application for planning permission for up to 50 residential units, landscaping, amenity space, car and cycle parking, roads, service and drainage infrastructure and other associated works, in accordance with application ref: BE/77/16/OUT, dated 11 May 2016.
2. On 9 January 2017, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission be granted, subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to grant outline planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**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 consists of the Arun District Local Plan (LP) 2003 and the made Bersted Neighbourhood Development Plan 2014-2029. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR4.4 and IR4.8.
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'), as well as the Written Ministerial Statement (WMS) of 12 December 2016 on Neighbourhood Planning.

### *Emerging plan*

8. The emerging plan comprises the Arun Local Plan (ELP) 2011-2031. The Secretary of State notes that the examination of the ELP was suspended in February 2016 and resumed on 19 September 2017. The Main Modifications are subject to consultation until 23 February 2018. The Secretary of State considers that the emerging policies of most relevance to this case include policy SD SP1a, policy SD SP2, policy C SP1 and policy H SP2a as set out by the Inspector at IR4.14-4.15.
9. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes that the ELP is currently undergoing further consultation; that there are a number of significant unresolved objections; and that, at this stage, the relevant policies do not appear to contain obvious inconsistencies with the Framework. He considers that, while there has been much progress, the ELP is still at an early stage and therefore carries limited weight.

### **Main issues**

#### *Housing land supply*

10. The Secretary of State has carefully considered the Inspector's analysis at IR9.3-9.6. He notes the main parties' agreement that there is a persistent undersupply of housing locally, that the 20% buffer should be applied, and that the assessed housing land supply is 2.07 years. Like the Inspector at IR9.4, the Secretary of State concludes that the supply of housing is 2.07 years.
11. He agrees with the Inspector that the current Development Plan, including the BNDP, is constraining development and not meeting local housing need or the Framework's advice to significantly boost the supply of housing. Like the Inspector at IR9.48, he considers that development will need to be built outside these boundaries and in the open countryside if the housing supply situation is to be improved. Such policies are therefore out of date and can only be given limited weight.

#### *Neighbourhood Plan*

12. The Secretary of State agrees with the Inspector at IR9.42 that the WMS on Neighbourhood Planning is not engaged, given that the Council is unable to demonstrate a 3 year supply of housing land.

13. Like the Inspector at IR9.47, the Secretary of State considers that that the proposal conflicts with paragraph 198 of the Framework, which states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. However, he notes at IR9.48 that the BNDP was produced and made at a time when the housing requirement for the district was in the region of 580dpa. It has now more than doubled and is in excess of 1200dpa. Given the severe housing shortage and the substantially increased housing need, the Secretary of State considers that this conflict carries limited weight.

#### *Character and appearance of the surrounding area*

14. The Secretary of State has given careful consideration to the Inspector's analysis at IR9.7-9.12. The Secretary of State agrees with the Inspector at IR9.7 that there would be some harm to the character and appearance of the area by the introduction of built environment. However, given the proximity to the settlement edge, the adjoining development site, surrounding landscape, and flat topography, the Secretary of State agrees with the Inspector that this harm would be limited, and that with planting that harm would be reduced over time.

15. The Secretary of State notes at IR9.8 that the application site is located beyond the built up area boundary and within the strategic gap defined in the LP and BNDP, amounting to less than 0.3% of the total land of the gap. For the reasons given at IR9.9-9.12, the Secretary of State agrees with the Inspector that the proposed development would result in limited harm to the character and appearance of the area through development in the countryside, beyond the built up area boundary and that there would be limited harm to the strategic gap. The proposal would therefore conflict with LP policies GEN2, GEN3, AREA 10 and BNDP policies ES3 and ES7.

#### *Highway safety and traffic conditions*

16. The Secretary of State has given careful consideration to the Inspector's analysis at IR9.13-9.24. For the reasons given at IR9.14-9.17, the Secretary of State agrees with the Inspector at IR9.18 that the proposal would not have a detrimental effect on the free flow of traffic or highway safety on the surrounding road network as a result of the additional traffic generated.

17. For the reasons given at IR9.19-9.22 the Secretary of State agrees with the Inspector that there are access arrangements available to the developer through a number of alternatives and that the scheme is deliverable.

18. Overall, the Secretary of State agrees with the Inspector at IR9.24 that the proposed development would not result in material harm to highway safety and traffic conditions on the surrounding road network and that the proposal would not conflict with LP policies GEN7, GEN14 and GEN15 or BNDP policy HDQ8.

#### *Flood risk*

19. The Secretary of State has given careful consideration to the Inspector's analysis at IR9.25-9.31. He notes at IR9.27 that the site is located in Flood Zone 1 on Environment Agency mapping which is rated as very low risk of flooding from rivers and sea and very low risk with regards to surface water flooding. He notes at IR9.29 that the Environment Agency, the Council's drainage engineer, nor West Sussex County Council, as Lead Local Flood Authority, have raised any objections to the scheme.

20. For the reasons given at IR9.27-9.31, the Secretary of State agrees with the Inspector that overall there would be a net benefit in terms of reducing flood risk in the area, the proposal would not result in flood risk for the occupiers of the new development and the development would not increase the risk of flooding elsewhere. The Secretary of State further agrees that the proposal is in accordance with the advice in the Framework, policy GEN9 in the LP and policy ES2 in the BNDP.

#### *Community and social infrastructure*

21. The Secretary of State has given careful consideration to the Inspector's analysis at IR9.32-9.41. For the reasons given at IR9.33, the Secretary of State agrees with the Inspector that the provision of affordable housing should be given significant weight in the planning balance.

22. For the reasons given at IR9.32-9.41, the Secretary of State agrees with the Inspector that the proposed development makes reasonable provision for any additional community and social infrastructure needs arising from the development. He further agrees that the proposal would therefore not conflict with LP policy GEN8.

#### **Planning conditions**

23. The Secretary of State has given consideration to the Inspector's analysis at IR9.53-9.61, the recommended conditions set out at the end of the IR and 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 and that the conditions set out at Annex A should form part of his decision. As part of the reserved matters process, the Secretary of State considers it important that the applicant informs the Council how the proposed dwellings will be connected to the utilities to be provided on site to facilitate super-fast broadband connectivity.

#### **Planning obligations**

24. Having had regard to the Inspector's analysis at IR9.62, the planning obligation dated 28 September 2017, 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 conclusion that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

#### **Planning balance and overall conclusion**

25. For the reasons given above, the Secretary of State considers that the application is not in accordance with LP Policies GEN2, GEN3, AREA 10 and BNDP ES3 and ES7 of the development plan, and is not in accordance with the development plan overall. The Secretary of State 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.

26. In the absence of a 5-year supply of housing land, paragraph 14 of the Framework indicates that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.

27. The Secretary of State considers that the harm to the character and appearance of the surrounding area and harm to the strategic gap both carry limited weight.
28. The Secretary of State considers that the proposal would make a significant contribution to housing and affordable housing in the district, where housing shortage is severe. He gives this significant weight. He considers that the proposal would bring economic benefits by creating jobs during construction, and he gives this moderate weight. He considers that the proposal would also bring environmental benefits, including reducing flood risk. He gives these benefits moderate weight.
29. The Secretary of State considers that there are no specific policies in the Framework which indicate that this development should be restricted. He further considers that the adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits. Overall he concludes that there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
30. The Secretary of State therefore concludes that planning permission should be granted, subject to conditions.

### **Formal decision**

31. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission subject to the conditions set out in Annex A of this decision letter for up to 50 residential units, landscaping, amenity space, car and cycle parking, roads, service and drainage infrastructure and other associated works, in accordance with application ref: BE/77/16/OUT, dated 11 May 2016.
32. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

33. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. 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.
34. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
35. A copy of this letter has been sent to Arun District Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Merita Lumley*

Authorised by the Secretary of State to sign in that behalf

## Annex A – List of conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before expiration of 1 year from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The development hereby approved shall be carried out in accordance with the following approved plans:
  - Framework Plan ref. 7096-L-NBL-01\_G (dated 28 August 2016)
  - Site Plan ref. 7096-NBL-L-05\_G (dated 25 August 2016)
- 5) Development shall not commence until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the local planning authority, and which shall include:
  - A design that follows the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, the recommendations of the SUDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, will be required to support the design of any infiltration drainage.
  - Full details of the maintenance and management of any SUDs system to be set out in a site-specific maintenance manual. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturer's recommended design life. Upon completed construction of the SUDs System, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
  - Arrangements for future access and maintenance of any watercourse or culvert (piped watercourse) crossing or abutting the site.

No building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the approved details and the details so approved shall be maintained in good working order thereafter.
- 6) Development shall not commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters:
  - the anticipated number, frequency and types of vehicles used during construction,
  - the method of access and routing of vehicles during construction,
  - the parking of vehicles by site operatives and visitors, the loading and unloading of plant, materials and waste, the storage of plant and materials used in construction of the development,
  - the erection and maintenance of security hoarding,

- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
  - details of public engagement both prior to and during construction works.
  - No operational or construction vehicles shall be operated on the site except between the hours of:  
0700 and 1900 on Mondays to Fridays inclusive  
0700 and 1300 on Saturday  
Not at any time on Sundays or Public Holidays
- 7) Prior to the commencement of construction works, details of a proposed foul drainage system shall be submitted to and approved in writing by the local planning authority (including details of its siting, design and subsequent management/maintenance) and no dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
  - 8) Prior to the commencement of construction works of the development a detailed ecological enhancement scheme (which shall include the installation of bat boxes and bird boxes as required throughout the site and a timetable for implementation of the ecological enhancement scheme) shall be submitted to the local planning authority for approval in writing, based on the recommendations within the supporting ecological statement. All approved details shall then be implemented in full and in accordance with the approved timetable and details.
  - 9) The landscape details referred to in Condition 1 shall include a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas other than privately owned domestic gardens. The landscape management plan shall be implemented in accordance with the approved details.
  - 10) At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources or equivalent fabric first standards that would secure a 10% reduction in energy use. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the local planning authority [as a part of the reserved matters submissions required by condition 1]. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.
  - 11) Development shall not commence until a street lighting scheme has been submitted and approved in writing by the local planning authority. This shall comply with the Institute of Lighting Engineers Guidance Notes for the reduction of obtrusive light.

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# Report to the Secretary of State for Communities and Local Government

by Kenneth Stone BSc Hons DipTP MRTPI

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

Date: 7 November 2017

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TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION BY

CHURCH COMMISSIONERS FOR ENGLAND

ARUN DISTRICT COUNCIL

Inquiry Held on 26 and 27 September 2017

Land west of New Barn Lane, Bersted, West Sussex PO21 5DN

File Ref(s): APP/C3810/V/17/3166900

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### Annexes

Annex A – Plans submitted with the application

Annex B – Plans submitted during consideration of application

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## TABLE OF ABBREVIATIONS

ADC	Arun District Council
AH	Affordable Housing
BNDP	Bersted Neighbourhood Development Plan 2014-29
BPC	Bertsed Parish Council
BUAB	Built Up Area Boundary
CCFE	Church Commissioners for England
CD	Core Document
CIL	Community Infrastructure Levy
dpa	dwellings per annum
EA	Environment Agency
ELP	Emerging Local Plan
Framework	National Planning Policy Framework
HLS	Housing Land Supply
LP	Arun District Local Plan 2003
LPA	Local Planning Authority
OAHN	Objectively Assessed Housing Need
OHN	Objective Housing Needs
PPG	Planning Practice Guidance
SC	Suggested Conditions
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
SPA	Special Protection Area
WMS	Written Ministerial Statement
WSCC	West Sussex County Council

**File Ref: APP/C3810/V/17/3166900**

**Land west of New Barn Lane, Bersted, West Sussex PO21 5DN**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 9 January 2017.
- The application is made by Church Commissioners for England to Arun District Council.
- The application Ref BE/77/16/OUT is dated 11 May 2016.
- The development proposed is up to 50 residential units, landscaping, amenity space, car and cycle parking, roads, service and drainage infrastructure and other associated works.
- The reason given for making the direction was in consideration of the Secretary of State's policy on calling in planning applications.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application: the conflict with the made Bersted Neighbourhood Development Plan and any other matters the Inspector considers relevant.

**Summary of Recommendation: The application be approved**

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**1. Procedural Matters**

- 1.1 This is an outline application with all matters reserved. Plans submitted with the application, listed at Annex A, were superseded by those listed at Annex B by email dated 26 August 2017 (ADC 7) prior to the Council's consideration of the application and the Secretary of State's Call in letter. There is an illustrative layout plan provided in the Design and Access Statement (CD1.4) which is provided for illustrative purposes only, indicating one way in which the scheme could come forward, I have treated it in that regard. The recommendation is based on the principles contained in the amended plans in Annex B.
- 1.2 The Inquiry sat for two days, on the 26 and 27 September 2017. A Planning Obligation was discussed in its final form before the Inquiry closed, but this was required to be signed and the parties were given a short period to submit the executed agreement after the close of the Inquiry. A certified copy of the executed agreement, dated 28 September 2017, was received on 2 October 2017. An informal site visit was made on the 25 September, prior to opening the Inquiry, and a formal unaccompanied visit made on the 27 September 2017, after the Inquiry closed.
- 1.3 The proposal falls below the thresholds for Environmental Impact Assessment. Arun District Council's (ADC's) Statement of Case confirms that an Environmental Statement is not required for this development<sup>1</sup>.
- 1.4 ADC considered the application on 7 September 2016 and resolved to grant planning permission subject to conditions and a section 106 Agreement (CD3.1).
- 1.5 The application was called in by the Secretary of State (SoS) for his own decision by direction made on the 9 January 2017. The stated reason for the direction was in the light of his policy on calling in planning applications. The direction stated the matters on which the SoS particularly wished to be informed are:

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<sup>1</sup> Paragraph 2 ADC's Statement of Case (CD2.3)

- i) Conflict with the made Bersted Neighbourhood Development Plan (BNDP); and
  - ii) Any other matters the Inspector considers relevant.
- 1.6 By email dated 3 July 2017 and confirmed by a Pre Inquiry Note<sup>2</sup> issued on 21 September 2017, I confirmed that the other matters I considered relevant related to the latest position of the Council's 5 year Housing Land Supply (HLS) and issues related to highway safety, flooding and the impact of the development on local social and community infrastructure. The Pre-Inquiry Note formulated the matters into main considerations and set out a number of matters I wished to be addressed.
- 1.7 It was evident that one of the principal issues in the context of whether the proposal accords with the neighbourhood plan was related to the location of the application proposal beyond the built up area boundary, in the countryside and in a strategic gap. In effect this relates to the effect of the proposal on the character and appearance of the surrounding area. Taking these matters together I therefore consider the main considerations to be:
  - i) The latest position in terms of the Council's HLS, having regard to a 5 year and 3 year supply;
  - ii) The effect of the proposed development on the character and appearance of the surrounding area;
  - iii) The effect of the traffic generated by the proposed development on highway safety and traffic conditions on the surrounding road network;
  - iv) Whether the proposed development would be at risk of flooding or increase the risk of flooding elsewhere; and
  - v) Whether the proposed development makes adequate provision for any additional need for community and social infrastructure arising from the development.
- 1.8 The consideration and conclusion in respect of these matters together lead to an overall conclusion in relation to whether the proposal accords with the Neighbourhood Plan and the Development Plan as a whole, and whether there are material considerations that indicate a determination otherwise than in accordance with the Development Plan would be appropriate.
- 1.9 Other than ADC and Church Commissioners For England (CCFE) there were no other main parties including any under rule 6(6) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 parties. Bersted Parish Council (BPC) participated in the Inquiry along with five other interested parties. One written representation was received in response to the notification of the Inquiry, that being from BPC. The Council received twelve letters of representation objecting to the proposal before the call in direction was made and these were considered in the Council Officer's report to committee (CD3.1). ADC's letter of notification advising of the date time and place of the Inquiry referred to it as an appeal. However, the press notice correctly refers to the matter as an Inquiry into an application. The Inquiry was attended by local residents and the BPC, in my view there was no prejudice produced by that error.

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<sup>2</sup> INSP 1 See Annex D Documents submitted by Inspector

1.10 The various application and Inquiry documents include reference to Chichester Road as the A259. Whilst Chichester Road South from the existing roundabout was part of the A259 at the time of the pre-application discussions and at the submission of the application the present roundabout is part of the newly constructed Bersted bypass which has only recently opened. The bypass eastward from the roundabout has now been designated as part of the A259 route. The road from the new roundabout junction south towards Bognor Regis (Chichester Road) has been re-designated and is now the B2259. In my report I refer to Chichester Road and the junctions onto it, having regard to its current designation, as the B2259 and have amended the parties cases where relevant to be consistent. Other references that are retained to the A259 relate to the wider strategic network route.

## 2. The Proposal

2.1 The description of development for the application is as follows:

“outline application with all matters reserved for up to 50 residential units, landscaping, amenity space, car & cycle parking, roads, service & drainage infrastructure & other associated works”.

2.2 The application is in outline and is supported by a:

- Framework Plan ref. 7096-L-NBL-01\_G (dated 28 August 2016), which includes an indicative access; and a
- Site Plan ref. 7096-NBL-L-05\_G (dated 25 August 2016)

2.3 There is an Illustrative Masterplan included in the Design and Access Statement which is for illustrative purposes only. It demonstrates one way how 50 units might be accommodated within the site and reflects the following:

- Uses: Residential, including public open space, proposed attenuation, indicative internal roads, footpaths, green corridor and trees, hedgerows and ditches.
- Access: The adjacent scheme to the north has planning permission for an access via either the track to the north of the application site or an access route onto New Barn Lane further north of this. Whilst access remains a reserved matter, the Applicant has held discussions with the highway authority, which has confirmed that either proposed access arrangement is acceptable. The section 106 agreement anticipates a connection to one of these approved access points.
- Scale: The Framework Plan fixes the number of residential units at a maximum of 50 residential units which equates to an average density of approximately 37 dwellings per hectare. An upper height limit of 2.5 storeys is suggested as part of the Design and Access Statement but height would be confirmed at reserved matters stage.
- Affordable Housing (AH): To be provided on-site, in line with adopted policy, at 30% comprising 15 units. Initially the proposal identified 8 of these would be affordable homes for rent and 7 would comprise intermediate housing. However, the section 106 agreement secures 5 as affordable rent and 10 as intermediate.
- Housing Mix: The Illustrative Masterplan shows an indicative housing mix as follows (albeit this will be agreed at reserved matters stage):

House Type	Total
2 bedroom	13
3 bedroom	20
4 bedroom	17

### **3. The Site and Surroundings**

- 3.1 The application site is located to the north-west of Bognor Regis, to the west of New Barn Lane, which connects the site to North Bersted, to the A2259 and on to the A259. It comprises 1.94 hectares. The site and surrounding farmland to the north and west is flat with fields separated by hedgerows, some boundary trees and drainage ditches.
- 3.2 The site is generally rectangular in shape and has been used for agricultural purposes. There are no buildings or structures currently on site, except for a small, timber-clad shed. The site lacks topographical variation.
- 3.3 The site is surrounded by open fields to the north, west and south. Jubilee Recreation Ground is to the south-east and single storey dwelling houses lie to the north-east, along the boundary of the site. Adjacent to the northern boundary is a footpath (Public Footpath 134), providing access to the wider countryside and footpaths to the west.
- 3.4 There are trees and hedgerows along the four boundaries of the site.
- 3.5 The nearby housing in Bersted is suburban in character, comprising predominantly 1950s and 1960s single and two-storey houses and maisonettes.
- 3.6 There are a number of key services and facilities that are located within 2km of the site. These include community buildings, education and library services, leisure and sports facilities, health and social care services, shops, communication services such as public internet access and post office, bank and/or cash machines, public houses, places of worship and access to public transport, pedestrian walkways and cycle networks.
- 3.7 There are also a number of local amenities which are located within 800m from the site and less than 10 minutes on foot, which include a convenience store, public house, takeaway and a community centre. Barton's Primary School is located approximately 800m to the north-east of the site, while Southway's Primary School and the Regis School, which are adjacent to each other, are located approximately 1.6km from the site to the south.
- 3.8 There are no designated or non-designated heritage assets, including Listed Buildings or Conservation Areas, within the application site or adjacent to it.
- 3.9 Two trees are the subject of a Tree Preservation Order TPO/BE/1/16 (Year 2016), comprising a Silver Birch T1 and an English Oak T2 on New Barn Lane, which lie outside of the application site.

## 4. Planning Policy and Other Relevant Guidance

### Development Plan

- 4.1 The relevant parts of the Development Plan are the saved policies of the Arun District Local Plan 2003 (LP) and the made BNDP.

#### **Arun District Local Plan 2003 (CD 3.3)**

- 4.2 The LP comprises a Written Statement and Proposals Map. The Proposals Map shows that the application site is located within Policy AREA 10 'Strategic Gap' (Bognor Regis and Chichester), but is not subject to any site specific or area wide allocations or designations.
- 4.3 The site is not in a Conservation Area or in an Area of Outstanding Natural Beauty.
- 4.4 The policies relevant to the consideration of the proposed development in the LP are DEV17; GEN2; GEN3; AREA 10; GEN5; GEN7; GEN8; GEN9; GEN11; GEN12; GEN14; GEN15; GEN18; GEN20; GEN25; GEN26; GEN28; GEN29; GEN32; and GEN33.
- 4.5 GEN2 identifies the Built up Area Boundaries (BUABs) as being defined on the proposals map and indicates that development within the boundaries will be permitted subject to other policies in the plan, whilst outside the BUAB development will not be permitted unless it is consistent with other LP policies. GEN3 indicates that outside the BUAB the countryside will be safeguarded for its own sake and development will not be permitted unless it meets a number of criteria, none of which are relevant to this application proposal. Policy AREA 10 identifies that strategic gaps, identified on the proposals map, will be maintained and protected and that proposals for development within a strategic gap will be subject to the most rigorous examination. Development only being permitted if it is necessary to meet the requirements of other policies, would not compromise the objectives and fundamental integrity of the strategic gap, and attention is given to the long term enhancement of the landscape amenity and conservation value within the gap.
- 4.6 GEN5 makes provision for 8,700 dwellings to be built in the period covered by the plan (1996 -2011). GEN7 requires a high quality of design and layout, while GEN18 requiring this includes crime prevention measures. GEN8 requires the provision of necessary infrastructure and GEN 9 requires either adequate foul and surface water drainage exists or is provided for as part of the development. GEN11 in effect seeks to ensure development would be at a low risk of flooding and would not increase the risk of flooding. GEN12 requires provision in line with or below the parking standards set out in the plan. GEN14 seeks to encourage public transport services and encourage improvements, including seeking contributions to improvements where appropriate. GEN15 seeks to encourage safe cycle and footpath networks and requires new developments to provide safe and attractive facilities for cyclists and pedestrians.
- 4.7 GEN20 requires the provision of public open space. GEN25 and GEN26 seek to ensure there are adequate water resources available to serve the development and that the development would not lead to a deterioration in the quality or yield of water resources. GEN28 and GEN29 seek to protect trees and woodlands and ensure that semi-natural habitats and features of nature

conservation are retained and sympathetically integrated into schemes. GEN32 and GEN33 seek to protect users from adverse effects of noise or from proposed noise generating uses and ensure light pollution is minimised with no adverse effect on neighbouring uses or the wider landscape.

### **Bersted Neighbourhood Development Plan 2014-29 (CD 3.4)**

- 4.8 The policies relevant to the consideration of the proposed development in the BNDP are: ES1; ES2; ES3; ES7; CLW4; HDQ1; HDQ2; HDQ4; HDQ5; HDQ6; HDQ7; and HDQ8.
- 4.9 Policy ES1 seeks high quality design contributing to local character. ES2 seeks new development to aim to reduce the overall level of flood risk in the area. The BNDP has a defined settlement boundary for Bersted and designates the area to the west of New Barn Lane as "Gap Between Settlements". Policy ES3, protecting the strategic gap, indicates development within the strategic gap will not be supported except for essential infrastructure where there are no reasonable alternative sites and ES7 indicates development outside of the built up area will not be supported.
- 4.10 Policy CLW4 requires developments of over 20 houses to make a financial contribution to fund allotment space elsewhere in the parish.
- 4.11 Policy HDQ1 'Housing Site Allocations' identifies permission will be granted for a minimum of 25 new homes in Bersted and identifies two sites<sup>3</sup>. HDQ2 requires proposals for new homes to be well connected and visually integrated and HDQ4 requires a range of house types and tenures, with a Bersted-specific dwelling mix and AH strategy. HDQ5, HDQ6 and HDQ7 relate to specific design matters requiring high quality design to reflect local character, private outdoor garden amenity space or shared space for all dwellings and paying attention to detail. Policy HDQ8 requires new development to have adequate on-site parking to meet current and future needs at a minimum rate of two spaces per dwelling unless alternative accessible parking arrangements can be made.
- 4.12 The application site is not allocated for housing in the BNDP and is located in the strategic gap, shown at Appendix D to the plan, and is outside the BUAB, as defined in Appendix F of the BNDP.

### **Emerging Development Plans**

#### **Arun Local Plan 2011-2031 (Publication version showing modifications – March 2017 (CD3.5))**

- 4.13 The Examination in Public (EiP) of the Emerging Local Plan (ELP) was formally suspended by letter dated 2 February 2016<sup>4</sup> following the Inspector's conclusions regarding the Objectively Assessed Housing Need (OAHN) and to allow ADC to undertake main modifications to the Plan and put these to public consultation. ADC consulted on its main modifications to the ELP between 10 April 2017 and 30 May 2017. The plan has been submitted to the Inspectorate

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<sup>3</sup> Sites include land at the former Rising Sun Public House for a minimum of 5 homes and Bartons School site for a minimum of 20 homes.

<sup>4</sup> Appendix 1 to Statement of Common Ground.

for the examination to resume and the hearings opened, the week before this Inquiry, on 19 September 2017.

- 4.14 The ELP sets out its strategic approach at policy SD SP1a which, amongst the matters included are those to promote and enable development that supports the main coastal towns of Bognor Regis and Littlehampton as the main service centres, to provide for the housing needs of the community by delivering 20,000 homes, and to provide for development in the countryside area which reflects its character and role, with green wedges separating urban areas. Policy SD SP2 retains the BUAB policy indicating development will be permitted within the boundaries but outside them development will not be permitted unless it is consistent with other policies, apart from the strategic, site specific and broad allocations. As a counterpart policy C SP1 indicates that outside the BUAB, as well as outside both the strategic and site specific allocations, the countryside will be safeguarded for its own sake, and development will not be permitted unless it meets various criteria, none of which apply to this application proposal.
- 4.15 Policy H SP2a indicates that to support the sustainable growth of Bognor Regis, growth will take place at three strategic locations adjacent to the urban area; those being Pagham South (SD1), Pagham North (SD2) and West of Bersted (SD3). The application site is part of the West of Bersted SD3 allocation. SD3 provides for at least 2,500 dwellings and requires provision is made for a new three form entry primary school and nursery places, a new 3G pitch facility, two new sports pitches and facilities, a community hub, pedestrian and cycle links and improvements to the A259 and account is taken of the Pagham Harbour Special Protection Area (SPA).
- 4.16 Policies in the ELP can only be given limited weight at this time. More weight will be afforded to policies once the plan has been the subject of an Examination (which recommenced on 19 September 2017) and as the plan moves closer to adoption.

### **National Planning Policy and Guidance**

- 4.17 National planning policy is set out in the National Planning Policy Framework (the Framework), which is a material planning consideration in decision making, and planning guidance is contained in the Planning Practice Guidance (PPG). I have had regard to relevant sections of the Framework including paragraphs 11 to 17; 47 to 50, sections 10 and 11, paragraphs 150-162, 182 to 185; 196 to 198 and paragraphs 204, 215 and 216 and relevant sections of the PPG.
- 4.18 I have had regard to the Written Ministerial Statement (WMS) on Neighbourhood Planning published on the 12 December 2016, but conclude it is not engaged for the reasons given. (see paragraph 9.43 below)

## 5. The Case for The Church Commissioners For England

- 5.1 The case for the CCFE ('the Applicants') is set out and drawn primarily from the opening and closing statements. (CCFE2 and CCFE7)

### Preliminary

- 5.2 The Applicants seek outline planning permission for some 50 residential units and associated works ('the Proposed Development') on land west of New Barn Lane, North Bersted ('the Application Site').
- 5.3 The planning application for the Proposed Development ('the Application') was called in by the SoS on 9 January 2017, on account of his concern regarding potential conflict with the BNDP.
- 5.4 During the course of the Inquiry the Applicants' witnesses have sought to address both this issue, and also those matters identified by the Inspector in the Pre-Inquiry Note.
- 5.5 The Applicants seek to address each of the various concerns raised by the SoS/Inspector, before turning to consider the merits of the Proposed Development in the round.

### Issues for Consideration

Issue 1: Drainage

- 5.6 This matter can be taken relatively swiftly.
- 5.7 The Application Site is in the optimum location as regards flooding concerns, in that it is wholly located within Flood Zone 1. Further, neither the Environment Agency (EA) nor the Lead Local Flood Authority (West Sussex County Council – 'WSCC') have offered any objection to the Proposed Development.
- 5.8 Various third parties raised anecdotal concerns as to flooding on the Application Site. However, these concerns are not underpinned by any technical evidence, and in any event they have been comprehensively addressed by The Applicants' Drainage Engineer, Mr Rob Lowe. In particular he advised that the on-site flooding witnessed by one interested party was most likely ponding on the flat site following heavy rainfall and while the ground was saturated with nowhere for the water to percolate<sup>5</sup>.
- 5.9 Mr Lowe is wholly familiar with the Application Site, and had oversight of the Flood Risk Assessment submitted in connection with the Proposed Development. As regards the concerns voiced by local people, he demonstrated that far from aggravating flood risk, development of the site would in fact result in an improvement over the existing position, by providing greater facility for the Application Site to store surface water at times of high rainfall, and thus restrict surface water discharge. Indeed the restriction in flow rate would better the existing position by some 32%<sup>6</sup>.

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<sup>5</sup> Mr Lowe Evidence in Chief

<sup>6</sup> See para 4.7 of the Flood Risk Assessment (CD1.8), and also paras 5.2 and 5.5 of Mr Lowe's proof.

- 5.10 There was no substantive challenge to the specialist evidence of Mr Lowe in this regard, in terms of surface water issues. Nor was there any challenge to his evidence as to ground water issues, which he explained<sup>7</sup> can be dealt with by means of suitable condition.
- 5.11 In these circumstances there is no reason for the Inspector/SoS not to accept the cogent testimony which Mr Lowe provided. The Proposed Development would not result in any adverse impact – either on the Application Site or elsewhere – and its planned use of sustainable urban drainage techniques is entirely in accordance with best practice.
- 5.12 The Proposed Development complies with all relevant policy and guidance<sup>8</sup>; both in terms of National Policy (the Framework and PPG), and in terms of adopted policy at the district level (in particular GEN9, but also policies GEN11 and GEN25 of the LP<sup>9</sup>). Further, and in light of the SoS's concerns as regards the BNDP, it is important to note that the Proposed Development is entirely in accord with Policy ES2 of the BNDP, and requirements set out in the supporting text to that policy<sup>10</sup>.

Issue 2: Highways and Transport

- 5.13 This matter is also one that can be dealt with relatively swiftly. The points raised by the Inspector in advance of the Inquiry as being of concern, essentially comprise the capacity of the local highway network to accommodate the Proposed Development, and the adequacy of the proposed access arrangements. At the Inquiry itself, various third party witnesses also raised a number of concerns, which themselves were largely-capacity related.
- 5.14 Once again, the Applicants note firstly that no relevant authority has voiced any opposition to the Proposed Development; either in terms of capacity, access or anything else<sup>11</sup>. On the contrary, insofar as either Highways England or WSCC have commented upon the proposal, they have indicated their approval.
- 5.15 As regards the detail of its case, the Applicants rely upon the evidence of Mr Paul Smith. Mr Smith is a transport planner of long experience, who has been involved with the wider site (of which the Application Site forms a part) for almost ten years. He had oversight of the Transport Statement prepared in respect of the Proposed Development.

Capacity

- 5.16 In terms of capacity considerations, Mr Smith explained that there was ample capacity in the local network to accommodate the minimal additional traffic movements which would be generated by the 50 additional dwellings delivered by the Proposed Development. Indeed it should be noted that the AM and PM

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<sup>7</sup> Mr Lowe in cross examination

<sup>8</sup> There is agreement with ADC as to this policy compliance; see para 13.6 of the SoCG.

<sup>9</sup> Notwithstanding that only limited weight can be accorded to it at this early stage of its progress towards adoption, the Proposed Development is also compliant with Policies WDM2 and WDM3 of the the ELP.

<sup>10</sup> Mr Lowe commented in evidence in chief specifically regarding paragraphs 5.1.2 and 5.1.4 of the BNP in this respect.

<sup>11</sup> Confirmed by Mr Smith in evidence in chief

peaks for the Proposed Development would be only 27 and 28 vehicles respectively<sup>12</sup>. As regards the specific queries voiced by local residents and BPC, his evidence can be summarised as follows:

- There would be no adverse consequences in terms of noise/fumes for local residents of existing properties proximate to the Application Site; at peak times the proposed dwellings would generate a maximum of no more than one additional vehicle movement every 2.2 minutes.
- The maximum additional traffic using the 'New Roundabout' to the north would be no more than one vehicle every 3 minutes (21 movements in the AM peak hour); this would have no discernible impact on existing traffic flows.
- 'Pinch points' at locations further afield, such as at the Retail Park on the A259, Rowan Way and Shripney would be entirely unaffected by the very limited traffic generated by the Proposed Development.
- The Traffic Modelling undertaken in respect of the Proposed Development has had regard to the consented scheme of 90 dwellings on the Landform Site; the cumulative position had been considered<sup>13</sup>.
- Contrary to what local people may believe, a package of measures to improve the operation of the A27 is actively being considered; the 'improvements programme' has not been cancelled.

5.17 In short, there are no concerns as to the capacity of the highway network – either locally or further afield – to accommodate the very limited additional vehicular traffic which would be generated by the Proposed Development.

#### Access – Safety & Deliverability

5.18 As regards questions of access, firstly it is of course important that the Inspector/SoS bear in mind that access is a reserved matter in respect of this outline planning application. Nevertheless, Mr Smith demonstrated to the Inquiry that there are multiple means by which access could be provided to the Proposed Development. Indeed, three such potential accesses were considered in his evidence, all of which have been subject to a Highways Safety Audit, and all of which can operate safely alongside access to the consented development on the adjacent 'Landform Site', located on the other side of New Barn Lane.

5.19 It is right to note as regards access to the public highway, that Access B would require that the developers of the Landform Site carry out 'complimentary' development on that site, in order for that access to be viable. However, the following matters should also be noted in this context:

- There is no reason to believe that the developer of the Landform Site will be obstructive in respect of efforts to deliver Access B. Indeed a Reserved Matters Application has been submitted by that developer

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<sup>12</sup> See para 4.11 of Mr Smith's proof.

<sup>13</sup> See in particular the Transport Statement (CD1.6) at para 5.9.

(Linden Homes) which provides expressly for an access road to link into the Application Site<sup>14</sup>.

- Access A could be delivered simply on the basis of a Reserved Matters Application on the Application Site
- Whilst Access C would require a separate planning application, there is no reason why that access could not be delivered. WSCC have indicated their approval<sup>15</sup>, and the Applicants own all relevant land interests necessary to deliver that development.

5.20 On this basis, it is clear that access to the Application Site from the public highway can be provided. Further, the condition proposed by the Applicants requiring that approval be obtained in respect of access prior to the commencement of development, would ensure that the Proposed Development only come forward on the basis of a suitable access proposal.

5.21 Thus as with 'capacity', there is no reason to reject the Proposed Development on grounds of 'access'.

#### Highway Safety

5.22 The last issue to address (briefly) in this context is that of 'highway safety'; this being a matter raised both by the Inspector and by one of the third parties (Ms Sanders) in her oral evidence.

5.23 Mr Smith demonstrated to the Inquiry, with reference to the recorded accident data<sup>16</sup>, not only that there have been no accidents whatsoever in the immediate vicinity of the Application Site (New Barn Lane/Winston Crescent), but that the accidents further afield were limited (both in number and in severity), and gave no legitimate cause for concern.

5.24 Accordingly, there is no safety issue to concern the SoS.

#### Summary

5.25 In summary, there is no transport or highways related reason why planning permission should be refused in respect of the Proposed Development. In this regard, not only is the proposal wholly acceptable in terms of the matters raised by the Inspector and Third Parties (as discussed above), they are also wholly acceptable in terms of other, related matters such as Accessibility<sup>17</sup>. As such, and as noted in paragraph 9.4 of the Statement of Common Ground (SOCG), the proposal accords with relevant policies, (GEN14, GEN15 of the LP, BNDP Policy HDQ8, and ELP Policy T SP1).

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<sup>14</sup> See application documents at CD5.3 – CD5.5.

<sup>15</sup> CD5.2

<sup>16</sup> Transport Statement at CD1.6, para 3.32 and following and Appendix C.

<sup>17</sup> The Application Site has good access to public transport (both bus and train), and also other local services & facilities. It is thoroughly sustainable in this regard, as Mr Smith's evidence demonstrated (see para 4.2 and following).

Issue 3: Principle of Development as per Development Plan

5.26 Several of the remaining issues raised by the Inspector (and indeed the sole issue raised by the SoS) essentially go to the 'Principle of Development' on the Application Site.

Development Plan Policy Conflict

5.27 First, the Applicants accept that the Proposed Development is in conflict with adopted policy in the Development Plan. In particular, the Applicants recognise conflict with the following LP Policies:

- GEN2: 'Built up Area Boundary'
- GEN3: 'Protection of the Countryside'<sup>18</sup>

And also Policies of the BNDP, being:

- HDQ1: Housing Site Allocations
- ES3: Protecting the Strategic Gap'
- ES7: 'Development of the built up area'.

5.28 The Proposed Development is necessarily in conflict with these policies given that the Application Site is not one of the two allocated housing sites, lies outside of the designated BUABs, within the countryside, and within a 'strategic gap'. It is on this basis that the Applicants accept that the Proposed Development is in conflict with the Development Plan.

5.29 However the Applicants maintain that planning permission for the Proposed Development should be granted irrespective of that conflict on the basis of material considerations<sup>19</sup>. In this regard, the Applicants rely on considerations which include the following.

Housing Need & Supply

5.30 ADC's housing need position was explained in detail by Mr Inness<sup>20</sup>. Essentially, the position is that whilst the Council had formerly understood its housing need to be some 580 dwellings per annum (dpa), as of 2017 it has recognised that the correct figure is in fact 919dpa.

5.31 Further, having regard to the shortfall in housing delivery within the district in recent years, and also the need to apply a 20% buffer as a consequence of its record as a 'persistent under-deliverer' of housing<sup>21</sup>, Mr Inness explained that for the purposes of calculating ADC's 5 Year HLS, the actual need figure is now upwards of 1200dpa.

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<sup>18</sup> The Applicants do not accept conflict with Policy AREA10, for the reasons given by Ms Roberts in her proof (at paras 4.16-4.17). Her analysis in this regard is robust. In particular, the Applicants note the fact that the Application Site comprises only 0.3% of the land currently designated as comprising the strategic gap, and its development would not extend built form further west than the consented development on the neighbouring Landform Site.

<sup>19</sup> Evidence of Ms Roberts in cross examination

<sup>20</sup> Mr Innes in evidence in chief

<sup>21</sup> See paragraph 47 of the Framework, second bullet.

- 5.32 This very substantial increase in need has dramatic consequences for the HLS position.
- 5.33 In this regard, there is no dispute as to the position before the SoS. ADC can demonstrate no more than 2.07 years' HLS. The figure was until recently only 1.92 years, but was revised very slightly upwards last week, in the context of ADC's evidence before the EiP in respect of the ELP.
- 5.34 Mr Inness demonstrated the genesis of 2.07 years' HLS figure<sup>22</sup>, by reference to the Council's relevant housing supply documentation<sup>23</sup>. The figure is agreed by Ms Roberts for the Applicants<sup>24</sup>. Further, it is consistent with the SoS's recent conclusions in the Fontwell Decision<sup>25</sup>. In that decision, dated July 2017, the SoS accepted ADC's then position that the HLS figure was 1.92 years<sup>26</sup>.
- 5.35 The only other point to note in this context is that there is no one who has appeared before – or indeed who has written to – the Inquiry, contending for another figure.
- 5.36 Thus, the only reasonable basis on which to evaluate the Proposed Development, is in a context where the HLS is 2.07 years.

#### Consequences of the Housing Need & Supply Position

- 5.37 As Mr Inness aptly noted in his evidence, the housing position of the district is 'dire'<sup>27</sup>. In policy terms, some of the consequences of this 'dire' position may be summarised as follows:
- First, policies for the Supply of Housing in the Development Plan (both LP GEN5 and BNDP HDQ1) must be regarded as being out of date, since the Council cannot demonstrate a 5 year HLS<sup>28</sup>.
  - Second, policies which are not 'housing supply policies' but are instead 'counterpart policies' which engage to restrict the supply of housing, must also be considered 'out of date' since they are predicated on housing need figures that have been rendered wholly obsolete.
    - As regards the LP Policies GEN2 and GEN3 were predicated on a housing need figure identified in 2003. The need has risen far beyond what may have been conceived almost 15 years ago, when those Policies were adopted. If the Council is to deliver the substantial volume of homes which are needed in the district, there will necessarily need to be development outside of the built up area, within the countryside.
    - As regards the BNDP, ES3 and ES7 were predicated on a housing need figure of 580dpa. Need has since more than doubled to more

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<sup>22</sup> Mr Innes in evidence in chief

<sup>23</sup> CD3.15 and CD5.13

<sup>24</sup> Ms Roberts evidence in chief

<sup>25</sup> CD4.1

<sup>26</sup> CD4.1 para 15

<sup>27</sup> Mr Innes in evidence in chief

<sup>28</sup> Given there is less than a 3 year HLS, the WMS (CD3.7) does not apply. Such approach has already been accepted by the SoS- see Fontwell (CD4.1) at para 45.

than 1200dpa. As noted above, if housing is to come forward in the required quantities, there will necessarily need to be development outside of the built up area, within the countryside.

- Further in this context, given the SoS's focus as to the BNDP, the Applicants ask that the Inquiry note the marked absence of any flexibility as regards the relevant policies in the BNDP. These policies are absolute in their prohibition as to development outside of the BUAB and in the 'Strategic Gap'. Further, no other policy provides any flexibility as to delivery of development other than on the two sites identified in HDQ1<sup>29</sup>.
- Thirdly, because relevant policies are out of date<sup>30</sup>, then the 'tilted balance' in paragraph 14 is engaged. This was the approach adopted by the SoS in Fontwell<sup>31</sup>.
- Fourthly, the weight attaching to all these policies – both policies for the supply of housing, and also counterpart policies which engage to restrict HLS – must be very considerably reduced. Where the weight attaching to those policies is reduced, it follows that the weight attaching to conflict with those policies must be reduced also. Again, this is consistent with the approach adopted by the SoS in Fontwell<sup>32</sup>.

#### Policy non-compliance with the Framework

5.38 The next consideration on which the Applicants rely is, as ADC also recognises by way of the SoCG and the evidence of Mr Inness<sup>33</sup>, that certain policies in the Development Plan are inconsistent with the Framework. In particular in this regard both GEN3 of the LP and ES7 of the BNDP are inconsistent with national guidance in that they seek to protect the countryside in general terms, and for its own sake.

5.39 Whilst Planning Policy Guidance Note 7 (PPG7) did indeed apply such 'blanket' protection to the countryside, the Framework consciously steps away from that approach. In particular, whilst it continues to direct that 'protection' be given to the Green Belt (para 17) and to 'valued landscapes' (para 109), it states only that development should 'recognise' the intrinsic character and beauty of the countryside. Whilst such 'recognition' must of course mean that land's status as countryside is taken into account when determining whether to permit development, the Framework is not directing that all countryside should be 'protected'. If it had wanted to say so, it would have done so. It does not.

5.40 In these circumstances, the fact that Policies GEN3 and ES7 offer such blanket protection to the countryside necessarily means that they are not consistent

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<sup>29</sup> The Inquiry will also note that when ADC sought to query with BPC whether there was scope for review of the BNDP to allow further housing in the Parish (CD5.11), the answer from BPC was a resounding 'No' (CD5.12). That this remained the position was confirmed by Ms Yeates in cross examination.

<sup>30</sup> All of the Policies cited above, being GEN5, HDQ1, GEN2, GEN3, ES3 and ES7 are relevant policies in this context.

<sup>31</sup> CD4.1 at para 45

<sup>32</sup> CD4.1 at para 4.7

<sup>33</sup> Mr Innes evidence in chief

with the Framework, and instead reflect the approach of the former PPG7 (which guidance has long since been cancelled). Thus the weight attaching to these policies must for this reason also be reduced by virtue of paragraph 215 of the Framework.

Issue 4: The ELP

5.41 The question as to the relevance and weight to be afforded to the ELP, can be taken shortly. Both the Applicants, ADC<sup>34</sup> and indeed the SoS<sup>35</sup> are of the same mind, namely that the ELP should attract only limited weight. This must necessarily be the case when the plan is still undergoing EiP, and there are outstanding objections in respect of it.

5.42 However, to the extent that weight does attach to that plan, it is important to note two things:

- First, the ELP endorses the principle of development on the Application Site, since it is included within a larger draft allocation to the West of Bersted.
- Secondly, whilst the ELP retains a 'strategic gap' between Bognor and Chichester, that gap is materially reduced so as to accommodate the West of Bersted Allocation. This is significant in terms of the BNDP; paragraph 5.1.6 of that plan comments on a resolution previously passed by ADC that it would retain the Gap in the same form it was included in the 2003 LP. However, that resolution has been overtaken; ADC has more recently resolved to reduce the scale of the Gap; hence the 'reduced gap' found in the ELP<sup>36</sup>.

Issue 5: The Framework

5.43 As Ms Roberts confirmed when giving evidence<sup>37</sup> and in her proof, the Proposed Development is in accordance with the Framework.

5.44 First, it offers the opportunity to deliver housing in a district in which there has been persistent and significant under-delivery of housing, and where the shortage of land for future housing is acute, when measured against the housing needs within that district.

5.45 Second, it provides the opportunity to do so in a way which will not result in adverse impact to any statutory designation; there will be no impacts on heritage assets, no ecological harm and no substantive visual or landscape disbenefit.

5.46 Third, it provides the opportunity to deliver this housing on a site which is well-related to existing built form, which is well-connected to public transport, from which local services and facilities are readily accessible, and which is within Flood Zone 1.

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<sup>34</sup> See paragraph 8.17 of the SoCG.

<sup>35</sup> See paragraph 38 of the Fontwell Decision (CD4.1).

<sup>36</sup> Ms Roberts in examination in chief

<sup>37</sup> Ms Roberts in examination in chief

5.47 When the policies of the Framework are considered in the round, the Proposed Development is compliant with that guidance.

Issue 6: Benefits of the Proposed Development

5.48 Ms Roberts confirmed<sup>38</sup> the benefits of the scheme, these include the following:

- Housing:

The delivery of housing is itself a benefit.

- Affordable Housing:

Provision of AH as a component of such residential development is separate and considerable benefit<sup>39</sup>.

- Delivery as part of 5 year HLS

In circumstances where HLS shortage is so particularly acute, the fact that the Proposed Development can be delivered in the short term is also a very significant benefit<sup>40</sup>.

- Economic Benefits

The Proposed Development would deliver economic benefits in the form of jobs during its construction, and generate expenditure in local shops and services thereafter<sup>41</sup>.

- Ecology

The Proposed Development would result in a net gain in terms of the Application Site's biodiversity<sup>42</sup>, having regard to its low ecological value as species poor grassland.

- Flooding/Drainage

Third parties have complained of flooding in Bersted. The Proposed Development would result in a significant (32%) reduction in flow rates of surface water discharged from the Application Site, at times of high rainfall.

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<sup>38</sup> Ms Roberts in evidence in chief

<sup>39</sup> Noted by Mr Inness in evidence in chief

<sup>40</sup> In this regard, the Inspector suggested that given the scale of the need, the fact that the Proposed Development would deliver only 50 dwellings meant that it would not amount to much of a 'benefit'. The Applicants reject that suggestion for the reasons given by Ms Roberts. Large sites are cumbersome and problematic; they take time to deliver by reason of the infrastructure provision required. Smaller sites such as the Application Site offer ADC the best prospect of boosting its housing supply in the short term. It is for that reason the Council has been actively encouraging developments such as the Proposed Development (see also the neighbouring development of 90 dwellings on the Landform Site).

<sup>41</sup> Para 15.2 of SoCG, and document CCFE5

<sup>42</sup> Para 12.7 of SoCG

## **Planning Balance**

- 5.49 The circumstances which currently prevail in Arun District are somewhat unusual, and mean that the planning balance to be undertaken in the case of the Proposed Development is not entirely orthodox. However, it is respectfully submitted that the decision for the SoS is nevertheless a straightforward matter.
- 5.50 It is accepted that the Proposed Development is in conflict with the Development Plan, but the matters recounted in these submissions amount to material considerations which wholly justify a grant of planning permission.
- 5.51 The tilted balance in the Framework is engaged; as such planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. There is no question but that in this case, no such adverse impacts exist<sup>43</sup>.
- 5.52 It is on this basis that the Applicants contend that the SoS should grant planning permission for the Proposed Development.

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<sup>43</sup> Ms Roberts confirmed in evidence in chief

## 6. The Case for Arun District Council

- 6.1 ADC's case is set out in the Council's Statement of Case and the SoCG. The Council's witness, Mr Innes, did not provide a formal proof of evidence but relied upon these documents on which to give his evidence in chief. The Council's case is summarised in its opening and closing submissions. (ADC4 and ADC10).
- 6.2 The Council contend that the starting point for considering this application, as with any application, is the material policies of the Development Plan and the extent to which the proposal is in accordance with those policies.
- 6.3 However, in considering that matter it is respectfully submitted that uppermost in the SoS's mind must be the acute shortage of HLS within the District. As Mr Innes considered in his evidence, the position in the District is one of the worst in the south of England and despite the slight improvement from 1.9 years' supply at the time the application was initially considered to 2.07 years now, the supply is still well below the 5 year requirement and still significantly below 3 years. The 50 residential units to be provided by this scheme make an extremely valuable contribution to that significant shortfall not only in terms of numbers but also because unlike larger strategic allocations, it can be developed more quickly bringing a more immediate contribution to the shortage, not only of general housing but also AH which is provided by the scheme. In addition, as was considered by Mr Innes in his evidence, the 50 units provided by the scheme are part of a wider strategic allocation with the ELP and have been included as part of the calculations for the ELP in delivering a 5 year supply – the contribution made by development of the site is vital in ensuring that the Local Planning Authority (LPA) has a demonstrable 5 year supply.
- 6.4 Returning to the Development Plan, this consists of the saved policies of the LP and the BNDP. Insofar as the policies of both those plans are concerned, given that the application is outline with all matters reserved, and subject to the section 106 agreement and appropriate conditions, the evidence demonstrates that there is no conflict with most of the relevant policies of those plans. In addition, the proposal is in accordance with all the relevant policies of the ELP. Those policies are considered in the SoCG as follows:
- 6.5 Transport and Access – it is agreed that the proposal accords with LP GEN 14 and 15, BNDP HDQ8 and ELP T SP1 and is acceptable in transport terms. There is no objection from either WSCC or Highways England. In addition, Mr Smith's evidence at the Inquiry has readily dealt with other highways related concerns which have been expressed by third parties and also explained how in terms of access arrangements the site will be deliverable.
- 6.6 Density – at 37dph is appropriate for the site and is in accordance with LP GEN 7
- 6.7 Amenity space- this is in accordance with LP GEN 20 and BNDP HDQ6.
- 6.8 Ecology and Trees – it is agreed that the proposed development provides ecological enhancement over the existing situation and that it is acceptable in arboricultural terms. The proposal accords with LP GEN29 and ELP ENV DM4
- 6.9 Flood Risk and drainage – the District Council's drainage engineer, the EA and WSCC do not object to the application. The development is located wholly in

Flood Zone 1 and not at risk of surface water flooding. It is not only the case that the proposal would not make flooding on site or off site worse, but by reason of the drainage proposals as part of the scheme, allowing the development would reduce the surface water flows and run off, reducing the risk of flooding elsewhere, and this is an important benefit of the scheme to weigh in any planning balance in due course. The proposal is in accordance with LP GEN 9, BNDP ES2 and ELP Policy W DM3.

- 6.10 AH – Appropriate levels of AH (30%) are secured by the section 106 agreement and both the quantum and tenure split is supported by the Housing Strategy and Enabling Manager at the District Council. The AH contribution is a significant benefit of the scheme in an area where there is a significant shortage of AH. In addition it is noted that the terms of the section 106 agreement in this case provide for 5 of the affordable housing units to be provided as affordable rent dwellings and the AH to be provided here therefore provides advantages to schemes which only provide for shared ownership as AH and which would nevertheless be policy compliant. The proposal is in accordance with LP DEV 17 and ELP HSP 2.
- 6.11 It is agreed that the location is sustainable with good access to services and facilities and public transport.
- 6.12 The proposal would make the appropriate level of Community Infrastructure Levy (CIL) contributions.
- 6.13 There are no archaeological, ground condition, biodiversity, arboricultural or landscape constraints that would prevent the proposed development of the site.
- 6.14 Returning to Development Plan policies and the saved policies of the LP, whilst the proposal is in accordance with many of the Development Plan policies there is some conflict with the wording of some policies of the LP.
- 6.15 LP Policy GEN5 sets out the district wide housing provision figures for the plan period to 2011, it is therefore either not relevant to the current application or, if it is of any relevance then it is plainly out of date and accordingly no weight whatsoever can be placed upon it in considering the planning balance in due course.
- 6.16 LP Policy GEN 2 sets a presumption against development outside of built up areas and GEN 3 seeks to protect the countryside in general terms. The built up areas defined within the Plan, and accordingly the countryside beyond those built up areas, were set against the housing needs and supply at the time. Whilst the application does not accord with these policies they are out of date for two reasons:
- a) because they were drawn up against the substantially lower housing needs at the time and/or
  - b) because of the significantly increased housing needs and the housing supply situation which exists now. Accordingly, the policies are considered out of date under the Framework and the policies are not compliant with it.
- 6.17 For both reasons, individually or cumulatively only very limited weight whatsoever can be placed upon the policies in the planning balance.

- 6.18 LP Policy AREA 10 seeks to protect the strategic gaps within the District including Area 10(v) which relates to the gap between Bognor Regis and Chichester. However, it is also out of date for the reasons considered in respect of GEN 2 and GEN 3. Only very limited weight can be applied to the policy. In addition, the site is a small site when compared with the size of the gap and represents just 0.3% of it.
- 6.19 Whilst the proposal accords with many of the policies of the BNDP, there may also be some perceived conflict with the strict wording of some of the policies of it.
- 6.20 BNDP policies ES3 and ES7 are policies which restrict the supply of housing but the objectives of those policies were set at the time when the Objective Housing Needs (OHN) were at 580dpa contrasted with the position of 919dpa at the time of application and now in excess of 1200dpa (allowing for a 20% buffer and to meet the shortfall). The wording of the policies themselves is inflexible and incapable of supporting the proposal and BPC has confirmed that despite the substantially increased OHN it will not be reviewing the policies. Accordingly, they should be considered as fundamentally out of date and no weight whatsoever can be placed upon them. In addition, given that the housing supply is less than 3 years, the policies should also be viewed as out of date under the Framework and again no weight can sensibly or properly be attached to them. For either reason, whilst there is conflict with the wording of the policy itself, because no weight can be attached to it, it cannot be considered that in applying it there is conflict with it. In practise, the policies add nothing to the planning balance weighing against the development.
- 6.21 With regard to policy HDQ1 of the BNDP, Mr Innes agreed that it does not apply to this site and is therefore not relevant. To the extent that the SoS may consider that it is relevant, then for the reasons considered above in respect of ES3 and ES7, it should be viewed as out of date and no weight can be placed upon it. Accordingly, as with ES3 and ES7, it adds nothing to the planning balance against development.
- 6.22 Turning then to the planning balance – that is the material considerations required to be considered both in respect of section 38(6) and under the separate test applicable to paragraph 14 of the Framework. There is substantial conformity with the application and a considerable number of Development Plan policies. Those policies in respect of which there is conflict or perceived conflict are either not relevant and/or are out of date and either of extremely limited weight or of no weight whatsoever.
- 6.23 The proposal is entirely in accordance with the ELP and some limited weight can be placed on those policies.
- 6.24 There is no conflict between the proposal and the overall objectives of the Framework.
- 6.25 Granting permission here would be entirely consistent and appropriate with the SoS's recent decision in the Fontwell Case.
- 6.26 It is acknowledged that there would be some very limited harm to the strategic gap, but the site represents just 0.3% of the gap. In the context of the application and the site being adjacent to the built development and the permission for 90 houses on adjacent land which is within the gap, the

objectives of the gap would not be fundamentally compromised by the development. It is also acknowledged that there would also be some very limited harm to the countryside by reason of the fact only that it occupies land designated as countryside. However, the land has no special designation, there are no unacceptable ecological or environmental impacts and the Council accepts that for the purposes of this application, in order to deal with the housing supply shortfall, it will be necessary to build on land beyond its settlement boundaries. Having said that, the site is well related to services and facilities and public transport, it is adjacent to existing development and also to development of the "Landform" site for which there is permission for 90 dwellings and the development here will be read in the context of. Moreover, it is common ground that the development would be acceptable in terms of landscape and visual impacts.

6.27 In addition the economic, social and environmental benefits of the development are substantial<sup>44</sup>.

6.28 The development is sustainable development within the meaning of the Framework and in respect of which the presumption of development under paragraph 14 applies. There are no adverse impacts of allowing the development which would significantly and demonstrably outweigh the considerable benefits which the development would bring. Accordingly the LPA agrees with the Applicants and respectfully submits that planning permission should be granted for the application.

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<sup>44</sup> Summarised at section 15 (pages 22-23) of the SoCG and also been referred to by Ms Roberts in her evidence in chief

## **7. The Case for Interested Parties and written representations**

### **Interested Parties at Inquiry**

#### *Bersted Parish Council (BPC)*

- 7.1 Gill Yates spoke on behalf of BPC and appeared at the Inquiry as an interested party; BPC had not sought rule 6(6) status. BPC had also submitted a written representation following notification of the call in.
- 7.2 Bersted was two villages North and South Bersted. The Council had recently refused an application notwithstanding the lack of a five year housing supply on the basis of prematurity and prejudice to the ELP that may also be a relevant consideration in this application. After the forthcoming EIP and the adoption of the ELP, the Council will be able to demonstrate a five year HLS and therefore the BNDP would not be out of date by virtue of the lack of an adequate HLS.
- 7.3 The adjoining land has permission for 90 dwellings but BPC were advised it could not be called in as it was under a 100 dwelling threshold. This advice was not given by a member of the Council.
- 7.4 The access proposals are confusing and two accesses onto New Barn Lane, which is a narrow road, would create problems. The local situation has significantly deteriorated as a result of the new relief road.
- 7.5 The projected population for the area identifies the highest increases in the older age groups this would add support to the suggestion bungalows would be appropriate.
- 7.6 Whilst the Council has requested BPC to consider whether it would be appropriate to review its Neighbourhood Plans, in the light of the existing HLS position and the ELP, BPC is not confident that it could get the necessary agreement to increase housing provision and would not get support in a referendum which could result in the loss of the protection of the BNDP. It is not proposed to review the BNDP.

#### *Pamela Roberts*

- 7.7 Represented the residents of an adjoining property (11 New Barn Lane) who are disabled residents and could not attend.
- 7.8 The residents are worried about pollution as the windows of their bedroom and kitchen are only 2 yards from the road. As the residents are disabled they cannot go out and are confined to the property which they would then have to keep windows shut because of the increased traffic movement leading to additional noise and air pollution.
- 7.9 The development is not in-keeping with the area as there are no bungalows proposed. The adjoining site is for 90 dwellings, and includes some bungalows along the road frontage with New Barn Lane.
- 7.10 There is an Oak Tree which should be protected by a Tree Preservation Order. It was planted by the residents, transplanted as a sapling and everybody in the area enjoys it.

*Doreen Sanders*

- 7.11 Was involved with the BNDP and witnessed the site flooding. She asks who is responsible for the ditches surrounding the site, particularly between the site and Jubilee Playing Fields? Furthermore she notes that there are branches and other material blocking the ditch.
- 7.12 The local roads are congested, particularly in the morning traffic backs back from the roundabout. It is a coastal road and there are a lot of improvements going on particularly on the stretch of Chichester Road between the Garage and Winston Crescent. There have been a number of accidents in the area: a tractor has overturned which caused road to be closed and very recently there was an accident on Chichester Road which damaged the wall of the adjacent house.
- 7.13 This is not the only planned development, there are 2,500 dwellings proposed at Chalcroft Lane and the site at Bersted Park (just across Chichester Road) has not yet been completed. Bersted Park has issues with its street lighting, with many not working. There is sewage backing up in the Bersted Park estate in the AH. There are also large developments further afield including the retail park on the A259, Roman Way and Shripney which add to the overall increase in traffic in the locality
- 7.14 After 4:30 in the afternoon you have to go to Portsmouth, Worthing or Brighton for Accident and Emergency access, and that would be during the rush hour.
- 7.15 General Practitioners (GPs) and Dentists in the area are closing their lists because they cannot recruit practitioners and there is not the funding for them.
- 7.16 With the amount of development going on, the area is now referred to as 'Greater Bognor' coming back for more land and it is not fair that it is all in Bersted.
- 7.17 If the BNDP is out of date now it is only a matter of time before the HLS is also out of date.

*Janet Bradfield*

- 7.18 Was on the advisory panel for the Neighbourhood Plan and involved with advising on what was required for BNDP. Residents have lost trust and faith and although they were led to believe that they would have a voice ,they have not.
- 7.19 This is agricultural land.
- 7.20 There are concerns regarding infrastructure. Chichester Road is a bottle neck in the morning and evening rush hours and at school time. The Council gets a payment for every house it gets and this does not come back to Bersted as a payment yet all the housing is being located in Bersted.
- 7.21 Development on land in Bersted should only be allowed for that community, and not for the regeneration of the whole of Bognor to aid people moving in and creating additional need to travel to work out of the area.

- 7.22 There is a huge development at Chalcroft Lane which is of concern to Bersted. When Bersted Park was originally approved it was for 350 houses, there are now over 700 and still counting.
- 7.23 Bungalows in Winston Crescent have a semi-rural location which would be lost if the proposed development is allowed and the outlook to rural countryside would be removed.
- 7.24 The Council has failed to introduce the Localism Act and therefore the local residents do not have a voice.

*Wendy Kapp*

- 7.25 Is a local Councillor on BPC and vice chair of the Steering group of the BNDP, but does not have formal authority to speak on BPC's behalf. She is speaking as an interested person.
- 7.26 The BNDP was agreed but it would be difficult to get agreement to review and increase housing delivery. That is disappointing but we will not be reviewing the BNDP.
- 7.27 The application site is one of the more sensitive fields in the area and appears to be one of the first to go.
- 7.28 Policies ES3 and ES7, protecting the strategic gap and building outside the built up area are two of the most important policies in the BNDP. The proposal would lead to the loss of a greenfield, as with the adjoining site for 90 dwellings. This has led to a feeling of a lack of democracy.
- 7.29 The traffic on Chichester Road is substantially slower than previously, over the last 2 years or so. The relief road has slowed things down on Chichester Road so traffic is not moving as freely. The traffic in the area is almost stationary during the morning rush hour. Bersted Park, across the road, 90 dwellings on the field adjacent and the proposed 50 dwellings on the site all would add to that traffic. The additional traffic increases traffic fumes in the area.
- 7.30 The application is premature pending the outcome of the ELP. Indeed that has an allocation for a significant development in Bersted and the approval of the proposed development could make that more likely.

### **Written Representations**

- 7.31 There was one letter received following the notification of the Call in, this being from BPC. The letter raised three issues. Firstly, that the site was not deliverable because there is no joint access to this site from the adjoining field which has already obtained outline planning permission for a separate development of 90 houses.
- 7.32 Secondly, the Government response to a petition 'Give communities back the right to decide where houses are built' stated "our proposals are focussed on development in built up areas....that Green Belt must be protected and that there are other areas that local authorities must pursue first, such as brownfield land and taking steps to increase density on urban sites". The site in question is outside the built up area in the made BNDP.

7.33 Finally, the Secretary of State for Transport has recently announced the cancellation of proposed improvements to the A27 around Chichester. The local road network is already operating at maximum capacity during peak hours with considerable delays being experienced by commuters. Adding yet more dwellings and commuters to the situation would simply exacerbate matters.

## 8. Conditions and Section 106 Agreement

- 8.1 A list of suggested conditions should the SoS be minded to approve the planning application is included in the SoCG (CD2.1) at section 16.0. The list has been the subject of discussion and agreement between the parties and formed the basis of the discussion at the Inquiry. The SOCG has been available for public view as part of the documentation and therefore other parties would have been aware of it.
- 8.2 An additional condition was suggested by the Applicants in the situation that concerns still prevailed regarding the access arrangements and one that they would be happy to accept (CCFE6). The Council also supported the condition if it was considered necessary.
- 8.3 A draft planning obligation in the form of an agreement under section 106 of the Town and Country Planning Act 1990 as amended was submitted before the Inquiry opened. On the opening day of the Inquiry the Council introduced an amendment to the section 106 agreement related to the financial contribution towards health. During the Inquiry minor typographical issues were highlighted and the omission of a financial contribution towards the SPA was noted. These were resolved and a final draft agreement was provided (CCFE3). The agreement was not executed and the parties were given until the 4 October 2017 to provide an executed agreement. A certified copy of the executed agreement was received on 2 October 2017 (PID1).
- 8.4 The matters covered in the agreement provide for financial contributions which are as follows:
- Primary education: £134,325
  - Secondary education: £144,567
  - Further Secondary education: £33,867
  - Libraries: £12,052
  - Fire service: £1,145
  - Health: £56,436
  - Access management contribution (SPA): £43,550
- As well as
- 15 units to be allocated as AH units (5 of the units shall be provided as affordable rent dwellings and 10 as intermediate housing units, unless otherwise agreed with the District Council)
  - Open Space Scheme: to be submitted to and approved by the District Council in respect of the Open Space.
  - Co-operation with the landowners of the adjacent site on access
- 8.5 The education contributions are calculated in respect of the existing capacity for schools in the locality, the places required from the development and a building cost multiplier. There is a written CIL justification statement [ADC2] which sets out the calculation and demonstrates that schools in the locality are expected to be short of places given committed developments. The contributions would be used towards expansion of the education establishments in the locality and the WSCC have confirmed that the schemes identified would involve a maximum of five pooled contributions and therefore be in line with the pooling restrictions.
- 8.6 The library contribution level is calculated on the basis of a cost multiplier and an increased space provision based on the increased population. The

contribution would be put towards the library facilities in a community building in Bersted to provide for a limited range of library activities including self-service kiosk, click and collect, drop off facilities etc. Again it is confirmed that the contribution would not be pooled with more than four other contributions.

- 8.7 The Fire service contribution is calculated by the projected population multiplied by a cost multiplier. The cost multiplier is derived from the cost of building fire stations and infrastructure improvements necessary to serve the area within which the development would be located. Given the small scale level of the contribution it is suggested by the Fire service that this would be directed towards small scale local solutions that would free up capacity in the fire service to deal with larger incidents and would be used towards the provision of fire safety equipment and smoke alarms to vulnerable persons in the locality within which the fire service operate, and in particular Bersted.
- 8.8 At the Inquiry I was provided with a letter from the NHS Coastal West Sussex Clinical commissioning Group (ADC3). The document sets out the justification for the calculation of the required Health contribution based on the population increase and identifies the contribution would be spent at the local GP surgery<sup>45</sup>.
- 8.9 The financial contributions are all calculated on the basis of contribution equations and are calculated on the basis of the proposed housing mix. The agreement provides for these figures to be recalculated should the mix change and provides for the equations to undertake those calculations.
- 8.10 WSCC and the Coastal West Sussex Commissioning Group have confirmed that the financial contributions sought in relation to Health, Education, Libraries and Fire & Rescue do not fall foul of the pooling restrictions as set out in the Community and Infrastructure Levy Regulations 2010 (as amended) and provided justification for the contributions sought (ADC 2 and ADC3).

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<sup>45</sup> ADC3

## 9. Inspector's Conclusions and Recommendation

- 9.1 In this section of my report the numbers in square parentheses thus [ ] refer to earlier paragraphs in preceding sections of the report or relevant documents from which these conclusions are drawn.
- 9.2 The main considerations in this Inquiry were those identified by the SoS and as supplemented by matters I identified as relevant. These were initially formulated in my Pre-Inquiry Note (INSP1) and adjusted as set out above [1.7]. My conclusions are structured on that basis.

*The latest position in terms of the Council's housing supply, having regard to a 5 year and 3 year supply*

- 9.3 The current position in respect of the District's HLS is such that its most recent Objectively Assessed Housing Need (OAHN) is 919 dwellings per annum, based on an update to the Strategic Housing Market Assessment.<sup>46</sup> On this basis when the shortfall is added to the OAHN the overall requirement rises to 6,440 over the period 2017-2022 (1,288 dwellings per annum). The shortfall being addressed in the following five years. The Council further accept that the Council is persistently underperforming and therefore a 20% buffer is appropriate<sup>47</sup>.
- 9.4 Based on the Council's total projected completions the Council can only demonstrate a 2.07 years of HLS<sup>48</sup>. [5.33 and 6.3].
- 9.5 The Council' assessment of its performance at the Inquiry on the five year HLS is only slightly better than when it considered the application and recommended approval, when it stood at 1.9 years. The Council note that this is one of the worst performances in the south east of England, and its position is 'dire'. There is no dispute between the parties as to the HLS position and the Applicants accept the figures of the Council [5.30 to 5.33 and 6.3].
- 9.6 On this basis it is clear that the Council cannot demonstrate a 5 year supply of housing land and, given that the land supply figure is 2.07, cannot demonstrate a 3 year supply. There is no other evidence before the Inquiry to suggest an alternative figure. [5.35].

*The effect of the proposed development on the character and appearance of the surrounding area*

- 9.7 The application site is adjacent to the settlement boundary of Bersted, it is located between an existing recreation ground and the site of a recently approved development of 90 dwellings to the north, which the parties refer to as the 'Landform site'. Whilst the Council accept that there would be some limited harm to the countryside by virtue of the introduction of built development, which would change its character and appearance, the Council accept that the development is acceptable in visual impact and landscape terms. The Applicants' Landscape and Visual Appraisal<sup>49</sup> also accepts that there would

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<sup>46</sup> SoCG section 6, and appendix 2

<sup>47</sup> CD5.13 Table 7

<sup>48</sup> CD5.13 Table 7

<sup>49</sup> CD1.10

be moderate-major adverse visual effects on nearby residents although noting this would fall to negligible to minor-moderate for residents slightly further away. It is also suggested that the existing boundary landscaping would reduce the visual intrusion and that ten years after completion the effects on visual amenity would further reduce as a result of the proposed planting. I accept that there would be some harm to the character and appearance of the area by the introduction of built development, as there would be a housing estate where there is presently an open field. However, given the proximity to the settlement edge, the adjoining development site, surrounding landscape, and flat topography I agree that this harm would be limited, and that with planting that harm would be reduced over time<sup>50</sup>. [6.26,]

- 9.8 The application site is located beyond the BUAB as defined on the proposals map and LP policy GEN2 it is therefore within the Countryside and protected by LP policy GEN3. The wider area forms part of a strategic gap between Bognor Regis and Chichester, Area 10(v). The BNDP has similar policies identifying the BUAB, Policy ES7, protecting the strategic gap, Policy ES3, and also includes a policy to provide for housing allocations, Policy HDQ1.
- 9.9 The proposal would result in development of an agricultural field in the open countryside and in this regard would conflict with policies GEN2 and GEN3 in the LP and policies ES3 and ES7 of the BNDP. This is accepted by the Applicants. [5.27]
- 9.10 In the context of the strategic gap, the site amounts to less than 0.3% of the total land area of the gap and it would not project any further west towards Chichester than the settlement edge taking account of the approval of the recent development on the adjacent site. As the development is not for essential infrastructure it is evident the development would conflict with policy ES3 in the BNDP. The particular circumstances of the site and its relationship with the built up area are more balanced as to whether there is conflict with policy AREA 10 in the LP, but this includes concern regarding piecemeal development of land at the edge of boundaries within the gap that could have a cumulative effect and it is this the policy seeks to guard against. The development by itself may have limited or negligible effect on the strategic gap, given its location and size, however, there is a potential for cumulative effects from small scale developments and on the basis of the wording of the policy I find that there is conflict with Policy AREA 10. [4.5, 4.9, 5.28, 6.26]
- 9.11 Policy HDQ1 in the BNDP is a positively worded allocation policy but the application site is not one of those allocated sites. The application site is not supported by the policy but the development would not directly conflict with the wording of the policy. [4.11]
- 9.12 On the basis of the above I conclude that the proposed development would result in limited harm to the character and appearance of the countryside through development in the countryside, beyond the BUAB and that there would be limited harm to the strategic gap. The proposal would therefore conflict with LP policies GEN2, GEN3, AREA 10 and BNDP policies ES3 and ES7.

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<sup>50</sup> section 11.0 SoCG

*The effect of the traffic generated by the proposal on highway safety and traffic conditions in the surrounding road network*

- 9.13 The Framework at paragraph 32 advises, amongst other matters, that for developments that generate significant amounts of traffic movement developments should only be prevented on transport grounds where the residual cumulative impacts of development are severe.
- 9.14 The proposed development, for some 50 new dwellings, would result in 27 additional vehicles in the AM peak (08:00 to 09:00) and 28 vehicles in the PM peak (17:00 to 18:00). The junction analysis for the New Barn Lane B2259 junction demonstrates that the junction would operate within capacity with and without the expected development traffic in the assessed years of 2018 and 2028<sup>51</sup>. [5.16]
- 9.15 The Applicants' Transport witness, Mr Smith, provided uncontested evidence which further confirmed that traffic in New Barn Lane would equate to one additional vehicle every 2.2 minutes; that the new development would add no more than one additional vehicle every 3 minutes to the roundabout junction to the north at the A259 / B2259 junction, which would have no discernible impact on existing traffic flows; and that the development would have no effect on further afield locations, including the retail park on the A259, Roman Way and Shripney. These being concerns expressed during oral evidence from third parties. [5.16 and 7.13]
- 9.16 The Applicants, by reference to accident statistics, also confirmed that there have been no accidents in the immediate vicinity of the site and that accidents further afield have been limited both in terms of numbers and severity. Whilst individual incidents were drawn to my attention, including a recent accident on the B2259 close to the Petrol Filling Station this did not conflict with or contradict the analysis of Mr Smith in his proof and oral evidence<sup>52</sup>. [5.23 and 7.12]
- 9.17 BPC in its written representations raised the issue about the cancellation of planned improvement works to the A27 by Highways England. The Applicants explained that there is work being undertaken by WSCC, Chichester District Council and ADC to consider a package of improvement measures along the A27 to address the impacts of proposed developments in the context of the Chichester Development Plan and ELP proposals. There are therefore measures for the improved operation of the A27 being actively considered and the 'improvements programme' has therefore not been cancelled. [5.16 and 7.33]
- 9.18 Given the conclusions above I conclude that the proposal would not have a detrimental effect on the free flow of traffic or highway safety on the surrounding road network as a result of the additional traffic generated. I am given further confidence in this conclusion given that there is no objection to the scheme from WSCC as Highway Authority or from Highways England in relation to wider transport matters on the strategic road network. [5.14 and 6.5]
- 9.19 The application is an outline application with all matters reserved, including access. There is concern expressed by BPC and other third parties concerning

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<sup>51</sup> CD2.6 4.11-4.13

<sup>52</sup> CD2.6

the deliverability of the site and the potential effect of the proposed access. [7.4, 7.29 and 7.31]

- 9.20 Mr Smith's evidence<sup>53</sup> presents a number of options to demonstrate that there are viable options available to the developer such that could be provided for under the terms of the outline application and that these would be a matter for the reserved matters application. In effect three potential scenarios are explored referred to as access A B or C above. Access A would be accommodated within the limits of the application site and is an achievable option within the application. The concern is that under a separate application the adjoining land owner has sought permission for an alternative access to the one originally approved by the Council and which would mean that option A may not be realised. If the developer of the adjoining Landform site proceeds on that basis there is a proposal to introduce access B. With co-operation between the developers this could be achieved, such co-operation is included in the section 106 agreement and I am informed there are reciprocal agreements in the context of the adjoining development. Finally option C would require a further planning permission for land between the application site and the public highway. That land is in the control of the Applicants and therefore there is no bar to it coming forward<sup>54</sup>. [5.18 – 5.20]
- 9.21 All of the proposed access arrangements have been assessed by WSCC who have either approved or indicated that they would have no objection to the arrangements. The Applicants have entered into agreements with the adjoining land owner to co-operate in terms of the access arrangements and in terms of option C the Applicants own the land necessary to progress the proposal. The Applicants have offered an additional Grampian style condition to ensure development is not commenced until access arrangements are agreed. This however would appear unnecessary at this stage as access is a reserved matter and development could not be commenced until that reserved matter was approved. Depending on the scenario fixed on by the developer and the submission for approval of those details under the reserved matters further safeguarding conditions could be attached to that approval as it would relate directly to the matter being considered. [5.18 – 5.20]
- 9.22 The available options for access have been considered by the Highway Authority and been the subject of safety audits and no significant issues have been identified. On the basis of the above I conclude that there are access arrangements available to the developer through a number of alternatives and that the scheme is deliverable. [5.19, 5.20 and 6.5]
- 9.23 The car parking detail would be a matter for the reserved matters application. However Mr Smith's proof confirms that parking would be provided at 2 spaces per dwelling in line with the requirement in the BNDP, policy HDQ8. Parking is also addressed in policy GEN12 of the LP and there is no identified conflict with this policy<sup>55</sup>. [5.25 and 6.5]
- 9.24 Overall for the reasons given above I conclude that the proposed development would not result in material harm to highway safety and traffic conditions on the

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<sup>53</sup> CD2.6

<sup>54</sup> CD2.6

<sup>55</sup> CD2.6

surrounding road network and that the proposal would not conflict with LP policies GEN7, GEN14 and GEN15, or BNDP policy HDQ8.

*Whether the proposed development would be at risk of flooding or increase the risk of flooding elsewhere*

- 9.25 The Framework, paragraph 100, advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at the highest risk, but where development is necessary, it should be made safe without increasing flood risk elsewhere. Further advice is provided in the following paragraphs and in the technical guidance on flood risk published alongside the Framework.
- 9.26 Policy GEN9 in the LP and Policy ES2 in the BNDP are consistent with the general aims of the Framework. [4.6 and 4.9]
- 9.27 The site is located in Flood Zone 1 on EA mapping which is rated as very low risk of flooding from rivers and sea and very low risk with regards to surface water flooding. It is the lowest flood risk and appropriate location for development in the context of flood risk<sup>56</sup>. [5.7 and 6.9]
- 9.28 The proposed development would provide for a drainage strategy based on sustainable urban drainage principles and would result in a 32% reduction in the surface water entering the existing drainage system from the site. The drainage strategy would provide a positive drainage system that would allow surface water to be collected and attenuated in specified areas. There would be a restricted run off rate<sup>57</sup>. [5.9 and 6.9]
- 9.29 The EA, the Council's drainage engineer, nor WSCC, as Lead Local Flood Authority, have raised any objections to the scheme [5.7 and 6.9]. Whilst local residents were concerned that they had seen the site flooded, Mr Lowe, advised this was most likely ponding on the flat site following heavy rainfall. I accept this as a reasonable explanation of those observations. This situation would be improved by the on-site drainage strategy. In relation to concerns regarding flooding on the A259 with the reduced surface water entering the system from the application site the scheme would result in a net benefit reducing flows into the existing system and therefore reducing the pressure on it. The proposal would therefore not increase the risk of flooding<sup>58</sup>. [5.8, 5.9, 6.9 and 7.11]
- 9.30 It is acknowledged in the SOCG and Mr Lowe's evidence that there is an issue with regard to the foul water drainage capacity in the area and that this could be addressed through the imposition of a Grampian style condition requiring the submission and approval of details. Southern Water do not object to that approach and I am satisfied that such a condition would meet the relevant tests<sup>59</sup>.
- 9.31 There has been no substantive evidence submitted to contradict Mr Lowe's evidence. The site is in the lowest risk for flooding according to the EA mapping, the proposal would reduce the flow of surface water off the site.

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<sup>56</sup> CD2.8

<sup>57</sup> CD2.8

<sup>58</sup> CD2.8

<sup>59</sup> CD2.1, CD2.8

Overall therefore, there would be a net benefit in terms of reducing flood risk in the area, the proposal would not result in flood risk for the occupiers of the new development and the development would not increase the risk of flooding elsewhere. The proposal is therefore in accordance with the advice in the Framework, policy GEN9 in the LP and policy ES2 in the BNDP.

*Any additional need for community and social infrastructure arising from the development*

- 9.32 The application is supported by a section 106 agreement which seeks to make provision for various elements of social and community infrastructure to ensure the impacts of the development are appropriately addressed. [2.3 and 8.3]
- 9.33 In this regard the agreement secures the provision of 15 of the dwellings as AH, 5 of which would be affordable rent and 10 as intermediate housing units. This would be compliant with policy DEV17 of LP. The quantum and tenure split is supported by the Council's Housing Strategy and Enabling Manager and the contribution is important given the significant shortage of AH in the district. Further weight is added to this benefit given the inclusion of affordable rent units. Intermediate housing would still be policy complaint and the inclusion of affordable rent is welcomed by the Council. The provision of AH is given significant weight in my planning balance for these reasons. [6.10 and 8.4]
- 9.34 The agreement also secures funding for education at Primary, Secondary and Further education levels. The nature and form of the multiplier is based on increase in school place demand and is directly related to the scale of the development. The evidence also demonstrates that there is no spare capacity at the local schools to accommodate the increased demand. The contributions are therefore proportionate and justified<sup>60</sup>. [8.5]
- 9.35 WSCC have confirmed that there would be additional pressure on its library services from an increase in the population. The contribution would maintain and improve the resilience of the service given the added pressure from the increased population in the development. The contribution is proportionate reasonable and justified. [8.6]
- 9.36 The Applicants have concerns regarding the Fire and Rescue Service contribution and questioned whether it was reasonably related to the development. In this regard the contribution would be directed towards provision of equipment in the area of the site. Whilst such equipment would be installed in the proposed houses, the retro fitting of existing dwellings in the locality would have a positive impact on the pressures on the fire service, potentially creating additional capacity to deal with the additional pressure that would arise from development. On this basis I am satisfied that the contribution is necessary, appropriate and justified<sup>61</sup>. [8.7]
- 9.37 The Applicants initially raised concerns that the health contribution had not been fully justified. Justification was provided and I was provided with a copy at the Inquiry, no concerns were raised by the Applicants following the submission of

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<sup>60</sup> ADC2 & PID1

<sup>61</sup> ADC2, PID1

the document. I am satisfied that the contribution is proportionate, reasonable and is necessary<sup>62</sup>. [8.8]

- 9.38 The agreement also secures provision of a financial contribution towards access management. The contribution is based on the cost of delivering measures to avoid and mitigate any harm that may arise to Pagham Harbour SPA. The site, at 3.9 km distance, is within the 5 km Zone of influence in relation to the SPA and therefore a contribution is appropriate. The contribution is for access management and not for the provision of infrastructure and is therefore not caught by the pooling restrictions. The Council have supplied background papers setting out the mitigation contribution<sup>63</sup>.
- 9.39 The BPC had requested that a contribution towards allotments was provided for. This has not been included in the agreement. Whilst the BNDP includes policy CLW4 which states developments over 20 houses will be expected to make a financial contribution to fund allotment space elsewhere in the parish, BPC has not provided justification to support the requirement and why it would be necessary to make the development acceptable. The request has not therefore been justified. Moreover the policy refers to an expectation rather than a requirement and the lack of provision is therefore not in conflict with the policy and is not a dis-benefit of the scheme.
- 9.40 The agreement also includes a requirement for an open space scheme and its future maintenance and management. Policy GEN20 requires the provision of public open space to a specified standard and play equipment in accordance with supplementary planning guidance. The detailed layout and specification is secured through the section 106 agreement and would be identified in any future reserved matters application. The Framework Plan ref. 7096-L-NBL-01\_G identifies the general parameters of the open space<sup>64</sup>.
- 9.41 On the basis of the above I conclude that the proposed development makes reasonable provision for any additional community and social infrastructure needs arising from the development. The proposal would therefore not conflict with policy GEN8 in the LP which seeks to ensure that the development makes provision for infrastructure needs or facilities made necessary by the development.

### **Overall conclusions and Planning Balance**

- 9.42 The Council cannot demonstrate a 5 year supply of deliverable housing sites. Indeed at 2.07 years supply the Council is unable to demonstrate a 3 year supply of housing sites. This is important as the WMS on Neighbourhood Planning HCWS346 12 December 2016 indicated that relevant policies for the supply of housing in a neighbourhood plan should not be considered out of date under paragraph 49 of the Framework where three circumstances arise. Two of those circumstances are met: firstly, the statement is less than 2 years old; and secondly, the BNDP does allocate sites for housing. However, the third provision is not met, in that the LPA cannot demonstrate a three year supply of deliverable housing sites. On this basis the statement is therefore not engaged.

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<sup>62</sup> PID1

<sup>63</sup> ADC6 PID1

<sup>64</sup> CD1.2, CD2.1, PID1

- 9.43 In this context paragraphs 49 and 14 of the Framework are engaged. Paragraph 49 of the Framework advises that relevant policies for the supply of housing should not be considered up to date if the LPA cannot demonstrate a 5 year supply of housing. Paragraph 14 of the Framework advises that where relevant development plan policies are out of date planning permission should be granted (a) unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole (the tilted balance) or (b) specific policies in the Framework indicate development should be restricted (the footnote 9 restrictions).
- 9.44 The site is not subject to specific designations of protection in the context of Green Belt, Area of Outstanding Natural Beauty, Local Green Space, valued landscape or such. The site does not include any heritage assets and it is not suggested that a heritage asset would be affected by the development. Given the conclusions on the mitigation measures in the section 106 agreement to address the potential effect on the Parham Harbour SPA and that the development would not be affected by or make flooding worse elsewhere, such policies in the Framework do not indicate development should be restricted. I am satisfied that the footnote 9 restrictions do not disengage the tilted balance.
- 9.45 The application site is located outside the BUAB which is identified in both the LP and BNDP. The proposal is therefore in the open countryside and conflicts with the policies which seek to safeguard the countryside, again both in the LP and the BNDP. There is no dispute on this matter. The proposal conflicts with policies in the Development Plan and given that these are policies that seek to direct development which are fundamental to the locational strategy that underpins the plan I conclude that the development conflicts with the LP and the BNDP, and therefore the Development Plan, as a whole.
- 9.46 Added to this, the site is within a strategic gap protected by policies in both the BNDP and the LP. The Applicants contend that the development does not conflict with policy AREA 10 in the LP but accept that it would conflict with the wording of policy ES3 in the BNDP. I have concluded that, whilst there would be relatively limited harm to the strategic gap, the development would still conflict with both policies, and this harm should be weighed in the balance.
- 9.47 Paragraph 184 of the Framework advises that Neighbourhood Planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. Paragraph 185 makes it clear that once made neighbourhood plans take precedence over non-strategic policies in the local plan where they are in conflict. Paragraph 198 of the Framework then advises that where a planning application is in conflict with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. Together these demonstrate the Government's commitment and strong support for neighbourhood planning and this is a significant consideration when assessing development against the policies in the Framework as a whole in the tilted balance.
- 9.48 The BNDP was produced and made at a time when the housing requirement for the district was in the region of 580dpa. It has now risen to in excess of 1200dpa. The Council in its own words has a dire position in HLS and can only demonstrate 2.07 years supply. It is evident that the current Development Plan, including the BNDP, is constraining development and not meeting local

housing need or the Framework's advice to significantly boost the supply of housing. Development will need to be built outside these boundaries and in the open countryside if the housing supply situation is to be improved. Such policies are therefore out of date and can only be given limited weight. The ELP, which although can also only be given limited weight because of its early stage of preparation, also recognises this. The ELP is some way off adoption and therefore it is likely that this state of affairs will persist for some time. Given these factors, I give conflict with those policies related to the built up area boundary, protection of the countryside and the strategic gap little weight in my consideration of this application.

- 9.49 Added to the conflict with the Development Plan, I have identified limited harm to the character and appearance of the countryside resultant from the development albeit that this would be reduced as the development would be assimilated into the neighbourhood and landscaping matures. This should be added to the adverse impacts of the development.
- 9.50 On the other side of the balance the benefits of the scheme are set out in Ms Robert's proof of evidence, are further elaborated on in CCFE5 which quantifies the economic benefits of the scheme, and are summarised above [5.48]. I give substantial weight to the provision of housing and significant weight to the provision of AH. This is enhanced by the Applicants' offer to accept shorter timescales for the implementation of development as addressed below in the appropriate condition.
- 9.51 There are significant economic benefits as well as significant environmental benefits, not least with the improvements to flood risk resultant from the reduction in surface water discharged from the site. The proposal would also result in a net gain in biodiversity on the site. Moreover the site is in a location which has good accessibility to public transport and also other local services and facilities required to meet the day to day needs of residents. [5.25, 5.48]
- 9.52 Overall I am satisfied that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies in the Framework taken as whole, including those directly related to neighbourhood planning. Accordingly, I conclude that planning permission should be granted.

### **Conditions and section 106 agreement**

#### Conditions

- 9.53 Should the SoS decide to grant planning permission, the list of conditions attached at Annex E is derived from the suite of conditions agreed between the Applicants and LPA and discussed at the Inquiry. I have assessed the suggested conditions in the light of the advice contained in the PPG and where necessary, in the interest of precision and enforceability, reworded appropriate conditions. I have also identified a number of suggested conditions which I would recommend should not be imposed.
- 9.54 The SoCG includes the list of Suggested Conditions (SC) at section 16. SC1 and 2 relate to the identification of the reserved matters, timing for the submission of reserved matters and the implementation of the permission. SC1 provides for a 2 year time limit rather than the standard 3 year timescale and SC2 requires development to be begun before 3 years from the date of permission or

1 year from the approval of the last reserved matter, again these are shorter than the standard timescales. The shorter timescales are promoted on the basis that this will bring forward development more quickly and add to the benefit the scheme would have in the context of the short fall of the HLS. Furthermore it is suggested that a small scale development does not have the difficulties associated with larger more complex cases and can be brought forward more quickly. The small scale nature of the scheme and shorter timeframe would mean that the development would start to contribute to housing provision within this 5 year period and the Council support the early implementation. Given the substantial shortfall, this adds further weight to the benefit and is reasonable. The standard format and wording for the conditions would be more appropriate. [9.51]

- 9.55 SC3 lists the plans for which approval is sought, this is consistent with the PPG and provides certainty. SCs 4, 5 and 6 require various details of drainage or its management in order to reduce the number of conditions these can be amalgamated and still retain the necessary level of control over the required details to ensure the development is adequately drained. SC7 seeks to address not previously identified contamination. However there is no strong evidence to suggest that the site has been contaminated and it is open countryside. The condition is therefore not justified.
- 9.56 SCs 8 and 9 require the submission of a landscaping scheme and tree protection details. These are however more properly reserved matters. The conditions are not required and the additional protection can be addressed at the reserved matters stage. Similarly SC10, which seeks details of materials is more properly dealt with under the appearance reserved matter and is not required at this stage.
- 9.57 SC11 requires details of a construction management plan and is required to protect the general amenities of the area, surrounding occupiers and highway safety. SC12 is a Grampian style condition requiring approval of the details of foul drainage and is required for the reasons discussed in my conclusions above. [9.31]. SC13 is required to secure ecological benefits deriving from the scheme.
- 9.58 SC14 relates to working hours during construction and would be better amalgamated with SC11. SC15 requires submission of a landscape management plan and is required in the interest of the on-going appearance of the development. It could be amalgamated with SC1 but is effective as a separate condition and I would recommend it stays separately but cross referenced as it is drafted. SC16 requires details of the public open spaces to be submitted and approved. This is already addressed in the section 106 agreement where it is linked to financial contributions and future management responsibilities. It is more appropriately addressed in the section 106 agreement and is not needed as a condition as it would be duplication.
- 9.59 SC17 precludes ground works during the bird nesting season. This is dealt with under other legislation and is not necessary. SC18 seeks 10% of the energy supply to be secured from decentralised and renewable or low carbon energy sources. This is required in order to ensure the development achieves high levels of energy efficiency and to meet the aspirations of meeting the challenge of climate change in the Framework. SC19 seeks the submission of details of a street lighting scheme. The Applicants have not decided whether the road

would be offered for adoption. Whilst it could be argued that lighting columns were part of the appearance and layout there may be some confusion or disagreement on this point. To provide clarity and certainty the condition is required. SC20 requires the provision of a fire hydrant but includes requirements for approval by a third party and imposes obligations on a third party. The condition as drafted does not meet the tests of enforceability and reasonableness. The matter could also be addressed under the reserved matters submission.

9.60 An additional condition was suggested by the Applicants and is set out in CCFE6. For the reasons given above this condition is not necessary. [9.22]

9.61 Conditions 5, 6 and 11 in Annex E are pre commencement conditions and require certain actions before the commencement of development. In all cases the matters they address are of an importance or effect to mean they need to be resolved before development begins.

#### Section 106 Agreement

9.62 All the obligations contained in the section 106 agreement are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, the section 106 agreement is consistent with the guidance in the Framework, paragraph 204, and Regulations 122/123 of the CIL Regulations and where appropriate, I have attached weight to it in coming to my conclusions. [9.33 – 9.42]

#### **Recommendation**

9.63 I recommend that planning permission be granted subject to the planning conditions attached at Annex E.

*Kenneth Stone*

INSPECTOR

## **Annex A**

### PLANS SUBMITTED WITH THE APPLICATION

Original Site Plan	-	7096-NBL-L-05-A
Original Framework Plan	-	7096-L-NBL-01 E

## **Annex B**

### PLANS SUBMITTED DURING CONSIDERATION OF APPLICATION

Amended Site Plan	-	7096-NBL-L05 G
Amended Framework Plan	-	7096-L-NBL-01

## **Annex C**

### **APPEARANCES**

#### FOR THE LOCAL PLANNING AUTHORITY:

Trevor Ward	Of Counsel instructed by Solicitor to Arun District Council
He called	
David Innes	Director of Blueprint Planning and Development Ltd on behalf of Arun District Council

#### FOR THE APPELLANT:

Alexander Booth QC	Queens Counsel instructed by Ms Francis Fallows of Charles Russell Speechlys LLP
He called	
Paul Smith BA(Hons) MA	Divisional Director Pell Frischmann
Rob Lowe MEng	Associate WYG Infrastructure & Built Environment
Pauline Roberts BA(Hons) MSc MRTPI MRICS	Planning Director Lichfields

#### INTERESTED PERSONS:

Pamela Roberts Gill Yates	On behalf of Occupants of 11 New Barn Lane Representing Bersted Parish Council, a Parish Councillor and Chair of Planning on Parish Council
Doreen Sanders Janet Bradfield Wendy Kapp	Local Resident – Winston Crescent Local Resident – Winston Crescent Local Resident and Bersted Parish Councillor

**Annex D****DOCUMENTS****DOCUMENTS SUBMITTED BEFORE THE INQUIRY OPENED**

<b>CD</b>	<b>Application Submission</b>
1.1	Cover Letter dated 11 May 2016
1.2	Framework Plan Ref. 7096-L-NBL-01_G
1.3	Site Plan Ref. 7096-NBL-L-05_G
1.4	Design and Access Statement (DAS) (including a section on community involvement) May 2016
1.5	Planning Statement May 2016
1.6	Transport Statement May 2016
1.7	Framework Travel Plan April 2016
1.8	Flood Risk Assessment April 2016
1.9	Arboricultural Assessment May 2016
1.10	Landscape and Visual Appraisal May 2016
1.11	Ecological Appraisal May 2016
1.12	Ground Conditions Desk Study Report May 2016
1.13	Preliminary Infrastructure Appraisal April 2016
1.14	Archaeology Statement May 2016
1.15	Cover Letter (responding to representations) dated 4 July 2016
1.16	Validation Requirements Checklist
1.17	Biodiversity Checklist
1.18	Framework Plan Ref. 7096-NBL-L-01_E (SUPERSEDED)
1.19	Site Plan Ref. 7096-NBL-L-05_A (SUPERSEDED)
1.20	Application Form 11 May 2016

<b>CD</b>	<b>Statement of Case / Statement of Common Ground / Proofs of Evidence / PINS Documents</b>
2.1	Statement of Common Ground
2.2	Applicant Statement of Case
2.3	Arun DC Statement of Case
2.4	Proof of Evidence of Pauline Roberts
2.5	Summary Proof of Evidence – Pauline Roberts
2.6	Proof of Evidence of Paul Smith on Transport Matters
2.7	Summary Proof of Evidence – Paul Smith on Transport Matters
2.8	Proof of Evidence of Rob Lowe on Drainage Matters
2.9	Summary Proof of Evidence – Rob Lowe on Drainage Matters
2.10	Draft S.106 Agreement between Arun DC and the Applicant (ref. WKS/104940750.3)
2.11	Call-in letter from Department for Communities and Local Government (9 January 2017)

<b>CD</b>	<b>Other Core Documents</b>
3.1	Arun DC Committee Report (7 September 2016)
3.2	National Planning Policy Framework (March 2012)
3.3	Arun 2003 Local Plan Saved Policies – extracts only
3.4	Bersted Neighbourhood Plan (November 2014)
3.5	Arun DC Main Modifications Local Plan – March 2017
3.6	GL Hearn Arun District Council - Updated Housing Needs Evidence (September 2016)

CD	Other Core Documents
3.7	Neighbourhood Planning: Written statement - HCWS346 (12 December 2016)
3.8	Arun Local Plan Examination – Inspector’s findings on OAN (2 February 2016)
3.9	Guidelines for Landscape and Visual Impact Assessment, Third Edition, 2013 – extracts only
3.10	Land West of New Barn Lane (reference BE/142/15/OUT) Decision Notice Dated 24 February 2016
3.11	Land West of New Barn Lane (reference BE/142/15/OUT) Committee Report and Addendum (27 January 2016)
3.12	Land West of New Barn Lane Alternative Access (reference BE/18/17/PL) Decision Notice Dated 5 May 2017
3.13	Letter to the Planning Inspectorate from Bersted Parish Council, dated 8 March 2017
3.14	Email from the Planning Inspectorate covering matters to be discussed, dated 3 July 2017
3.15	Arun Local Plan Housing Implementation Strategy (March 2017)

CD	Relevant Case Law, Appeal Decisions and Evidence
4.1	Secretary of State Decision – Land East of Fontwell Avenue (APP/C3810/V/16/3143095) 13 July 2017
4.2	High Court Decision – Stroud District Council v Secretary of State for Communities and Local Government – CO/4082/2014 (6 February 2015)
4.3	High Court Decision - Forest of Dean District Council v Secretary of State For Communities and Local Government and Gladman Developments Ltd - CO/978/2016 (4 October 2016)

CD	Additional Core Documents – 25/09/2017
5.1	Transport Pre-application Request re. Access C 28.07.2017
5.2	WSCC (Dominic Smith) Response 25/08/2017
5.3	BE/113/17/RES Linden Homes Application Form
5.4	BE/113/17/RES Linden Homes Layout Plan and Landscaping
5.5	BE/113/17/RES Linden Homes Detailed Layout
5.6	Arun DC Committee Report Update (7 September 2016)
5.7	Bersted PC – acknowledgement of objection
5.8	Bersted PC comments to Local Plan 24.05.2017
5.9	Bersted Parish – Flooding Fluvial
5.10	Bersted Parish – Flooding Tidal
5.11	Letter from Karl Roberts to Parish Councils 31.03.2017
5.12	Bersted Parish Response to Karl Roberts 12.04.2017
5.13	Five year Housing Land Supply Report (as at 31 <sup>st</sup> March 2017) including tables 1 to 8
5.14	Committee Report Minutes

INSP	Documents produced by Inspector
1	Pre-Inquiry Note
2	Timetable for Inquiry

## DOCUMENTS SUBMITTED AT THE INQUIRY

ADC	Documents Submitted BY Arun District Council
1	Amended Page 9 of section 106 Agreement
2	West Sussex County Council Community Infrastructure Levy Justification
3	NHS Community Infrastructure Levy Justification
4	Council’s Opening Statement

<b>ADC</b>	<b>Documents Submitted BY Arun District Council</b>
5	Tree Preservation Order TPO/BE/1/16 (YEAR 29016)
6	Documents to support the policy position on Special Protection Area
7	E-mail from appellant providing amended plans and confirming conversation that no consultation required.
3	Mr Innes Qualifications and Experience
9	List of cases where matters of Library Services and Fire service contributions had been accepted in previous appeal decisions
10	Council's closing submissions

<b>CCFE</b>	<b>Documents Submitted by Church Commissioners for England</b>
1	List of appearances on behalf of CCFE
2	Applicant's opening statement
3	Revised final draft sec 106 agreement
4	Itinerary for unaccompanied site visit
5	List of economic benefits of scheme (including figures)
6	Additional suggested condition regarding access
7	Applicant's closing submissions

<b>BPC</b>	<b>Documents submitted by Bersted Parish Council</b>
1	Notes of comments by Ms Gill Yates

## **DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED**

<b>PID</b>	<b>Documents submitted after the Inquiry closed</b>
1	Certified Copy of the executed sec106 agreement

## Annex E

### SCHEDULE OF SUGGESTED CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before expiration of 1 year from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The development hereby approved shall be carried out in accordance with the following approved plans:
  - Framework Plan ref. 7096-L-NBL-01\_G (dated 28 August 2016)
  - Site Plan ref. 7096-NBL-L-05\_G (dated 25 August 2016)
- 5) Development shall not commence until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the local planning authority, and which shall include:
  - A design that follows the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, the recommendations of the SUDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, will be required to support the design of any infiltration drainage.
  - Full details of the maintenance and management of any SUDs system to be set out in a site-specific maintenance manual. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturer's recommended design life. Upon completed construction of the SUDs System, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
  - Arrangements for future access and maintenance of any watercourse or culvert (piped watercourse) crossing or abutting the site.

No building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the approved details and the details so approved shall be maintained in good working order thereafter.
- 6) Development shall not commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters:
  - the anticipated number, frequency and types of vehicles used during construction,

- the method of access and routing of vehicles during construction,
  - the parking of vehicles by site operatives and visitors, the loading and unloading of plant, materials and waste, the storage of plant and materials used in construction of the development,
  - the erection and maintenance of security hoarding,
  - the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
  - details of public engagement both prior to and during construction works.
  - No operational or construction vehicles shall be operated on the site except between the hours of:  
0700 and 1900 on Mondays to Fridays inclusive  
0700 and 1300 on Saturday  
Not at any time on Sundays or Public Holidays
- 7) Prior to the commencement of construction works, details of a proposed foul drainage system shall be submitted to and approved in writing by the local planning authority (including details of its siting, design and subsequent management/maintenance) and no dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
- 8) Prior to the commencement of construction works of the development a detailed ecological enhancement scheme (which shall include the installation of bat boxes and bird boxes as required throughout the site and a timetable for implementation of the ecological enhancement scheme) shall be submitted to the local planning authority for approval in writing, based on the recommendations within the supporting ecological statement. All approved details shall then be implemented in full and in accordance with the approved timetable and details.
- 9) The landscape details referred to in Condition 1 shall include a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas other than privately owned domestic gardens. The landscape management plan shall be implemented in accordance with the approved details.
- 10) At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources or equivalent fabric first standards that would secure a 10% reduction in energy use. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the local planning authority [as a part of the reserved matters submissions required by condition 1]. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.
- 11) Development shall not commence until a street lighting scheme has been submitted and approved in writing by the local planning authority. This shall comply with the Institute of Lighting Engineers Guidance Notes for the reduction of obtrusive light.

END



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

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