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## Appeal Decisions

Inquiry Held on 29 October 2019 to 7 November 2019

Site visits made on 28 and 29 October and 4 November 2019

**by Jonathan Hockley BA (Hons) DipTP MRTPI**

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

**Decision date: 16<sup>th</sup> December 2019**

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### **Appeal A: APP/D3830/W/19/3231997**

#### **Land off London Road, Bolney, West Sussex RH17 5RL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Anstone Developments Ltd and Spurpoint Ltd against the decision of Mid Sussex District Council.
  - The application Ref DM/18/0953, dated 2 March 2018, was refused by notice dated 3 January 2019.
  - The development proposed is the erection of a new class C2 care/assisted living older persons facilities (up to 15,500 sq m gross internal floor area) with associated access, amenity space, landscaping, pond, refuse storage and car and cycle parking.
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### **Appeal B: APP/D3830/W/19/3231996**

#### **Land off London Road, Bolney, West Sussex RH17 5RL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Anstone Developments Ltd and Spurpoint Ltd against the decision of Mid Sussex District Council.
  - The application Ref DM/18/0954, dated 2 March 2018, was refused by notice dated 4 January 2019.
  - The development proposed is the erection of new use class C2 care/assisted living older persons facilities (up to 7,000 sq m gross internal floor area) and erection of 40 no. age-restricted (over 55) Use Class C3 dwellings with associated access, amenity space, landscaping, pond, refuse storage and car and cycle parking.
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## **Decisions**

1. The appeals are dismissed.

## **Preliminary Matters**

2. Appeal A concerns a proposal for a new class C2 care facility of up to 15,500m<sup>2</sup> gross internal floor area, while Appeal B is for a new class C2 care facility of up to 7,000m<sup>2</sup> gross internal floor area, along with 40 age restricted (over 55) class C3 dwellings. Both appeals cover the same site, and both were submitted in outline with all matters reserved apart from access. My reasoning below refers to both schemes, unless otherwise indicated, and I have taken all plans to be indicative, aside from those relating to access.
3. The Inquiry sat for six days. Matters relating to heritage, ecology/biodiversity, accessibility, housing land supply, and C2 need were

dealt with on a round table basis as opposed to cross-examination of the various witnesses, with the agreement of the main parties.

4. I held an accompanied site visit on the first day of the Inquiry and carried out two unaccompanied visits; one on the 28<sup>th</sup> of October, the day before the Inquiry opened and one on the 4<sup>th</sup> of November. On my first unaccompanied visit I walked on the public footpaths which largely surround the site, along London Road and along the length of The Street in Bolney. The accompanied site visit included an inspection within the site itself and also contained an unaccompanied element where I walked north on London Road to Jeremy's Corner petrol station and viewed the inside of the Bolney Stage. On my second unaccompanied visit I revisited the footpaths surrounding the site and the suggested viewpoints of the two main parties contained within their respective landscape evidence.
5. An agreement between the appellant, Mid Sussex District Council (the Council) and Sussex County Council was submitted under section 106 of the Town & Country Planning Act (1990) (s106) on 21 November 2019, subsequent to the closure of the Inquiry. I deal with its contents below; however, it is relevant to note at this point that the agreement of the document in the opinion of the two main parties removes the Council's 2nd reason for refusal of both applications relating to affordable housing and infrastructure.
6. During the Inquiry it emerged that there were differing versions of proofs of evidence produced by the Council's planning witness, Mr Arbon. I have used the latest composite version in my decisions (October 2019) and have disregarded previous superseded versions.

### **Main Issues**

7. Based on all that I have seen, read, and heard from the discussions at the Inquiry, the main issues in both the appeals are as follows:
  - a) the effect of the developments proposed on the character and appearance of the area, including upon the High Weald Area of Outstanding Natural Beauty
  - b) the accessibility of facilities and services for future residents in terms of limiting the need to travel and offering a genuine choice of transport modes;
  - c) the effect of the developments proposed on biodiversity;
  - d) the effect of the developments proposed on the special interest of the nearby grade II listed Bolney Stage Public House and on the heritage significance of Bolney Conservation Area; and
  - e) the Council's housing land supply position.

### **Reasons**

#### ***Planning Policy Background***

8. The Mid Sussex Local Plan 2014-2031 (the Local Plan) was adopted in March 2018. Both applications appealed were refused for the same 5 reasons, with 10 Local Plan policies cited in these reasons for refusal; policies DP6, DP12,

DP16, DP20, DP21, DP31, DP34, DP35, DP37 and DP38. The overarching Statement of Common Ground (SoCG)<sup>1</sup> states that policies DP4, DP15, DP25 and DP30 are also relevant to these appeals.

9. The Bolney Neighbourhood Plan 2015-2031 (the NP) was made in September 2016. Policies BOLBB1, BOLA4, BOLE1 and BOLD1 are cited in the reasons for refusal. The SoCG states that policy BOLE2 is also relevant to these appeals.
10. The Local Plan has thus been in place for around a year and a half and the NP has been made for some three years and predates the Local Plan. The adoption of the Local Plan also predates the publication in February 2019 of the revised National Planning Policy Framework (the Framework).
11. The SoCG details that a draft Site Allocations development plan document was consulted upon from 9 October to 20 November 2019 and states that no weight can be afforded to this document. However, during the Inquiry various implications and considerations for the proposals were sought to be drawn, with the Mid Sussex District Council Site Allocations Methodology document also submitted by the Council during the event<sup>2</sup>.
12. Consideration of the relevant policies and weight to be given to them is considered in the planning balance below.

### ***Character and appearance***

13. The site for the appeals is a reasonably large one located on the northern edge of the village of Bolney. The site is very roughly rectangular, with largely straight boundaries on its southern, eastern and northern sides, with the north west boundary seemingly cutting the corner off in plan form and shortening the northern and western boundaries. Public footpaths border the site on its western and northern boundaries, with a further public footpath bisecting the south east corner of the site. The eastern boundary of the site runs along London Road, which runs along the east edge of Bolney.
14. Bolney itself is a reasonably sized settlement, with a population of 1,365 in 2011 (NP, Introduction). The village as a whole is a linear settlement, largely based around The Street, which runs roughly from north to south. At its northern end the Street has various roads to the side linking the road towards London Road to the east and an accompanying fairly wide spread of development, such as around Ryecroft Road and Cherry Lane/Top Street. As such the northern end of the village has a more nucleated character than the southern end of the settlement. The site for the appeals runs contiguous to the northern edge of the village, with the southern edge of the site largely backing onto rear/side gardens of properties on various cul-de-sacs set off the northern side of Top Street.
15. The site for the appeals is undeveloped land and has large areas of woodland of varying age upon it, as well as clearer areas. An access track for the private property of Packway runs across the northern part of the site; this property is located to the north west of the site, in the area cut off by the north west boundary. A remnant of a historic sunken trackway heads

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<sup>1</sup> Inquiry Document (ID) 1

<sup>2</sup> ID 24

southwest from where the Packway access meets London Road. The boundary for the High Weald Area of Outstanding Natural Beauty (AONB) runs roughly from east to west across the southern part of the site, so that the majority of the site lies within the AONB area (whereas Bolney to the south does not).

16. The Landscape Statement of Common Ground<sup>3</sup> (LSoCG) notes that the site comprises approximately 6.24ha of former estate farmland that was historically used for pasture within a woodland setting, that more recently some pasture has become self-colonised with woodland, scrub and bracken (paragraph 1.4), and that the site “comprises essentially wooded pasture with some invasive scrubs in parts across the grass swards” (paragraph 1.10).
17. This assessment accords with my own impressions; the southern area of the site is now fairly heavily wooded with a mixture of age of trees; open pasture areas remain in the northern part of the site and sporadically in the middle and south of the site. It is clear from historical photographs that the site has become more wooded in recent times, with evidence of the site in 1999 and 2018 showing a distinct increase in woodland cover on the part of the site below the Packway access road<sup>4</sup>, and it is reasonable to assume that without management in time more of the site would become wooded.
18. The appellant’s tree survey of the site recorded 61 individual trees, 29 small to medium sized Tree Groups (TG) and three larger Woodlands Groups (WG). The three WGs are assessed as being of moderate quality by the appellant, chiefly due to their visual contribution to the appearance of the sites. There are four veteran trees on the site and a distinctive grouping of tall Wellingtonia trees located towards the south west corner of the site. A Tree Protection Order (TPO) for the site was made in June 2019.
19. To the north of the site lies open fields with dispersed properties; of these Laragh and Woodleigh are fairly close to the site; Laragh and its land appears from plans to border almost all of the northern boundary of the site and Woodleigh lies just to the north of this. Other properties of Parklands, Parklands Cottage and Malthouse Field lie further to the north. To the east, on the opposite side of London Road lies the Grade II listed Bolney Stage public house and a caravan park to the south.
20. The site is largely bordered by trees and woodland of varying density, such that views into the site are restricted to instances on the footpaths and London Road; the LSoCG states that “it is agreed that the public visual effects on the AONB would be limited to the immediate surroundings of the site including from public footpath 5Bo between Packway House and London Road to the north, the site access points and other areas of less dense woodland on London Road to the east, public footpath 6Bo crossing the site between London Road and Hillcrest to the south east, and from the High Weald Landscape Trail (public footpath 3Bo) to the west of the site”(paragraph 1.6).

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<sup>3</sup> Core Document (CD) 03/04

<sup>4</sup> Figure 4 & 5, Proof of Julian Forbes-Laird, FLAC, for the appellant.

21. The site lies within the National Character Area (NCA) 122, High Weald. This NCA encompasses the ridged and faulted sandstone core of the Kent and Sussex Weald and is stated by Natural England to be “an area of ancient countryside and one of the best surviving medieval landscapes in northern Europe”<sup>5</sup>. Key characteristics of the NCA include a dispersed settlement pattern, ancient routeways, an intimate, hidden and small-scale landscape, extensive broadleaved woodlands cover, and small and medium sized fields enclosed by a network of hedgerows and wooded shaws.
22. As mentioned above, the majority of the site also lies within the High Weald AONB Landscape Character Area (LCA). The High Weald Management Plan 2019-2024<sup>6</sup> describes the High Weald as an outstandingly beautiful Medieval landscape. The document describes the natural beauty of the High Weald as having five defining components: a deeply incised and ridged landform of clays and sandstone with numerous streams; dispersed historic settlements of isolated farmsteads and late Medieval villages; a dense network of historic routeways; an abundance of ancient woodlands; and small, irregular and productive fields.
23. Within this overall area the site lies within the Western High Weald. A Countryside Commission document<sup>7</sup> highlights key characteristics of this area as its landform, shaws with pines, hedgerow trees, sandstone outcrops and large tracts of dense woodlands. Although now some 25 years old the document highlights that the western end of the High Weald is under extreme pressure from urban-edge developments.
24. At a District Level the site lies within the High Weald Fringes LCA 10. A Mid Sussex District Council (MSDC) assessment<sup>8</sup> summarises key characteristics of this area including a wooded, often confined rural landscape of intimacy and complexity partly within the AONB, long views over the Low Weald to the downs, and significant woodlands cover. The assessment states that the “typically dispersed historic settlement pattern of the area reflects that of the High Weald proper” (paragraph 13.17), and notes that apart from a few examples, villages such as Bolney are few and small and that suburban development in such villages has been limited.
25. Although submitted plans are indicative, they are useful in demonstrating how the proposed development sought for both schemes may be accommodated on the site. The Landscape Masterplan for Appeal A shows a large, fairly linear block in the southern area of the site facing a large circular road with the Wellingtonia set in the middle and smaller pairs of semi-detached units to the south fronting a new access road which would be constructed off the London Road close to the entrance to the caravan park. This access road would split off to the north where further semi-detached units would be sited around the cul-de-sac. The existing access to Packway is shown with a further crescent of semi-detached units set around. The

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<sup>5</sup> National Character Area profile 122: High Weald, Natural England, 2013. Appendix 15 to appellant’s Landscape Proof of Evidence.

<sup>6</sup> The High Weald Management Plan 2019-2024, High Weald Joint Advisory Committee, Appendix 14 to appellant’s Landscape Proof of Evidence.

<sup>7</sup> ‘The High Weald – Exploring the landscape of the Area of Outstanding Natural Beauty’, Countryside Commission, 1994. Appendix 16 to appellant’s Landscape Proof of Evidence.

<sup>8</sup> ‘A Landscape Character Assessment for Mid Sussex’ MSDC, November 2005. Appendix 17 to appellant’s Landscape Proof of Evidence.

Landscape Masterplan for Appeal B does not have as large a singular block but the internal road layout, although seemingly less formal is fairly similar if more circuitous.

26. The appellant considers that the site context is provided by the settlement of Bolney characterised by mostly two storey units in a woodland setting, bordering the northern edge of Bolney to the south, with countryside to the north and west of the site, albeit punctuated by glimpsed views of residential properties with larger curtilages and to the east and north-east of the site "the busy London Road, residential development, the Bolney Stage with its hardstanding car park, and the permanent caravan park with its hardstanding"<sup>9</sup>. They are of the view that the perception of Bolney extends to this 'Greater Bolney', encompassing the built development to the east of London Road.
27. I agree that the development along the London Road would be seen as being part of a greater Bolney; even the pub's name indicates this. However, there is a distinct and significant change in character on London Road when travelling north from around the junction with Top Street. For the initial section of the road, houses are present on both sides. However, there is a clear feeling of being on the fringes of the village and once the 40mph speed limit signs are reached, the edge of the village feels like it has been reached. Sporadic development is still visible on both sides, but views of trees predominate and once the south east site edge is reached the perception is that the village has been left behind.
28. The Appellant's witness for landscape described the site's surroundings as 'peri-urban' and considered that the proposals would be 'low key' and 'dispersed'. I am of the view that the sporadic development around the site, whether this be the Bolney Stage, the caravan park, or dwellings to the north do not constitute a peri-urban environment. While the countryside may be settled to a certain extent, the site and the land surrounding in this context is clearly countryside and has a distinct and separate character to the built-up area of Bolney to the south. The footprint plan referred to in evidence and reproduced in the Appellant's closing submissions, when omitting the artificial addition of the proposed scheme for Appeal A, clearly shows a strong northern line to Bolney and a distinct change in character to the land to the north of this, including the appeal site.
29. During the Inquiry and in evidence the proposals were described in various ways, including as a care home in a woodland setting and as a retirement village. What is clear to my mind is that both schemes would involve a substantial amount of development and would represent a significant adverse change to the character of the site itself from an essentially wooded pasture with grass swards to a developed site, which due to the quantum of development proposed would inevitably appear sub-urban in character, rather than low key.
30. To mitigate the level of development proposed the Appellant describes in various places the proposals as truly landscape led schemes; in the Inquiry I heard from various witnesses of the appellant of how long they had been involved in the proposals and the changes they have brought to the process.

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<sup>9</sup> Closing submission of the Appellant, ID 31.

It is clear that the proposals have been designed so as to avoid the loss where possible of mature trees and to design the schemes, indicatively, within the constraints of the site. The submitted Green Infrastructure Plan incorporates various mitigation such as a circular walk around the edge of the site, a 'northern ecological corridor' and other woodland buffers and green corridors around and within the site.

31. However, even with such measures the character of the site itself would change substantially in an adverse manner; described in the Appellant's landscape evidence as the "wholesale change of the character of the site from a wooded pastoral field to a 'care' neighbourhood"<sup>10</sup>. While the mitigation measures proposed and tree planting/management may assist in assimilating some of this change in character into the surrounding area, the proposals would still comprise this wholesale change.
32. In terms of broader effects on landscape character beyond the site, the parties agree that the character of the countryside surrounding the site would not change as a result of the proposal with effects on landscape character fairly limited to the site and surrounds. From my visits to the site I agree with this assessment; the wooded nature of the site boundaries and the local topography leaves views generally hard to come by of the site interior. Nevertheless, views are possible, particularly from the footpaths surrounding the site and from elements of London Road, as confirmed in the LSoCG (see para 20, above).
33. A range of viewpoints were identified by both the appellant and the Council in their evidence. I viewed the site from these surrounding viewpoints both during the Inquiry while accompanied and unaccompanied once I had had the benefit of both party's landscape evidence.
34. In particular I consider that the proposals would have substantial adverse effects upon appellant viewpoints (AVP) 1, 2, 4, and 5 and Council viewpoints (CVP) 1, 2, 3 and 4. AVP1 and CVP1 are located in the north west corner of the site, and at present comprise a view of the northern pasture/glade in the site backed by trees further south. From this VP the South Downs can be clearly seen in the distance to the south east and the view has a tranquil, rural air. Under the proposed development this would significantly alter with the pasture lost to a view of the rear gardens and enclosures of the proposed properties set along the northern crescent, significantly changing the perception from an attractive rural landscape to a suburban one. While trees and landscaping may in time shield some of this suburban perception, fleeting views would likely still remain and the trees themselves would block the currently attractive largely open views.
35. The appellant is of the view that the fairly young trees to the south will likely grow and in time block the far-reaching views to the South Downs, and that this in fact is more likely now the TPO is in place. However, evidence is not substantive on this point (in terms of tree heights, angles of view from VP1 and the trees, topography of the South Downs etc) and in any case such an effect of a more treed view would have far less of an adverse effect than the proposed development. It is also noticeable from VP1 that, when looking north and east towards the properties of Malthouse Field, Parkway, Parkside

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<sup>10</sup> Appellant's Landscape proof of evidence, paragraph 10.9

Lodge and Laragh that these properties are sufficiently spread out to give the impression of dwellings sitting in the countryside.

36. AVP2 and CVP2 are located slightly further to the east along the northern footpath. From this VP the South Downs are not visible but the view remains of an attractive woodland glade. Laragh to the north is very well screened by a dense laurel hedge. The indicative proposed developments in this location would again initially change the open view to one of a suburban style housing development, due to the number and blocks of semi-detached buildings.
37. AVP4 lies on London Road close to the caravan park access and the proposed southern access, with CVP3 located slightly further south. At present these views present a fairly rural view when looking at the west side of London Road. These views would be altered significantly by the widening and works to the existing access and the proposed construction of a new access. While London Road is currently lit, the construction of a new access to modern highway standards with the associated lighting and visibility splays would mark a significant adverse change in the local character of the area. The required widening and upgrading of the existing Packway access would also have an adverse effect on the character of this area.
38. Finally, AVP5 and CVP4 are located in the south east corner of the site, on the footpath which cuts a corner through the site. From this VP fleeting views are possible through the woodland to patches of more open land within the site. While very close to the northern edge of Bolney, this view and this element of the footpath provides a feeling of being fully in the countryside; an impression which would not alter even if the view in time were to become more dominated by trees. The proposed schemes, with properties backing onto the views would adversely alter this feeling to that of being in a suburban environment.
39. In such a way the proposed schemes would have an adverse effect upon both the landscape character and the visual amenity of the area.
40. With regards to the AONB, the effect of the proposals would be to have an adverse effect on the defining component of settlement identified in the High Weald Management Plan. At present the site and Bolney (noting that Bolney lies outside of the AONB) falls within the description of dispersed historic settlements of isolated farmsteads and late Medieval villages. The proposals would blur to a certain degree this settlement pattern, merging the village to the south in the setting of the AONB with the pattern of isolated farmsteads to the north within the AONB.
41. The Applicant's evidence refers to a Natural England list of natural beauty criteria to be used for criteria when addressing landscapes for designation as AONBs of landscape quality, scenic quality, relative wildness, relative tranquillity, natural heritage features and cultural heritage<sup>11</sup>. With regards to natural beauty and scenic quality, for the reasons given above I consider the proposals would have an adverse effect on the AONB. The site in parts, such as on the northern footpath has a tranquil element and the quantum of the proposed development would have an adverse effect upon the natural

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<sup>11</sup> Appellant's Landscape Proof of Evidence, para 8.24

beauty, scenic quality and the sense of tranquillity of this element of the AONB. The proposed mitigation measures, including the reopening of the sunken trackway would not address this matter to a sufficient degree and the opening up of the site for public access and recreation would not have a significant beneficial effect given the range and number of footpaths already set close to the site.

42. I accept that there will inevitably be variations across the value of an AONB in landscape terms. The appellant is of the view that the appeal site sits at the lower end of the high scale for valued landscapes. Frequent references were made at the inquiry to the presence of the caravan park south of the Bolney Stage within the AONB. However, I consider that the site provides a valuable purpose in the AONB in terms of providing a rural environment with patches of dense woodland and shaws. The proposal would adversely affect such quality; in particular the removal of the trees to create the southern access would affect the woodland shaw in this location, sub-urbanising the landscape and character of the area. While the caravan park may not be particularly attractive, it is very well screened and the presence of development in an AONB which may not be of the highest quality does not justify further harmful development in my view.
43. The Local Plan outlines that the approach to housing and employment development in the District is to focus the majority of such development at Burgess Hill with opportunities for other new development at East Grinstead and Haywards Hill. The Local Plan includes a settlement hierarchy (policy DP6) which identifies five categories of settlement within the District. It notes that within defined built up area boundaries development is accepted in principle, but that outside such boundaries in the countryside the primary objective of the Local Plan is to minimise the amount of land taken for development and preventing development that does not need to be there. Policy DP6 allocates Bolney as a Category 3 settlement, described as 'medium sized villages providing essential services for the needs of their own residents and immediate surrounding communities'.
44. The Local Plan inset for Bolney<sup>12</sup> identifies the built-up area boundary for the settlement, the northern line of which runs along the rear of the properties on the north side of Top Street; that is the southern boundary of the site. The boundary corresponds to my reading of the change of character of the area above. The site therefore lies outside of this boundary, where policy DP6 states that the expansion of settlements will be supported where the site is allocated in the development plan or where the proposal is for fewer than 10 dwellings, the site is contiguous with an existing built up area of the settlement, and the development is demonstrated to be sustainable. In this context while the site is contiguous with the built-up area of Bolney, the site is not allocated in the development plan, and is not for fewer than 10 dwellings. The proposals are therefore contrary to Policy DP6.
45. Policy DP12 concerns the protection and enhancement of the countryside. This policy states that the countryside will be protected in recognition of its intrinsic character and beauty, with development permitted where it maintains or where possible enhances the quality of the rural and landscape

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<sup>12</sup> ID 23

- character of the District and it is necessary for agriculture or is supported by a specific policy reference elsewhere in the development plan. The proposals would not maintain or enhance the rural and landscape character of the District or meet the other exceptions in Policy DP12 and would thus be contrary to this policy.
46. Policy DP16 of the District Plan concerns the High Weald AONB. This states that development within the AONB will only be permitted where it conserves or enhances natural beauty and has regard to the AONB Management Plan, in particular the identified landscape features or components of natural beauty and to their setting; the traditional interaction of people with nature, and appropriate land management; character and local distinctiveness, settlement pattern, sense of place and setting of the AONB; and the conservation of wildlife and cultural heritage. For the reasons above, the proposals would not conserve or enhance natural beauty and would adversely affect character, local distinctiveness and settlement pattern, and would thus be contrary to Policy DP16 of the District Plan.
47. Policy DP37 of the Local Plan states that development that will damage or lead to the loss of trees, woodlands, or hedgerows that contribute, either individually or as part of a group to the visual amenity or character of an area will not normally be permitted. Due to the reasons above, while the design of the schemes and mitigation proposals assist, the removal of trees for the proposed access would adversely affect the visual amenity and character of the area and therefore the proposals would also be contrary to this policy.
48. Policy BOLBB1 of the NP defines a development boundary for Bolney. This matches that defined in the later District Plan. The policy states that outside this boundary development will not be permitted unless it is supported by a specific policy elsewhere in the NP, it relates to necessary utility infrastructure, is necessary for agriculture, maintains or enhances the quality of the character of the parish and takes account of the quality of the agricultural land. The proposals would not meet any of these exceptions and hence they are contrary to this policy.
49. Paragraph 172 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. Planning permission should be refused for major development in AONBs other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. Footnote 55 of the Framework states that whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.
50. The proposals would result for Appeal A in up to 15,500m<sup>2</sup> of development and in Appeal B for up to 7000m<sup>2</sup> of C2 use and 40 dwellings. Coupled with this is other ancillary development such as internal access roads and car parking. Both proposals therefore contain a substantial amount of development, the vast majority of which would be sited in the AONB. Given this volume of development I consider that the scale of the proposals constitutes major development. The precise nature of the development is

difficult to assess given the outline nature of the scheme, but when coupled with the quantum of development proposed I consider that the proposed C2 or C2 and C3 uses also constitute major development, and given my conclusions above over the effect of the schemes upon Bolney and the relative size of the schemes when compared to this settlement I also consider the proposals to be major when considering its setting.

51. I note evidence regarding the overall scale of the AONB and the purposes of the AONB, including creating opportunities for recreation. However, when considering the nature, scale and setting of the proposals I consider that the schemes would have a significant adverse impact on the purposes for which the area has been designated and the proposals would therefore constitute major development.

### **Accessibility**

52. Bolney contains various services and facilities, including a large village hall, a primary school, a nursery and a public house. Outside of the settlement boundaries lies a further pub, the Bolney Stage, located close to the site, a part time post office, café and service station. As noted above, the settlement is defined within policy DP6 of the District Plan as a category 3 medium sized village.
53. Some of these facilities, such as the school and nursery are unlikely to be utilised or required by the future residents of the proposals; given the nature of the schemes and its inhabitation by those in need of C2 care or those over 55 it seems reasonable to assume that community facilities, public houses, and local shopping facilities would be the most useful local features.
54. The Bolney Stage, as mentioned above is very close to the site and fairly easily accessible across London Road. However, due to the linear nature of the southern half of Bolney, some of the facilities are a fair distance from the site, with Bolney Village Stores in particular close to the far edge of the 1km -2km walking accessibility isochrone<sup>13</sup>. A service station/petrol station is located closer to the site, north along London Road. I walked to this facility on a site visit, which was a good 10-minute walk uphill (shown on the edge of the 500m-1km walking accessibility isochrone). The appellant also accepted that the range of goods available from this store may not be wide and could be more expensive than other sources.
55. In terms of community facilities, the Rawson Hall and Bolney Village Chapel are closer, and it is reasonable to assume that the proposal would include its own community facilities in this regard.
56. Bus stops are in place on London Road reasonably close to the site; these provide services to Haywards Heath, Crawley, Burgess Hill and Brighton and provide reasonable levels of service during peak hours in the day. During off peak hours however, service levels drop. Given the C2 nature of Appeal A and partially of Appeal B, care home staff may well work shifts and be required to access or leave the site at off peak times.
57. To address some accessibility issues the appellant proposes three main measures; firstly the access north to the service station is proposed to be

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<sup>13</sup> Appendix B of the Appellant's planning witness, Page 14 Figure 4a.

improved by widening the footpath and providing a dropped kerb and crossing point; secondly a travel plan is proposed; and thirdly the scheme proposes a minibus to be used by residents of the schemes to access services and facilities in wider locations. The minibus is provided for in submitted S106 agreements.

58. At the accessibility round table session the appellant acknowledged that the movement of staff would be a challenge but explained that this service could also be used to assist staff for the schemes, for instance picking up from Hayward's Heath at 8am to take staff to work at the proposed C2 care home. This would assist both staff and residents to a certain degree, but I am not convinced of how useful it would be or could be to staff required to get to the care home at unsociable hours from differing locations. In this respect I note that such staff are unlikely to earn high levels of wages but also accept to a certain degree that it would be in the appellant's interest to ensure that sufficient numbers of staff could access the site.
59. The appellant notes the 'category 3' settlement status of Bolney as a medium sized village, and further notes that Bolney is identified in the District Plan for the provision of 113 homes over the plan period. My attention is also drawn to the emerging Site Allocations DPD which proposes to allocate over 9.4ha of employment land in Bolney.
60. It is clear therefore that the Council see Bolney as a suitable site for some development; however, the allocation of 113 homes for Bolney over the plan period equates to less than 10 per year. The Council state that the proposals would result in an increase of 31% of the scale of Bolney<sup>14</sup> and note that the majority of the employment allocations identified is located on a major road junction – and is therefore not for Bolney specific needs, rather for large scale uses on the strategic road network.
61. Policy DP21 of the District Plan states that development will be required to support the objectives of the West Sussex Transport Plan 2011-2026, which includes access to services, employment and housing and that to meet such objectives, development proposals will take account of whether the scheme is sustainably located to minimise the need for travel and that appropriate opportunities to facilitate and promote the increased use of alternative means of transport to the private car have been fully explored and taken up.
62. I consider that alternative measures of transport to the private car, such as the proposed footpath improvements, travel plan and minibus service, have been fully explored. However, I am not convinced that the scheme is sustainably located to minimise the need for travel. While I accept that many over 55-year olds are fully mobile and able to walk and cycle to further away facilities, this would not be the same situation for many C2 residents, and I do not consider in this respect that the scheme would be sustainably located. I therefore consider that overall the scheme would be contrary to DP21.
63. The Framework states that the planning system should actively manage patterns of growth and that significant development should be focused on locations which are or can be made sustainable. While noting that the Framework also states that opportunities to maximise sustainable transport

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<sup>14</sup> Council's closing submissions, para 78

will vary between urban and rural areas and that this should be taken into account in both plan making and decision taking, this is effectively what the settlement hierarchy in policy DP6 seeks to do. I consider the proposals to be significant development which should be focused in a sustainable location.

### ***Biodiversity***

64. As a whole the site is dominated by trees, with some 59% of the site being covered by woodland. This is interspersed with grasslands and other minor land features. At my site visit I noticed the denseness of much of the woodland on the site, which had led to issues in certain places such as a lack of ground shrubbery cover. The Ecological Statement of Common Ground (ESoCG)<sup>15</sup> states that of habitats found on site it is agreed that woodlands (priority habitat), neutral grassland, and trees outside of woodlands are of local importance, with other habitats of importance at site level only. At the Biodiversity round table session there was a good deal of agreement between the two main parties witnesses although there were some differences, leading to the appellant to consider that the proposal would lead to an impact of the proposals of a slight net gain overall against the Council's view of a slight net loss overall.
65. The appellant categorises woodlands at the site into 5 'compartments', depending on their value. This identifies that the largest compartment is made up of young developing woodlands, around 20 years in age (W1). This compartment covers some 29,500m<sup>2</sup>, significantly more than the remaining compartments which add up to less than 7,300m<sup>2</sup> altogether. The parties agree that just under 60% of W1 (16,940-17,100m<sup>2</sup>) would be lost under the proposals, but that this is considered to be of low value. Small areas, around 60m<sup>2</sup>, of W3 (moderate to high value) and W4 (moderate value) would also be lost.
66. To mitigate for these losses, the appellant proposes mitigation and compensation in the form of woodland management and new woodland planting of around 8,000m<sup>2</sup> and 11,000m<sup>2</sup> for Appeals A & B respectively.
67. At the Inquiry it was confirmed that new planting would consist of native species only as opposed to including some non-native species, an aspect which the Council had previously considered a negative aspect of the scheme. With this in mind, when considering the quality of much of the woodland that would be lost by the scheme when combined with the management proposals, particularly for the existing retained mainly higher quality trees and new planting, I consider that the end result for woodland in ecological terms on the site would be neutral. The benefits of the management of the retained trees, particularly those of higher value and the mitigation planting would counter the loss of the woodland inherent in the schemes.
68. In terms of other habitats, essentially neutral grassland, I agree with both parties' evidence that the reduced area of such locally important habitat would not be fully mitigated by proposed new wildflower planting, and as such a minor adverse effect would arise. I also agree with the Council that the reinstatement of a pond on site, which on my site visit despite the time

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<sup>15</sup> ID 8

of year was almost completely dried up, would present a minor gain of the scheme.

69. In terms of bats, a lighting strategy, conditions and appropriate woodland management could mitigate the partial loss of woodland and dark areas for foraging bats. I also agree that the imposition of conditions to ensure bat boxes were erected would ensure no impact on roosting bats given the lack of habitat identified in the ecological surveys.
70. Evidence at the Inquiry and in writing referred to the use of the site by badgers. The proposals would retain the existing dormant setts but although the Council consider effect on badgers would be neutral, the reduction in foraging area for badgers that would be caused by the proposals would in my view potentially have a minor adverse effect, a view I note is shared in the appellant's evidence. On the other hand, the reinstatement of the pond would have a beneficial effect for amphibians.
71. I agree with both parties' views that the loss of woodlands for dormice would be mitigated by the proposed management of the woodlands and other mitigation measures, leading to a neutral effect for dormice. I am also of the view that for the same reasons the proposals would have a neutral effect on reptiles and invertebrates.
72. I note evidence relating to potential increased vulnerability for birds due to disturbance and cats, but consider that the proposed management would counter such effects; noting also evidence presented by the appellant carried out by the RSPB that there is no clear scientific evidence that such activities are causing bird populations to decline, a view accepted by the Council's witness in the round table session.
73. I have therefore found there to be slight adverse effects on the scheme in terms of the loss of some neutral grassland and potentially on badgers. I have found positive aspects to the scheme via the reinstatement of the pond and for amphibians and have found that all other effects would be mitigated effectively such that there would be a neutral effect overall. When considered in the round I consider that the proposals would have an overall neutral effect on ecology and biodiversity.
74. Policy DP37 of the District Plan states that the Council will support the enhancement of trees, woodland and hedgerows and encourage new planting which should be of suitable, usually native species, that development should incorporate existing important trees, woodland and hedgerows into the design of new development and landscape schemes and does not sever ecological corridors. Policy DP38 of the District Plan states that biodiversity will be protected and enhanced by ensuring that development creates a net gain in biodiversity in improvements to green infrastructure and by incorporating biodiversity features, and no net loss of biodiversity for existing biodiversity, with damage to biodiversity offset through ecological enhancements and mitigation measures. Policy BOLE1 of the NP states that development proposals should protect and where possible enhance biodiversity.
75. While I do not consider that the proposals would lead to a net gain in biodiversity, I am of the view that the schemes would not lead to a net loss of biodiversity. The landscape proposals for the scheme would incorporate

biodiversity features and green infrastructure within the developments such that I consider the schemes overall would comply in a biodiversity respect with policies DP37 and DP38 of the District Plan, and with policy BOLE1 of the NP.

### ***Heritage – the Bolney Stage***

76. As mentioned above, the Grade II listed Bolney Stage pub is located close to the site's north east corner, on the eastern side of London Road. The pub is an attractive two storey building, with prominent timber frame and painted brick infilling. The listing dates the structure as being originally from around 1500 with later additions. The pub is set back from London Road, with a separate access road leading off the Road and in front of the building leading to a fairly large open car park to the south of the building. A further access to this car park is located at its south end, which is located roughly opposite to the current access to Packway and the proposed northern access to the site.
77. The appellant's evidence shows that the building was a farmhouse in the 19<sup>th</sup> Century and was converted into two dwellings, before being converted to a tearoom/café in the 1920s. Road improvement works took place during the 1930s, moving the London Road slightly further away from the building and leaving the structure with the separate access road; historic plans show that the southern car park covers an area which was previously (last shown 1897) occupied by an 'L' shaped building. The appellant notes that the tea room was subsequently labelled on maps around the 1960s as Ye Olde Tudor House before being named as the Bolney Stage on 1977/78 Ordnance Survey mapping.
78. The setting of the Bolney Stage has clearly changed and altered in various ways over the years, with the road alignment works being one significant change in the setting. The appellant notes that by the time the building was listed in 1957 it had long ceased to be a farmhouse, with its setting including the roadside with parking area that still exists today and considers that the present day setting of the building has nothing that indicates it was once a farmhouse or of associations with agriculture. They are also of the view that London Road has severed any sense of a connection between the appeal site and the Bolney Stage.
79. Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) states that when considering whether to grant planning permission for development which affects a listed building or its setting, the Secretary of State shall have special regard to be given to the desirability of preserving the building or its setting or and any features of architectural or historic interest it possesses. The Framework states that any harm to, or loss of, the significance of a designated heritage asset (including from development within its setting) should require clear and convincing justification. The Framework defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced. It notes that its extent is not fixed and may change as the asset and its surroundings evolve and that elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

80. I agree with the appellant that the significance of the Bolney Stage largely derives from its age and its vernacular form and interest and that architecturally its form and detail add to its interest and legibility. However, I also consider that its setting contributes to its significance. As I consider above, while the countryside around the site – and the Bolney Stage - may be settled to a certain extent, the site and the land surrounding in this context is clearly countryside and has a distinct and separate character to the built-up area of Bolney to the south.
81. This sense of countryside adds to the setting of the pub. This, when combined with the architectural form and detail of the exterior of the building gives the impression of a large roadside country pub and contributes positively to the significance of the asset. The separate access road and car park are sufficiently low key to not detract from the setting of the pub, appearing to be of a form and function befitting of such a rural roadside pub. The reasonably large caravan park to the south, while within the surroundings and setting of the pub, is virtually completely screened from the pub and does not impact adversely upon this setting. The fairly close proximity of the A23 dual carriageway to the east of the pub and the noise from this road does however make a negative contribution to the setting and significance of the pub, particularly in the context of its countryside setting.
82. The proposed masterplans for the two schemes, while indicative, show a significant level of development. Much of this development would be screened from the Bolney Stage and would not adversely affect the setting, and conditions to bolster landscaping in relevant places could screen areas where potentially required, where this could take place without having an intrusive effect itself on the setting of the Bolney Stage. However, the scheme would necessitate other changes to the setting of the Bolney Stage. In this context the scheme would involve the widening and improvement of the existing access to the site and the construction of a new access to the south. Such changes to the road would alter the character of the setting of the heritage asset from a settled countryside to a more suburban feel on the edge of a built-up area, causing harm to the setting and therefore the significance of the Bolney Stage.
83. Policy DP34 of the District Plan states that development will be required to protect listed buildings and their setting, by ensuring that special regard is given to protecting such settings. Policy BOLD1 of the NP states that permission for new development will ordinarily be permitted if, amongst other criteria, it does not have an unacceptable impact on the setting of any heritage asset. For the reasons given above, I consider that the proposals would be contrary to these policies. Such harm would not reach the high bar of substantial harm as defined in the Framework; however, less than substantial harm would be caused which requires clear and convincing justification. Paragraph 196 of the Framework states that where this occurs this harm should be weighed against the public benefits of the proposal; this is considered further in the planning balance.

***Heritage - other listed buildings and the Bolney Conservation Area***

84. The Bolney Conservation Area (BCA) is separated into two distinct parts, with one area covering much of the northern part of the village and a separate smaller area at the southern end of the village. The BCA is

characterised by a reasonably low density of development and a variety of age, styles, and materials of buildings. The BCA has a semi-rural feel, which is created by the density of development, the style and arrangement of the buildings within it and the landscaping in and around the BCA.

85. The northern section of the BCA is separated from the appeal site by more modern development on its northern side and as such the BCA does not share a boundary with the site.
86. The modern development on the northern side of the BCA provides a suburban setting to the north side of the BCA, behind which can be seen the tall trees on the appeals site. The schemes are indicative, so precise details are unable to ascertain but it is likely that any reserved matters scheme could retain many of the noticeable tall trees (such as the aforementioned Wellingtonia) and the heights of proposed development, where potentially noticeable in places would not adversely affect the setting of the BCA given the modern development already in place.
87. The north west corner of the BCA boundary has been drawn so as to include two listed buildings and their curtilages; Thatched House and Yew Tree Cottage. It is not part of the Council's case that the significance of these buildings would be harmed by the proposals; at the heritage round table session they stated that this was a drafting error but acknowledged that it remained their case that the proposals would not harm these buildings. Nevertheless, given the requirements of Section 66 of the Act I am required to consider the desirability of preserving the building or their settings.
88. The Grade II listed Thatched House is set just off the north west corner of Top Street. The property, as its name suggests, has a thatched roof and is a timber framed building with plaster infilling, and the listing states that the property dates from the 15<sup>th</sup> century. The ground floor appears to have been rebuilt in red brick. The building has an ample front garden and is well screened from the road by mature landscaping. From a roadside viewing, the significance of the building derives from its age, architectural detailing and materials and its setting within Bolney. The setting includes development to virtually all sides and the proposed schemes would not adversely affect this setting or the significance of the heritage asset.
89. The Grade II listed Yew Tree Cottage is noted in the listing to date from the 17<sup>th</sup> century or earlier. This two-storey timber-framed building with plaster infilling and tiled roof is set to the north of Thatched House and is set slightly lower than road level. A prominent pitched roof front porch and high brick plinths are noticeable features, along with casement windows. There is modern housing development between the property and the proposed sites and given this and the siting of the heritage asset I do not consider that the proposals would cause harm to the setting or significance of the listed building.
90. During my site visit I observed views up and down the hill from the south west corner of the site into Bolney and the BCA and vice versa. When walking down the hill along the landscape trail one would be aware of the proposals on the left hand side but given the density of screening in this location such effects would not be significant and would not adversely affect views into the BCA from this area. Similarly views from out of the BCA northwards would not be adversely affected by the proposals.

91. I therefore conclude that the proposals would not cause harm to the setting of the BCA, whose character and appearance would be preserved by the proposed development. The proposals would comply with policy DP35 of the District Plan, which states that development will protect the setting of the Conservation Area and in particular views into and out of the area. The proposals in this context would also comply with policy BOLD1 of the NP. With regard to Thatched House and Yew Tree Cottage only, the proposals would also comply with policy DP34 of the District Plan as the setting of these listed buildings would be protected.

### **5 Year Housing Land Supply and C2 Use**

92. Policy DP4 of the District Plan states that there is a minimum District housing requirement of 16,390 dwellings between 2014 and 2031, and that the Plan will deliver an average of 876 dwellings per annum (dpa) until 2023/24 and thereafter an average of 1,090 dpa.
93. Helpfully there is a good deal of common ground between the main parties on the issue of five-year housing land supply (5YHLS) as evidenced in the submitted Statement of Common Ground<sup>16</sup> for this issue (HSoCG). In summary, the Council and appellant are agreed that the period for assessment of the 5-year period is 1 April 2019 to 31 March 2024, that the District Plan requires 876 homes per year in this period, and that this equates to a minimum of 4,380 new homes required over the five-year period. There is also agreement that since 1 April 2014 there has been an undersupply of 466 new homes.
94. There is disagreement however over how the undersupply of 466 can be caught up with – the Appellant is of the view that it should be added to the five year supply figure (thus resulting in a total of 4,846 houses) – the so called ‘Sedgefield’ approach, whereas the Council consider that it should be met over the remaining plan period of 12 years (the Liverpool approach) which would result in a requirement of 4,574 homes.
95. Both parties agree that a 10% buffer should be applied, as the Council have submitted an Annual Position Statement (APS) to PINS in accordance with paragraph 73b of the Framework. This results in required minimum housing figures of 5,032 for the Council and 5,331 for the Appellant.
96. Planning Practice Guidance states<sup>17</sup> that, when considering past shortfalls in housing completions against planned requirements, the level of deficit or shortfall should be added to the plan requirements for the next 5 year period (the Sedgefield approach), and notes that if a strategic policy-making authority wishes to deal with past under delivery over a longer period, then a case may be made as part of the plan-making and examination process rather than on a case by case basis on appeal.
97. The Inspector’s Report to the Council on the examination of the District Plan in March 2018<sup>18</sup> noted on this issue that the shortfall (then 218 dwellings) should be spread out over the plan period as opposed to being dealt with in the first five years, as “most of the housing on the strategic allocation north

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<sup>16</sup> ID 9

<sup>17</sup> Planning Practice Guidance Housing Supply and Delivery paragraph 031

<sup>18</sup> Report on the Examination of the Mid Sussex District Plan 2014-2031, PINS/D3830/429/5, March 2018

of Burgess Hill will be built after the end of the current 5 year period; it is expected to only contribute 605 dwellings towards the end of the initial 5 year period". He also noted that it would take some time for the forthcoming Site Allocations DPD to identify further sites and that the 20% buffer would bring forward a substantial requirement to ensure adequate choice, concluding that spreading the shortfall over the plan period would be a realistic approach which would have proper regard to the start dates and likely delivery of the main strategic sites and the timing of the Site Allocations DPD.

98. I am conscious in this case that there is a relatively modern District Plan, that the planning system should be genuinely plan led, and that consistency is important in the planning system. The Council made a case within the plan-making and examination process for dealing with past under delivery over a longer period and this was accepted by the Inspector considering the District Plan. The Inspector's report cited above was published only around 18 months ago, and while there was no specific statement by that Inspector that continuing shortfall should be dealt with in the same way, much of the justification within that Inspector's reasoning remains valid in my opinion; the Council remains reliant on some substantial strategic allocations, the 20% buffer would bring forward adequate choice and the Site Allocations DPD remains in progress, albeit delayed. While later on in the plan period circumstances may be different, in this case I consider that the shortfall should be dealt with over the plan period as opposed to within 5 years. The minimum housing figures, with the 10% buffer applied, should therefore be 5,032.
99. The Framework states that a five-year supply of deliverable housing sites can be demonstrated where it has been established in a recently adopted plan or in a subsequent APS which has been considered and recommended by the Secretary of State. As stated above, the Council have submitted an APS to the Inspectorate for such a process and consideration is ongoing; as such therefore it has not yet been demonstrated.
100. The Council considers that deliverable sites can deliver 5,675 homes over the plan period; the Appellant considers that only 4,485 homes are deliverable. The Framework states that to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites which do not involve major development and have planning permission, and all sites which have detailed planning permission should be considered deliverable unless there is clear evidence that they are not (List A sites).
101. Sites for major development with outline planning permission, an allocation in a development plan, a grant of permission in principle or on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years (List B sites). Planning Practice Guidance states that such 'clear evidence' may include details of current planning status, progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates; firm

progress with site assessment work; or clear relevant information about site viability, ownership constraints or infrastructure provision.

*List A sites*

102. The APS contains details of 3,487 units in the 'A' list of sites. The appellant's evidence raises queries over two sites, Sunte House and Superdrug East Grinstead. They note that the Sunte consent was given consent in 2016 and so in theory has expired. For the Superdrug site the appellant notes the history of various applications seeking variations and revisions to previous consents and does not consider the site to be deliverable. These sites total 19 dwellings, thereby reducing the A list to 3,468.

*List B - Sites with Outline permission*

103. Two sites considered at Land East of Kingsway Burgess Hill would deliver a total of 243 houses. It was explained at the Housing Land Supply round table session that these sites (phase 3b and 3c) are contiguous with each other and with a further site, 3a, which is currently under construction. Emails are contained in the evidence from the developer containing details of the sites and build out rates. While I appreciate that detailed consent for site 3c (204 units) has not yet been submitted, given the evidence provided, the fact that the same developer will build out both sites and is already on site building out phase 3a I consider that there is clear evidence that these sites are deliverable.
104. The appellant states that there are clear planning concerns over a 40-unit site at Bridge Hall, Burgess Hill. At the round table session I heard evidence that the aim was to progress a full application for the site for approval in November 2019, indicating to me that any planning concerns can realistically be negotiated. I consider this to be clear evidence that the site is deliverable.
105. Freeks Lane Burgess Hill Arc is a large site which forms the first phase of a very large strategic site for the Council. The appellant agrees that the site is deliverable but considers 300 units to be more likely than the 460 predicted by the Council. Evidence submitted by the Council from the developer states that the whole site will be complete by Autumn 2024; however, I note that this is outside the period for assessment of the 5-year period. The APS states that units will be delivered on the site at a rate of 77, 132, 132 and 119 per year for 2020/21, 2021/22, 2022/23 and 2023/24 respectively. Given the evidence from the developer it would appear realistic to me to reduce by 50% the predicted delivery rates for the final year, thereby providing 60 units (rounded up) for 2023/24 and a total of 401 units.
106. Crawley Down Road, East Grinstead is split across two Council areas, with the access to the site being located in the adjacent Tandridge Council area. Consent for the access was granted on appeal on 25 June 2019. While no detailed consent has been submitted, given that an appeal process via inquiry has been undertaken constitutes to my mind a clear indication that the developer is committed to the site and of the planning status of the site.
107. Scamps Hill Lindfield (111 units) was granted consent, according to the Appellant, in mid-2018 but no application for reserved matters have been submitted. While the Council state that pre-application discussions have

taken place and stress the attractiveness of the site, there is no clear evidence provided to me that indicate this site is fully deliverable within 5 years.

108. For sites with outline permission I therefore conclude that the total provided by the Council should be reduced by 170 units, providing a total of 1,285 homes.

*List B - Allocated sites*

109. Extensive discussions took place over the Burgess Hill Northern Arc site, which has a predicted 368 or potentially higher number of homes. I note the Appellant's view that the delivery rates for the site would be significantly higher than that achieved previously in Mid Sussex. However, I also note the evidence that the site is a flagship site for Homes England and the significant levels of public investment which have been and are being expended to deliver the site including substantial infrastructure projects to open up the site and allow delivery. While therefore I accept that the build out rates are exceptional, the scale, nature and backing for the site itself is also exceptional. A great deal of effort and investment has been expended on the site and I consider the site to be deliverable, to the lower figure of 368.
110. Evidence relating to Clayton Mills indicates 100 units to be delivered on this site, as opposed to 150.
111. Hurst Farm, Haywards Heath is owed by the Council and this fact, along with the evidence that the Council have authorised the disposal of the land to the Council's preferred developer provides me with clear evidence that this site is deliverable.
112. Finally, I heard evidence on the NCP car park site that there is a resolution to grant consent, but this is delayed due to ongoing viability discussions. While I agree that such discussions may well go on for a long time, given that the resolution is for a full consent and the indication that the developer is keen to progress the site given their active stance over the S106 agreement I consider the site likely to deliver the relatively small number of 40 units in the five year period.
113. For allocated sites I therefore conclude that the total provided by the Council should be reduced by 50 units, providing a total of 663.

*5YHLS Conclusion*

114. For the list B sites I have concluded that a total of 1,948 units are deliverable; when this is added to the A list sites this provides a total of 5,435 units, or 5,416 when taking into account the appellant's concerns over two of the list A sites. The discrepancy of 20 units against the Council's figures arises from the fact that the APS provides a total of 1,475 for List B sites with outline consent whereas the HSocG provides a total of 1,455.
115. This total of 5,435 or 5,416 is above the minimum housing requirement for the five-year period, and I therefore conclude that the Council can demonstrate a 5YHLS.

## C2 Use

116. Both proposals include C2 uses, with Appeal A being solely for C2 use and Appeal B providing a sizable component of such use. The Council published an assessment of need for such specialist residential accommodation in August 2016 (the HEDNA<sup>19</sup>). This document states that there was a surplus of C2 accommodation in the District in 2014 of some 228 units/bed spaces, with a projected 762 further units/bed spaces required by 2031 to meet predicted need at that time.
117. The Appellant has produced evidence of its own on this matter, in the form of the 'Pinders' report<sup>20</sup>. This considers that 985 units of care accommodation (for extra-care and residential care combined) are required by 2029 and considers that there is a shortfall of 701 units at present.
118. Although different methodologies are used within the HEDNA and Pinders reports and the use of different care categories and timescales in Pinders to HEDNA is not particularly useful in this context, a figure of 985 units is not significantly different to the HEDNA total of 762, particularly when noting that the 985 number leaves out some 378 rooms in care homes that currently exist but do not have en-suite accommodation. While I appreciate that such rooms do not meet modern standards it is reasonable to assume that such rooms, or a high percentage of them, could be upgraded so that a figure more akin to the HEDNA need figure for 2031 is reached. I also note the Council's view that the Pinders assessment does not take account of at home care, which is a likely outcome for many of those in need.
119. Details are provided in the Council's evidence of a C2 supply pipeline. This details various sites which have consent for C2 and some C3 care uses. There were various discussions during the round table event at the Inquiry as it appeared that during the Inquiry, or reasonably soon before, the Council's view of what constituted C2 use had altered and that consequently some of the sites in the pipeline they would now consider as C3 uses as opposed to C2; such sites potentially include Lingfield Lodge, Westall House, and elements of Land to the west of Beech Hurst.
120. This would leave, as C2 uses for elderly residents in the pipeline under the Council's definition as 9 at Oaklodge Nursing Home, a potential 48 at Pease Pottage (including 24 in the form of a hospice) and 121 at Beech Hurst. Kingsland Laine has outline consent for a care home but this is yet to come forward under reserved matters.
121. As such a fairly large shortfall arises between the HEDNA/Pinders need numbers and the pipeline currently permitted or constructed. Policy DP30 of the District Plan states that to support sustainable communities if a shortfall is identified in the supply of care homes falling within Use Class C2 to meet demand in the District, the Council will consider allocating sites for such use through a Site Allocations Document, produced by the District Council.
122. Given the change in approach taken by the Council towards the definition of a C2 use, some of the sites they may have been relying on to avoid such

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<sup>19</sup> Housing and Economic Development Needs Assessment (HEDNA) Addendum August 2016, Mid Sussex District Council

<sup>20</sup> Care Needs Assessment, Pinders, September 2019.

shortfall as evidenced in their prepared pipeline would no longer meet such a need and as such there may be unmet need. While not on an allocated site, the proposals, to varying degrees, would be in accordance with meeting a shortfall which is an aim of policy DP30.

123. However, I also note in this context the overprovision for care home rooms identified in HEDNA at 2014; furthermore several sites identified in the pipeline (Land southwest of Handcross Primary School, and Kingsland Laine) have removed or delayed their C2 elements, suggesting that the market for C2 use may not be especially buoyant at present – something that it would be reasonable to assume would not occur were there to be an existing significant shortfall for the area. I also note that there is still a significant amount of time until 2029 or 2031. These reasons reduce the weight I provide to the scheme potentially meeting a future C2 shortfall.

### **Other matters**

124. The appellant draws my attention to various other developments which have been allocated in the Council area within the AONB, including a strategic allocation in the District Plan to the east of Pease Pottage, as well as other housing and employment allocations in the AONB. Figure 4 of the District Plan, noted on page 14 of the appellant's closing submissions, shows the environmental constraints for the District, including the AONB, but also the South Downs National Park and the buffer around the Ashdown Forest Special Protection Area and Special Area of Conservation.
125. However, such allocations where confirmed in the District Plan have been through the plan making process and are therefore confirmed as being required to meet the needs for the Council area. I also note in this respect that the Pease Pottage allocation is located on the edge of the substantial town of Crawley and can therefore reasonably be assumed to be located in a sustainable location. Each case must also be considered on its own merits.
126. Signed and dated Section 106 Agreements were submitted after the Inquiry had closed. The contents of these agreements were discussed during the public event and the submission of the documents after the event were to allow final proofing and to arrange signatures.
127. The S106 for Appeal A provides for the appellant to provide to the District Council an ecological and arboricultural management plan, a site wide management plan, for the care home units to fall within Class C2 use and for health assessments to ensure levels of personal care required, with a minimum of 7 hours personal care to be required for each primary resident. Details of an approved care agency and basic care packages are also provided for. Payments are also provided for the County Council for a library contribution, as well as details of a travel plan and mini bus implementation.
128. The S106 for Appeal B provides similar details, but also provides for a health contribution and for 30% of the proposed dwellings to be affordable.
129. The S106 agreements in effect remove the Council's second reason for refusal of the applications. I consider that the provisions within them comply with policy DP20 of District Plan and policy BOLA4 of the NP, which when read together state that the Council will expect development to provide for or contribute towards the infrastructure and mitigation measures made

necessary by their development proposals. For Appeal B the S106 Agreement complies with policy DP31 of the District Plan which states that the Council will seek the provision of a minimum of 30% on-site affordable housing for all residential developments providing 11 dwellings or more. I consider that for both appeals the submitted planning obligations would be necessary to make the developments acceptable in planning terms, directly related to the developments, and fairly and reasonably related in scale and kind to the developments.

### ***Planning Balance***

130. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
131. Above I have found that the proposals would both be contrary to policies DP6, DP12, DP16, DP21, DP34 and DP37 of the District Plan, and policies BOLBB1 and BOLD1 of the NP.
132. Paragraph 11 of the Framework states that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application area are out-of-date, granting permission unless the application of policies in the Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
133. Footnote 7 of the Framework relates to the phrase 'out of date' in paragraph 11 and states that this includes for the applications involving the provision of housing situations where the local planning authority cannot demonstrate a 5YHLS. I have found in this case that the Council can demonstrate a 5YHLS.
134. Paragraph 212 of the Framework states that the policies in the Framework are material considerations and that plans may need to be revised to reflect policy changes within the revised Framework. However, paragraph 213 states that existing policies should not be considered out of date simply because they were adopted prior to the publication of the Framework and that due weight should be given to them, according to their degree of consistency with the Framework, with the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.
135. The appellant is of the view that elements of policies DP4 and DP12 in the District Plan are out of date and reduced weight should be given to them. Other Local Plan policies are considered as up to date. They are also of the view that the NP is out of date, primarily as it was developed in the context of the previous District Plan (dating from 2004).
136. Policy DP4, Housing, while noted in the SoCG as being relevant to the appeal, is not cited in the decision notice. While elements of this policy may be out of date, when considering this and the fact that I have found that the Council retain a 5YHLS I do not consider this policy to be the most important for determining the application.

137. In relation to policy DP12, the appellant considers that the protection of the countryside was a planning principle in the previous Framework but is not in the current version, noting that the Framework only seeks to ensure that the intrinsic character and beauty of the countryside is recognised, and that the notion of 'protection' only exists in relation to valued landscapes and not ordinary countryside. I recognise this change in wording between the versions of the Frameworks and the use of the previous wording in DP12. However, despite this, Policy DP12 does not impose blanket protection on the countryside and remains a positive policy by permitting development in the countryside subject to certain restrictions. I thus still ascribe substantial weight to this policy. To the other District Plan policies that I have noted the proposals would be in conflict with, I ascribe full weight.
138. I agree that policy BOLBB1 of the NP is out of date due to the fact that this policy was developed in the context of the former, superseded, District Plan. During cross examination the Council's planning witness accepted that the issue of the development boundary and the age of the NP, predating the District Plan meant that the Neighbourhood Plan itself was out of date, and thus the 'tilted balance' in paragraph 11 of the Framework applied. I would not go as far as this; I afford policy BOLBB1 limited weight but consider that policy BOLD1 is consistent with the Framework and is thus up to date; I therefore ascribe it full weight. I note in this view that the appellant agrees that policy BOLD1 is up to date<sup>21</sup>, and also that although policy BOLBB1 is out of date, its objectives in practical terms have been replaced by policy DP6 of the District Plan.
139. As noted above, paragraph 172 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues, and that planning permission should be refused for major development in AONBs other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. Above I have concluded that the proposals constitute major development.
140. The proposals, particularly Appeal A would generate benefits for the area in terms of the creation of C2 development, which would assist in meeting an unmet need for this in the area and would comply with policy DP 30. However, the weight I give to this is reduced to moderate given the market evidence over supply and demand of C2 use.
141. The proposals would produce economic benefits both during their construction and due to the jobs created by the schemes and the activities of the future residents of the proposals, which would also have locally social benefits. Although I have concluded that the Council can demonstrate a 5YHLS, the proposals would still support the objective of boosting the supply of housing in the Framework and Appeal B would provide further social benefits via the provision of affordable housing, to which I afford significant weight. Minor benefits from the scheme would also arise from footpath improvements and the ecological and arboricultural management of the site.
142. In isolation such benefits would provide public benefits so as to outweigh the less than substantial harm that I have found the schemes would cause to the

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<sup>21</sup> Proof of Evidence of the appellant's planning witness, para 6.17

setting of the Bolney Stage. However, when taken as a whole such benefits would not constitute exceptional circumstances and due to the wider effects of the scheme and its non-compliance with the development plan the proposals would not be in the public interest.

143. I therefore conclude that the proposals would not accord with the development plan, and material considerations do not indicate a decision contrary to this.

**Conclusions**

144. For the reasons given above, and having regard to all other matters raised, I conclude that Appeals A and B should be dismissed.

*Jon Hockley*

**INSPECTOR**

FOR THE LOCAL PLANNING AUTHORITY:

David Forsdick of Queen's Counsel instructed by Mid-Sussex District Council

He called

Will Harley BSc (Hons) CMLI	WH Landscape Ltd
Neil Arbon BA (Hons) DipTP MRTPI	DPDS Ltd
Christopher Tunnell BSc (Hons) M.Phil FRTPI FAcSS FRSA	Arup Ltd
Emily Wade MA MSc	Mid Sussex DC
Nick Pincombe BA (Hons) MSc CEnv MIEMA MCIEEM	VEEL Ltd

FOR THE APPELLANT:

Sasha White of Queen's Counsel instructed by Anstone Developments Ltd and Spurpoint Ltd

He called

Asher Ross MRTPI	JLL Ltd
Andrew Cook BA (Hons) MLD CMLI MIEMA CENV	Pegasus Group
Julian Forbes-Laird MIL FOR, MRILS, MEWI	FLAC Ltd
Alastair Baxter BA (Hons) MA(Oxon) MSc CEcol CEnv MCIEEM	Aspect Ecology Ltd
Ignus Froneman B.Arch,Stud ACIfA IHBC	Cogent Heritage Ltd
Joanne Kerry	Brookbanks

INTERESTED PERSONS:

Andrea Turrell  
Suzanne Snow

For Bolney Village Action Group  
Interested Person

## INQUIRY DOCUMENTS (ID)

1. Overarching Statement of Common Ground (SoCG), dated 28 October 2019.
2. CIL Compliance Statement, Mid-Sussex District Council, 21 October 2019.
3. List of Local Planning Authority Appearances
4. Judgement, Great Trippets Estate Limited v SoS CLG, [2011] EWCA Civ 203 C1/2010/1804.
5. Appellant's opening submissions.
6. Council's opening submissions.
7. Statement of Mr Mark Sutton, Top Street Bolney, read by Ms Turrell.
8. Ecology SoCG (ESoCG), dated 27 September 2019.
9. Site Visit Plan.
10. Housing land supply SoCG (HSoCG), dated 29 October 2019.
11. Heritage Round Table Draft Agenda.
12. Sustainability Round Table Draft Agenda.
13. Ecology Round Table Draft Agenda.
14. 5YHLS Round Table Draft Agenda.
15. Appeal decision APP/D3125/W/18/3209551, Land north of Woodstock Road, Stonesfield.
16. Draft S106 Agreement Appeal A, 1<sup>st</sup> draft.
17. Draft S106 Agreement Appeal B, 1<sup>st</sup> draft.
18. Note on Planning Balance
19. High Weald Landscape Trail leaflet
20. Appeal decision APP/D3830/W/18/3218035, Land at Friars Oak Fields, East of London Road, Hassocks BN6 9NA.
21. Draft conditions Appeal A, 1<sup>st</sup> draft.
22. Draft conditions Appeal B, 1<sup>st</sup> draft.
23. Inset map 6a, Bolney, Mid Sussex Local Plan, March 2018.
24. Mid Sussex District Council Site Allocations Methodology, December 2018.
25. Draft S106 Agreement Appeal A, 5/11/19, 16:00.
26. Draft S106 Agreement Appeal B, 5/11/19, 16:00.
27. Draft conditions Appeal A, 6/11/19, 10:00.
28. Draft S106 Agreement Appeal A, 6/11/19, 11:00.

29.Draft S106 Agreement Appeal B, 6/11/19, 11:00.

30.Closing submissions of the Council.

31.Closing submission of the Appellant.

32.Conditions Appeal A at closing.

33.Conditions Appeal B at closing.

*Post inquiry documents*

34.S106 Appeal A, dated 21/11/19.

35.S106 Appeal B, dated 21/11/19.