



FAO: Mr Mark Cathcart
Rother District Council
Planning Services
Town Hall
London Road
Bexhill-on-Sea
East Sussex
TN39 3JX

Our ref: Cathcart 21.07.17 EC-GF
Your ref: RR/2017/382/P

21 July 2017

Dear Mr Cathcart,

Town and Country Planning Act 1990 (As Amended)

Letter of Objection in Relation to Proposed Erection of 98 no. of Residential Dwellings (Use Class C3), Non-residential Floorspace Comprising of 280m² (Use Class A3), and 920m² (Use Class B1), and Associated Access, Car/Cycle Parking, Open Amenity Space, Strategic Landscaping and Green Infrastructure and Including Restoration Works to the Mill Building and Oast House at Hodson's Mill, Northbridge Street, Robertsbridge, TN32 5NY (LPA Ref. RR/2017/382/P)

I write on behalf of my client, 'The Rector and Scholars of Exeter College', to **object** to the above full planning application (LPA Ref. RR/2017/382/P).

Our detailed objection primarily focuses on the following:

- The site is constrained from a heritage perspective due to the existence of a grade II listed building as well as an area of the site being in a Conservation Area. We are concerned that the dense form of housing within close proximity of such heritage assets will likely be detrimental to its setting, character and appearance.
- The southern part of the Hodson's Mill Site is located on Flood Zones 2 and 3 (i.e. areas of medium and high flood risk respectively) and that this equates to circa 36 no. of dwellings. We, along with Rother District Council and the Environment Agency have major concerns on the need to build new homes on such flood zones. The applicant has submitted a sequential assessment but we will demonstrate in this letter that its methodology is flawed and that there are sequentially preferable sites (to include the Grove Farm site) in which to accommodate the 36 no. of new homes.

- The emerging Salehurst and Robertsbridge Neighbourhood Plan (SRNP) is flawed as it has not undertaken a sequential assessment in accordance with the National Planning Policy Framework (NPPF) when allocating its three sites for housing to include the Hodson's Mill Site for up to 100 no. of new homes.
- As identified by the Environment Agency, the only access onto the site via Northbridge Street to the east is on Flood Zone 3, thereby posing a major threat to the safe evacuation of the site at times of flooding and preventing emergency vehicles from being able to access the site. The applicant has provided no mitigation measures to address this issue.
- In light of the above, we are concerned that the applicant as well as the Salehurst and Robertsbridge Parish Council have taken a cavalier approach to flood risk and potentially placing new households at risk from flooding.
- As set out in this letter, we have made a compelling case in which application RR/2017/382/P should be refused planning permission.

By way of background, our client owns the site known as 'Land at Grove Farm, Robertsbridge', which is situated approximately 700m south of the Hodson's Mill Site. Grove Farm is currently an under-utilised agricultural site with a number of redundant/dilapidated buildings that benefits from being an allocated housing site for at least 30 no. of residential dwellings to include housing for the elderly and 40% affordable housing as stipulated under 'saved' Policy VL7 of the adopted Rother District Local Plan (2006).

The Grove Farm site had previously been represented by Croudace Homes Limited, who had an Option on the land but have now surrendered it, therefore, allowing Exeter College to lead on all matters. Earlier this year, Croudace had withdrawn a full planning application for 34 no. of residential dwellings and associated development (LPA Ref. RR/2016/1722/P) on 16 January 2017 due to various unresolved planning concerns from the LPA and other statutory consultees. Turnberry has subsequently been appointed directly by the College to conduct a fundamental review and address all planning issues identified in RR/2016/1722/P.

As you are aware, on 10 July 2017 we submitted a full planning application (LPA Ref. RR/2017/1642/P) and Listed Building Consent (LPA Ref. RR/2017/1643/L) to Rother District Council (the LPA) to redevelop the northern part of the site (with a site area of 0.32ha) for a residential-led mixed-use development to include the proposed erection of 6 no. of dwellings; repair and conversion of the Grade II Listed Barn as well as the Cow Shed for Class B1 use; erection of a new single-storey office building (83.5m²); car parking; landscaping; and associated works.

We also submitted an outline planning application (for access and layout) for the redevelopment of the southern portion of the site (0.94ha) for 24 no. of residential units, car parking, new vehicular access,

landscaping to include a play area and associated works (NB. the LPA Ref. is not yet available). It is noted that all planning applications are in the process of being validated by the LPA at present. The LPA's Business Support Team has informed us that the applications will be validated and made public in the early part of next week (i.e. week commencing 24 July 2017).

As previously highlighted in our written representation to formally object to the emerging Salehurst and Robertsbridge Neighbourhood Plan (SRNP) dated 24 March 2017 (see **Appendix 1**), we have major concerns relating to draft Policy HO3 (Site Allocations), whereby it appears that the housing allocation is over-optimistic. Draft Policy HO3 proposes to de-allocate the Grove Farm site for residential and, instead, is proposing the allocation of three alternative sites for housing to meet the required 130 no. of new residential units up to year 2028 as stipulated in the adopted Core Strategy (2014). The three alternative sites (to include a percentage buffer, thereby for up to 150 no. of residential units) are as follows:

- Vicarage Land (approx. 10 no. of residential units)
- The Hodson's Mill Site (approx. 100 no. of residential units)
- Heathfield Gardens (approx. 40 no. of residential units)

In our submitted written representation, we particularly highlighted our doubts as to whether the Hodson's Mill Site (with a site area of approx. 4.38ha) could feasibly achieve up to 100 no. of residential units given that a large area is within Flood Zones 2 and 3 (these are Zones with a medium to high probability of flooding); presence of the Grade II listed Oast House; and that the southern area is a Conservation Area.

You will be aware that the Hodson's Mill site was the subject of a previous outline planning application (I note you were the Case Officer) in 2007 for 'the construction of up to 1,301m² of Class B1 business buildings, construction of up to 66 no. of residential units, construction of surgery premises of up to 557.4m², construction of café of up to 92.6m², associated landscaping, infrastructure, access roads and revised junction with Northbridge Street' (LPA Ref. RR/2007/2576/P) was refused by the LPA. It was subsequently subject of an appeal (Public Inquiry) and that it was ultimately dismissed by the Inspector on 26 August 2008 (PINS Ref. APP/U1430/A/08/2064297), which was primarily due to the following two reasons:

- The site was last occupied by a commercial firm as a feed mill with storage, offices and workshops. Local Plan Policy EM2 seeks to resist proposals to change the use of buildings or redevelop sites last in employment creating use, unless it is demonstrated that there is no prospect of its continued use for business purposes or that it would perpetuate serious harm to residential amenities. On this

point, the Inspector concluded that the full employment possibilities of the site have not been adequately explored such as to justify giving up a site with locational, topographical and economic advantages.

- The proposed commercial block to the south of Hodson's Mill would harm the character and appearance of the area.

Therefore, the proposed 66 no. of housing on the site did not form part of the reason for the appeal's dismissal. A copy of the appeal decision and proposed layout plan is contained at **Appendix 2**. It is clear from the appeal decision (under paragraph 7) that the Inspector accepted the principle of residential development on the Hodson's Mill Site (as the housing proposal back then were entirely on Flood Zone 1) and that he also commented on the Grove Farm site:

"7. There are two Local Plan sites within Robertsbridge that are relevant in my view. Land at Grove Farm, Policy VL7, is held in reserve for development of at least 30 houses if the 'Mill Site' or other development on previously developed land does not meet housing need. There appears therefore an acceptance of at least the possibility of housing on the appeal site, the 'Mill Site'. I consider the VL7 site more strongly related to the village centre, shops and transport than the appeal site and to appear in plan form as a rounding off of the development boundary. Against those advantages is the greenfield nature of the site".

The inspector further commented under paragraph 22:

"22. I consider the main part of the residential uses and the surgery would be acceptably sited as shown, with housing screened from much of the wider AONB and set behind the substantial bulk of the Hodson's Mill building".

With regard to the Inspector's point about the Grove Farm site being a 'reserved site', it is noted that this is no longer the case. The 2006 Local Plan allocation at Grove Farm at VL7 was originally subject to Policy DS6 of that Plan. This stated that the Grove Farm allocation would only be released if found necessary to meet Structure Plan housing requirements up to 2011 – making Policy VL7 effectively a 'reserve' site. Following the publication of the National Planning Policy Framework (NPPF) in 2012, the LPA assessed the extent to which existing policies were compliant with the NPPF. A report on this was presented to Cabinet on 2 July 2012. In this regard, Policy DS6 was found to be not wholly compliant with the NPPF. This was because the principle of holding sites 'in reserve' was not

considered consistent with the NPPF at paragraph 14. Therefore, the Grove Farm site is no longer recognised as a reserve site and can be developed for housing (as recognised in the draft Committee Report relating to the previous Grove Farm planning application that was withdrawn – LPA Ref. RR/2016/1722/P).

A comparative view between the 2007 Appeal Scheme and the current 2017 Scheme (RR/2017/382/P) is shown in **Figure 1**.

Figure 1 – Comparison of Layout (2007 vs 2017 planning applications)



A copy of the proposed layout of the 2017 Scheme is contained at **Appendix 3**. In terms of layout, it is clear that the 2017 Scheme is now proposing a significantly denser form of redevelopment as the number of housing units have increased by 32 no. of new dwellings (i.e. 33% increase) when compared to the 2007 Scheme.

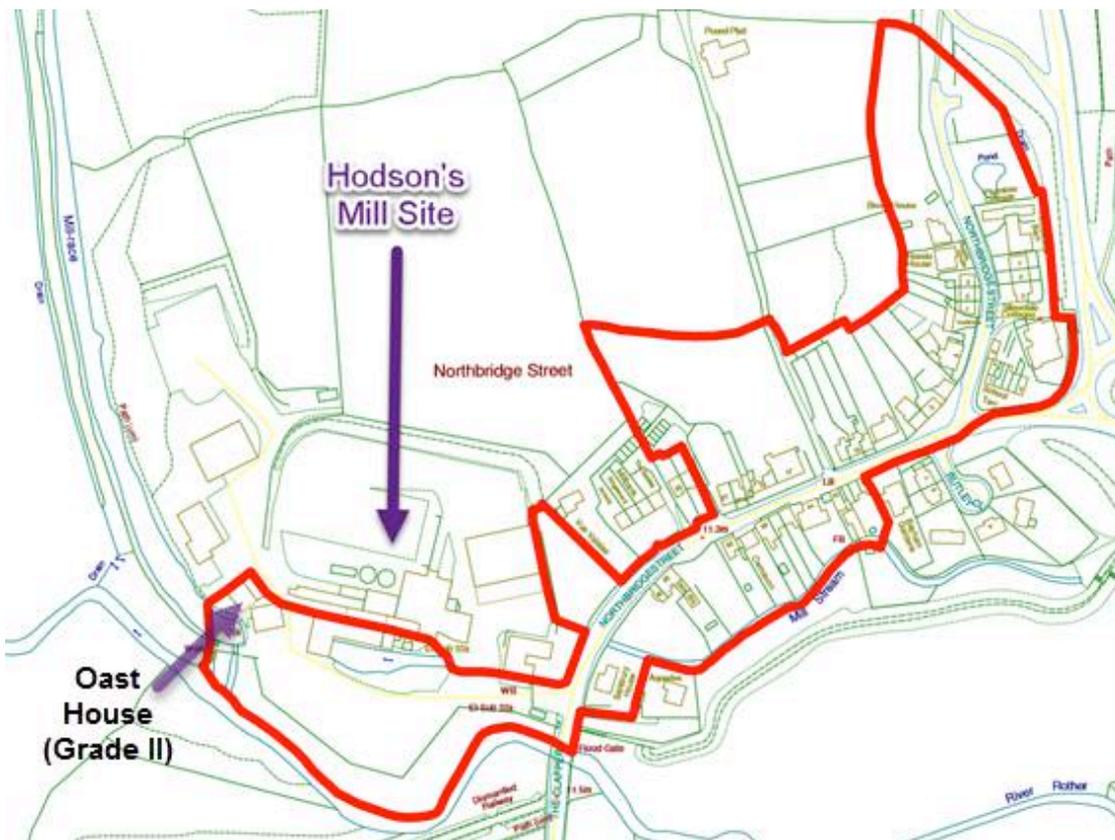
We have a number of concerns relating to application RR/2017/382/P and that this relates to heritage and flood risk.

Heritage

When the Appeal Scheme (PINS Ref. APP/U1430/A/08/2064297) was determined in 2008, the southern portion of the Hodson's Mill Site was not a designated Conservation Area. However, since then the southern portion of the site (circa 1.04ha) to include the Mill Building and Oast House (Grade

II listed) are designated within the Northbridge Street Conservation Area (edged in red) as shown in **Figure 2**. The Conservation Area occupies approximately 24% of the total application site area of 4.38ha.

Figure 2 - Northbridge Street Conservation Area



Given the significant intensification of housing on the site and to the north of the Conservation Area, we are concerned that this would be harmful to its character and appearance. We request that the LPA makes an informed assessment of the potential heritage impacts to the Oast House and the wider Conservation Area in-line with sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The recent Court of Appeal decision in the case of *Barnwell v East Northamptonshire DC* 2014 made it clear that in enacting section 66(1), Parliament's intention was that 'decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings' when carrying out the balancing exercise.

In terms of the consideration of planning applications that affects a Conservation Area, the LPA must pay special attention to the desirability of preserving or enhancing the character or appearance of that

area. The House of Lords in the South Lakeland case (*South Lakeland District Council v Secretary of State for the Environment and another [1992]*) decided that the 'statutorily desirable object of preserving the character of appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say preserved'.

Flood Risk

Formal comments from Rother District Council (RDC) were submitted in February / March 2017 in relation to the emerging SRNP (Regulation 16). Clearly this was done prior to the submission of RR/2017/382/P. In particular, RDC has raised concerns regarding draft Policy HO3 and the proposed allocation of the Hodson's Mill Site for up to 100 no. of residential units:

"Overall, it is found that the quantum of residential development on the sites, most significantly on the Mill Site is highly optimistic".

Furthermore, the Council stated:

"The SRNP needs to satisfactorily demonstrate application of the NPPF's sequential test to justify residential development within Flood Zone 3. There is no explicit sequential testing and, while the sequential test can be demonstrated through a Strategic Environmental Assessment (SEA) process and the SRNP includes a supporting SEA, it is not considered that this presents a sufficiently robust case to demonstrate that there are sustainability benefits of developing the extent of the Mill Site to outweigh the flood risk".

Indeed, paragraph 061 (Reference ID: 7-061-20140306) of the Planning Practice Guidance stipulate:

"The overall approach in paragraph 100 of the National Planning Policy Framework applies to neighbourhood planning. In summary, the qualifying bodies involved in neighbourhood planning should:

- **Seek to ensure neighbourhood plans and neighbourhood development/ community right to build orders are informed by an appropriate assessment of flood risk;**
- **Ensure policies steer development to areas of lower flood risk as far as possible;**

- **Ensure that any development in an area at risk of flooding would be safe, for its lifetime taking account of climate change impacts;**
- **Be able to demonstrate how flood risk to and from the plan area/ development site(s) will be managed, so that flood risk will not be increased overall, and that opportunities to reduce flood risk, for example, through the use of sustainable drainage systems, are included in the plan/order”.**

We have reviewed the ‘Strategic Environmental Assessment (SEA) Report of the Salehurst and Robertsbridge Neighbourhood Development Plan’ that was produced by the Parish Council dated December 2016. The SEA appears to rely on a sequential test that was undertaken in the ‘Strategic Flood Risk Assessment – Level 1’ (August 2008) and the ‘Strategic Flood Risk Assessment – Level 2’ (June 2008). However, neither document properly applies a sequential test to inform site allocations in Robertsbridge as it merely identifies at a strategic level that certain towns and villages within the District will likely experience flood risk issues and that Robertsbridge is one of these. Paragraph 101 of the NPPF recognises that Strategic Flood Risk Assessments (SFRAs) will only provide the basis for applying the sequential test but by no means should the Parish rely on this document when undertaking the sequential test when allocating sites for the SRNP.

We therefore agree with RDC that the Parish has not undertaken a robust sequential testing exercise to properly inform its proposed site allocations in-line with the NPPF and thereby the proposed allocation of up to 100 no. of new homes on the Hodson's Mill Site is, in the words of RDC, ‘highly optimistic’ and thereby considered flawed and premature.

The applicant's proposals are supported by a Flood Risk Assessment prepared by UNDA dated February 2017, but despite this, housing has been situated within Flood Zones 2 and 3 without having undertaken a sequential test in-line with the NPPF. Indeed, the Environment Agency (EA) submitted a formal objection to application RR/2017/382/P dated 19 June 2017 due the absence of applying the sequential test. In particular, it stated:

“Part of the application site lies within Flood Zone 3a defined by the Environment Agency Flood Map as having a high probability of flooding. Paragraph 101 of the National Planning Policy Framework requires decision-makers to steer new development to areas at the lowest probability of flooding by applying a ‘Sequential Test’. In this instance, no evidence has been provided to indicate that this test has been carried out. Although the site is defended to a standard of protection of 75 years (up to

1.33% Annual Exceedance Probability (AEP) event), the residual risk from flooding during larger events is high with flood water depths in excess of 1m during the 100 year (1% AEP) event”.

Furthermore, the EA pointed out:

“NPPF requires developers to sequentially test a development site both in the context of other available sites in lower flood risk areas and the site itself to ensure that the more vulnerable form of development is placed in the areas of lower risk. Whilst we accept that the conversion of the mill building is not subject to these tests, as the majority of the site lies within Flood Zone 1, we are disappointed to see that new residential units are to be placed in Flood Zone 3”.

In relation to access and egress, it is noted that the site's only access is via Northbridge Street to the east. However, we note that this is area located in Flood Zone 3, thereby having a high risk of flooding. We note that the applicant's Flood Risk Assessment is considered by the EA as deficient in that it provides no details as to how to mitigate this:

“The FRA confirms that living and sleeping accommodation will be set a minimum of 600mm and 900mm above the design flood level as agreed with us in pre-planning discussions. This aspect of the design is therefore acceptable. We are however concerned with the access and egress arrangements for the site. The Retirement Flats, Rother Court and units 40 and 41 all have their access in FZ3. NPPF Planning Practice Guidance states that access requirements should include voluntary and free movement of people during a design flood event (1% annual probability). It goes on to state that the acceptable flood depth for safe access will vary depending on flood velocities and the risk of debris within the flood water. Even low levels of flooding can pose a risk to people in situ (Para 39). Given the potential depth of flooding here it is clear that a flood event could pose a significant risk to the safety of people and property. There has been no attempt to assess the hazard posed by the depth of flooding in the FRA other than to confirm that it will not be possible to provide a safe escape route. We have not specifically objected on the grounds of access and egress as it is your own Authority's decision as to whether the flood warning and evacuation plan is acceptable for the

development as a whole. You may consider that the risk is manageable for the majority of the site that is above the flood level in FZ1. However, we do think this is a serious consideration for the new development proposed within FZ3. Ideally all of the residential 'More Vulnerable' element would be in FZ1, with the commercial 'Less Vulnerable' development being placed in FZ3. As a minimum we would wish to see an attempt to provide safe access for all new residential units (for example both the retirement flats and Rother Court are on the edge of FZ1 but the access has been placed within FZ3)".

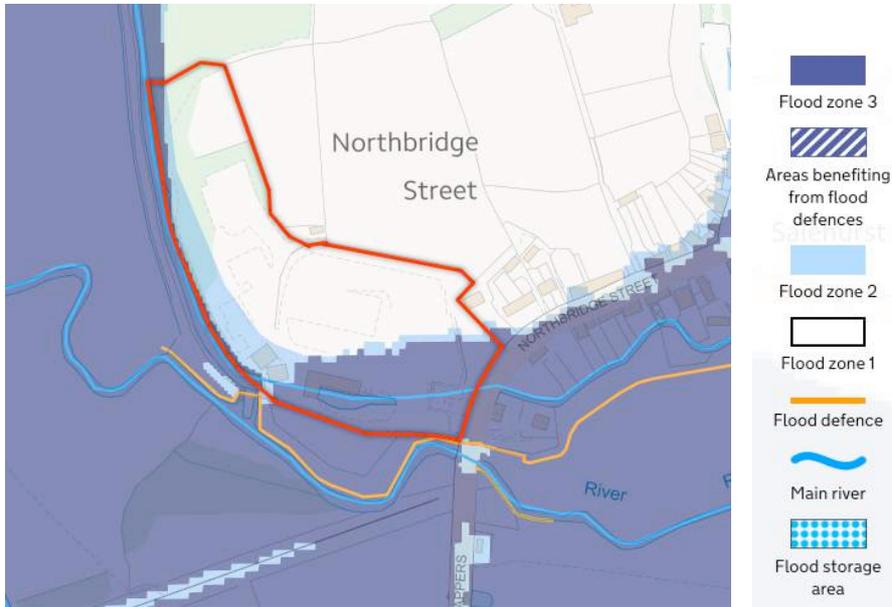
Under the 'Town and Country Planning (Consultation) (England) Direction 2009, Local Planning Authorities (LPAs) must inform the Secretary of State if they intend to approve an application that includes development in a flood risk area (i.e. Flood Zones 2 or 3; or Flood Zone 1 which has critical drainage problems and which has been notified for the purposes of article 10 of the Order to the LPA by the EA). Referral of the application to the Secretary of State relates to major development in a flood risk area to which the Environment Agency has made an objection, which even after talks with the local planning authority, is not withdrawn.

Therefore, if RDC is minded to approve application RR/2017/382/P and if the EA still has a holding objection then it must consult with the Secretary of State as to whether he should call-in the application for his own determination.

The applicant of RR/2017/382/P subsequently submitted a document titled 'Flood Risk Sequential Assessment and Exception Test' (June 2017). The document (as contained at **Appendix 4**) appears to have been uploaded on RDC's website on 6 July 2017. Having reviewed this document, we question its robustness.

Whilst we acknowledge that the majority of the proposed housing is on Flood Zone 1, the document does not define exactly how much of the proposed development fall within Flood Zones 2 and 3. Based on the EA Flood Map, we have outlined the core development area of the site (edged in red) and as shown in **Figure 3**.

Figure 3 – EA Flood Risk Mapping



We then undertook an exercise to crudely overlay the proposed site layout plan onto the EA Flood Zone Mapping and that this is shown in **Figure 4**.

Figure 4 – EA Flood Risk Mapping onto Proposed Site Layout Plan



Based on the mapping shown in Figure 4, we note the following uses fall within Flood Zones 2 and 3:

- Flat Nos. 36-39 (i.e. 4 no. of units within Flood Zone 3)
- Nos. 40 and 41 (2 no. of units within Flood Zone 3)
- Retirement flats re Nos. 44-71 (27 no. of units in Flood Zone 3)
- Nos. 76, 77, and 78 (3 no. of units in Flood Zone 2)
- Nos. 79, 80, 81, 82, 83, 84, 85, 86, and 87 (9 no. of units whereby its curtilage falls within Flood Zone 2).

A summary of the residential properties falling within each flood zones is shown in **Table 1**.

Table 1 – Proposed Residential Units within Flood Zones

Flood Zones	No. of Residential Units whereby Building Footprint is within Flood Zone	No. of Residential Units whereby only its curtilage is within Flood Zone 2
1	53	0
2	3	9
3	33	0
Total	89	9

In light of the above information, it is noted that there are 33 no. of proposed residential units within Flood Zone 3 (i.e. 34%); 3 no. of residential units within Flood Zone 2 (i.e. 3%); 9 no. of residential units whereby only its curtilage (i.e. not its building footprint) is within Flood Zone 2 (9%); and 53 no. of residential units within Flood Zone 1 (i.e. 54%).

Paragraph 101 of the NPPF states:

“101. The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding.”

It is clear from the NPPF that the sequential test should steer new development to the lowest probability of flooding (i.e. Flood Zone 1). Therefore, at the very least, it is our view that the 36 no. of residential units within Flood Zones 2 and 3 should be the main focus in which to find 'reasonably available' alternative sites that are on Flood Zone 1.

With reference to the submitted 'Flood Risk Sequential Assessment and Exception Test' (June 2017) prepared by the applicant of RR/2017/382/P, we agree that the area of search should be focused in the areas of Salehurst and Robertsbridge and not of the wider District given that the adopted Core Strategy (2014) anticipates the delivery of circa 130 no. of new homes in the area up to 2028.

We note that the Sequential Assessment has considered a total of 3 no. of alternative sites to include the Grove Farm site and have discounted these as being unsuitable. In relation to Grove Farm (particularly relating to the Phase 1 site and subject of current housing allocation for at least 30 new homes under saved Policy VL7 of the District Local Plan [2006]), the site was discounted due to the following reasons (as set out in Appendix 5 of the document):

- a) Grove Farm is not available as it is being promoted for residential development by its landowner.
- b) The site has been dismissed as an option for residential development within the emerging Neighbourhood Plan.
- c) In citing the previously withdrawn planning application for 34 no. of new homes on the Grove Farm site made by Croudace Homes Ltd (LPA Ref. RR/2016/1722/P), the site is not suitable as it had unresolved issues relating to heritage, residential amenity and ecology.
- d) The site has been discounted on the basis that it is not large enough to accommodate the entirety of the 98 no. of new homes as proposed for the Hodson's Mill Site.
- e) It is a greenfield site situated partially outside of the settlement boundary within open countryside and is less sustainable.

We consider the above reasons for discounting the Grove Farm site (the same used to discount the other two alternative sites regarding Bishop's Lane and Heathfield Gardens) as flawed and this is to be addressed below. In addition, it is our view that as the Grove Farm site is sequentially preferable and available (we recently submitted planning applications for a total of 30 no. of new homes in July 2017); wholly located within Flood Zone 1; and being an allocated housing site for at least 30 no. of new homes in the adopted Development Plan – the sequential test is incorrect to assume the Grove Farm site as not suitable and available.

- a) Grove Farm is not available as it is being promoted for residential development by its landowner

We do not agree that this is a valid reason to discount the Grove Farm site. We have researched a number of relevant appeal decisions in order to understand how the Planning Inspectorate interprets key principles and considerations regarding the sequential test and flood risk. This should clearly be regarded as material consideration for RDC when assessing the sequential assessment submitted in support of RR/2017/382/P.

In an appeal in Droitwich (Spa) that was dismissed by the Inspector on 28 September 2016 for an outline planning application for 34 no. of new dwellings in Flood Zones 2 and 3 (PINS Ref. APP/H1840/W/16/3148838), the notion that simply because an alternative site is owned by a different developer/landowner, it does not mean that such site can be discounted as unavailable in the context of the sequential test. A copy of the appeal decision is contained at **Appendix 5**.

Paragraph 13 of the appeal decision states:

“13. There are two sites available within the search area which are on land of low flood risk (flood zone 1) that form part of the allocated urban extensions to the town. As a consequence, the Council is of the view that as these sites will deliver well in excess of the 34 dwellings the appeal site could provide, there are other reasonably available sites for the delivery of the amount of housing proposed. The appellant, on the other hand, maintains that as those sites are in the hands of a different developer they are not ‘reasonably available’ in the terms of the PPG. Furthermore, the appellant considers those sites to be too large to equate to a suitable alternative to the appeal site”.

The Inspector further concludes in paragraph 14 of the appeal decision:

“14. The Sequential Test stems from the sequential approach embraced by the PPG. The sequential approach seeks to ensure that areas at little or no risk from any source of flooding are developed in preference to areas of higher risk, the aim being to keep development out of medium and high flood risk areas. As set out in the PPG, this will help ensure that development can be safely and sustainably delivered and developers do not

waste their time promoting proposals, which are inappropriate on flood risk grounds. It is clear, therefore, that in carrying out the Sequential Test, it is the strategic issue of the availability of housing land at lower flood risk for the type and amount of development proposed that is determinative, rather than private considerations of whether a particular housing developer would have the opportunity to purchase land of a similar size and capacity to the appeal site to develop".

It is clear from the Droitwich appeal that the reason for the applicant to discount Grove Farm based on such alternative site being owned by a different developer/landowner is flawed.

- b) Grove Farm has been dismissed as an option for residential development within the emerging Neighbourhood Plan

The statutory development plan for RDC comprises of the adopted Core Strategy (2014) and the 'saved' District Local Plan (2006). The emerging SRNP should only be afforded limited weight at present particularly as the document has yet to complete examination and that there appears to be a number of significant hurdles that appear unresolved such as the fact that the SRNP has not undertaken a sequential test in accordance with the NPPF. In addition, Statutory Instrument (SI) 2017 No. 767 (C.61) (made on 18 July 2017) known as the 'Town and Country Planning Acquisition of Land – New Towns' and relates to 'The Neighbourhood Planning Act 2017' to require a local planning authority or other planning decision-taker to have regard to a post-examination neighbourhood development plan when dealing with an application for planning permission, so far as that plan is material to the application. The fact that the emerging SRNP has yet to reach this stage reinforces the understanding that the current draft SRNP is to only have very limited weight.

We also note that in the 'Questions from the Independent Examiner' (dated 5 July 2017) regarding the SRNP (a copy is contained at **Appendix 6**), paragraph 11 states:

"11. I note that the LPA have concerns as to the level of residential development being proposed on the Mill Site, both in terms of whether there should be a requirement to include possible employment uses upon redevelopment and because of potential impact on the heritage buildings on the site. If I were to suggest a lower figure, do the parties have a view as to what would be an appropriate figure and also how would the Plan make up the shortfall – should other sites be allocated?"

It is our view that the Examiner should also have regard to the significant constraint posed by flood risk on the site (a matter that is of clear concern to RDC and the Environment Agency) and that this too can restrict the number of new homes that could be delivered.

The fact that the Grove Farm site has been discounted by the applicant due to it not being an allocated housing site in the emerging SRNP (even though it is allocated in the adopted development plan) is considered premature and should not be regarded as a valid reason for discounting the site in the sequential assessment.

- c) Grove Farm is unsuitable given it had unresolved issues relating to heritage, residential amenity and ecology as observed under withdrawn applications

Whilst we acknowledge that the Grove Farm site had unresolved issues in the previous applications submitted by Croudace Homes Ltd that were withdrawn in January 2017 (LPA Ref. RR/2016/1722/P and RR/2016/1723/L), we have recently submitted revised planning applications that address the previous concerns relating to heritage, residential amenity and ecology. It is noted in the submitted 'Consultation Statement' that our proposals were previously presented to Salehurst and Robertsbridge Parish Council earlier this year and it was generally recognised by Members to being a materially better scheme compared to the Croudace proposals.

Irrespective of the above, the applicant should not be assessing alternative sites in the sequential assessment based on a range of non-flooding related issues. This detracts from the primary purpose of the sequential test, which is to direct development land with the lowest probability of flooding.

In an appeal in Farnham (see **Appendix 7**) for a proposed residential development in Flood Zone 2 that was dismissed on 10 August 2016 (PINS Ref. APP/R3650/W/15/3136799), the Inspector noted the following under paragraph 32 of the appeal decision:

“32. The appellant’s sequential exercise excludes sites by making value judgements on a range of non-flooding related issues. For instance, sites are discounted for possible impacts on heritage assets, for contamination reasons, loss of employment or even excluded for reasons of location in the strategic gap...”

The Inspector further concludes:

“33. ...The discounting of sites in this way for the purposes of the Sequential Test is a self-serving, circular exercise which would inevitably render the majority of sites incapable of consideration... The approach is without support in Government policy or guidance and undermines the overarching objective of steering developments to locations at lower probability of flooding”.

Therefore, the discounting of the Grove Farm site based on other non-flooding related matters is flawed.

- d) Grove Farm is considered too small to accommodate the entirety of the Hodson's Mill Site

It is understood that this notion stems from paragraph 6.2 of the applicant's sequential assessment, whereby it states:

“The proposed development comprises a major residential-led mixed-use regeneration scheme, which is inappropriate to disaggregate”.

Paragraph 6.3 further outlines:

“Put simply, if the number of units currently situated within Flood Zones 2 or 3 were to be removed from the wider scheme, this would result in the scheme being unviable and would prevent the wider site from being brought forward for redevelopment...”

Firstly, the applicant's approach to the sequential test is considered flawed in that it is looking for alternative sites of a comparable site area. Secondly, paragraph 101 of the NPPF is clear in that the aim is to steer 'new development to areas with the lowest probability of flooding'. In our view, this relates to the need to look for alternative sites that could suitably accommodate the 36 no. of residential units within Flood Zones 2 and 3 only. The sequential test does not expect the need to find alternative sites for non-residential uses.

In addition, the remainder of the residential units (i.e. 62 no. of units) are already located in Flood Zone 1 (lowest probability of flooding), therefore these properties do not need to be relocated for the purposes of the sequential test. The Inspector of the 2008 appeal for the Hodson's Mill Site (as

mentioned above) also accepted the principle of residential units in Flood Zone 1 areas of the site. We are therefore not convinced that the relocation of the 36 no. of residential units would actually make the scheme unviable. On the point of viability, this is not an NPPF requirement in relation to the sequential test.

In light of the above, we would like to point out that in the Farnham appeal (PINS Ref. APP/R3650/W/15/3136799), the Inspector considered the discounting of alternative sites on the basis of site size is flawed:

“28. However, the process of discounting alternative sites on the basis of size and for reasons that have nothing to do with flooding is, in my view, flawed”.

The Inspector further explained:

“29. The objective is to deliver housing numbers. Whether the supply is forthcoming from sites capable of accommodating large numbers, from a number of smaller sites or a combination of both is neither here nor there. The Sequential Test in this case should consider the comparative flooding risks of reasonably available candidate sites capable of accommodating the numbers expected from the appeal site. There is no policy or indeed rational basis for considering sites on a ‘like for like’ basis only, or for excluding those that fall outside an arbitrary size cut off limit of 50 units”.

In a similar appeal on such matter (PINS Ref. APP/D0840/W/16/3158466), which was dismissed on 16 March 2017 for the proposed erection of 5 no. of residential dwellings in St Austell, Cornwall (see **Appendix 8**). Paragraph 19 of the appeal decision states:

“19. The appellants argue that the Council should have identified sites of a similar size to the appeal proposal instead of relying on combinations of smaller sites to show that five dwellings could be accommodated elsewhere. However, the main justification for providing five open market dwellings in the CNA is to deliver the Local Plan housing target. This objective can be equally well achieved whether five dwellings are built on single site or multiple smaller sites. Hence the Council took a reasonable approach. Whilst I am referred to a Judgement where it was decided that such an approach was not appropriate in a Scottish retail development, the circumstances of that case are clearly

different from that of the current appeal. Certain forms of retail development may require sites of a minimum size for operational reasons, whereas this argument is less easily applicable to housing proposals".

In light of the above we are therefore of the view that the discounting of Grove Farm based on the site being too small and that the Hodson's Mill Site seemingly cannot be disaggregated are flawed.

e) Grove Farm is a greenfield site and is less sustainable

We do not agree that alternative sites should be discounted on the basis that it is a greenfield site and that the Hodson's Mill Site is a previously developed (brownfield) site. In the St Austell appeal (see Appendix 8), the Inspector noted under paragraph 20:

"20. It is also argued that the sequential test should have focused on identifying previously developed land in order to find sites more equivalent in nature to the appeal proposal... The Framework indicates that the sequential test should aim to identify reasonably available sites appropriate for the proposed development. In this case the 'proposed development' is housing, which can be equally well accommodated on either previously developed or greenfield sites. Whilst I accept that the Local Plan promotes the reuse of previously developed land, it also recognises that not all sites are necessarily suitable for development by virtue of their location".

Conclusions

The following conclusions can be drawn:

- The applicant has undertaken a sequential test to support the Hodson's Mill Site application (LPA Ref. RR/2017/382/P) but is considered fundamentally flawed in terms of its methodology and the reasons for discounting the alternative sites.
- The Grove Farm site should be regarded as a sequentially preferable site as it is in Flood Zone 1 and that it can accommodate at least 30 no. of the Mill Site's new homes within Flood Zones 2 and 3 in order to help meet the housing target for Robertsbridge as defined in the adopted Core Strategy (2014).
- Regarding the remaining 6 no. of residential units of the Hodson's Mill Site falling within Flood Zones 2/3, we consider that this could be accommodated in the Bishop's Lane site as a significant proportion of this land is located within Flood Zone 1.

- Therefore, application RR/2017/382/P is considered to have failed the sequential test and that the evidence shows that the circa 36 no. of new residential units could be accommodated on reasonably available sites with a lower probability of flooding than the Hodson's Mill Site. In these circumstances, the NPPF says development should not be permitted.
- The emerging SRNP has not undertaken a sequential test in accordance with the requirements of the NPPF and its proposed allocation of the Mill Site for up to 100 no. of residential units is therefore considered premature. We urge RDC to inform the Examiner (Mr J Slater) to consider the Grove Farm site as an allocated housing site in the SRNP (in-line with a similar allocation in the saved District Local Plan [2006]), thereby alleviating the pressures of the Hodson's Mill Site from expecting to deliver circa 100 no. of new homes when the reality is that the site can only accommodate a much lower number of new homes on a site constrained by medium and high flood risk areas and heritage issues relating to the setting of the grade II listed building and the Conservation Area.
- The high density of residential development on the site is considered to be detrimental to the Conservation Area. A lower density of housing should be proposed (in-line with the 2008 appeal scheme).

In light of the above, we reiterate our concern that the applicant as well as the Parish Council have taken a cavalier approach to flood risk and potentially placing new households at risk from flooding.

Due to the compelling reasons documented in this letter, we therefore request that application RR/2017/382/P should be refused planning permission on the grounds of heritage and flood risk.

Yours sincerely,

Wai-kit Cheung
Turnberry Planning

cc. Mr J Slater	-	Examiner of the SRNP
Mr D Marlow	-	Planning Policy Manager, Rother District Council
Ms S Page	-	Planning Advisor, the Environment Agency
Ms R Kinsella	-	Principal Drainage Officer, East Sussex County Council
Mrs K Ripley	-	Clerk to Salehurst and Robertsbridge Parish Council

Appendix 1

Objection Letter (dated 24 March 2017) to object to Emerging SRNP

Service Manager – Strategy and Planning
Rother District Council
Town Hall
Bexhill-on-Sea
East Sussex
TN39 3JX

Turnberry

Our ref: RDC. 24.03.2017. EC-GF

Your ref: -

24 March 2017

Dear Sir/ Madam,

Town and Country Planning Act 1990 (As Amended)
Salehurst and Robertsbridge Neighbourhood Plan – Regulation 16 Submission Consultation
Representation On Behalf of the ‘Rector and Scholars of Exeter College’, Oxford

I write on behalf of our client, the ‘Rector and Scholars of Exeter College’ to make formal representations on the emerging ‘Salehurst and Robertsbridge Neighbourhood Plan’ (SRNP) – Regulation 16 Submission Consultation, which was published in December 2016.

It is noted that public consultation of this document is from 10 February 2017 to 24 March 2017. It is understood that an Independent Examiner will soon be appointed by Rother District Council to independently examine the emerging SRNP. In addition, we note that the independent examiner will only consider whether the proposed neighbourhood plan meets the following basic conditions:

- Appropriate regard to national policy.
- Contributes to the achievement of sustainable development.
- In general conformity with the strategic policies in the development plan for the local area.
- Compatible with EU obligations.
- Meets human rights requirements.

Assuming the emerging SRNP satisfies the independent examination process, it will then go onto the ‘Modifications’ stage; Referendum (28 days); and then shortly to adoption by which case it will become part of the development plan. It is estimated that the emerging SRNP could be adopted in the third or fourth quarter of 2017.

By way of background, our client is the landowner of the 0.9ha allocated housing site under Policy VL7 of the 'saved' Rother District Local Plan (2006) known as 'Land at Grove Farm, Robertsbridge'. The housing allocation is for at least 30 no. of residential dwellings on the site to include housing for the elderly and 40% of the dwellings to be affordable housing.

This site had previously been represented by Croudace Homes Limited, who had an Option on the land but have now surrendered it - thereby allowing Exeter College to lead on all matters. Croudace have recently withdrawn a full planning application for 34 no. of residential dwellings and associated development (LPA Ref. RR/2016/1722/P) on 16 January 2017 due to various unresolved planning concerns from the LPA and other statutory consultees. Turnberry has subsequently been appointed directly by the College to conduct a fundamental review and address all planning issues identified in RR/2016/1722/P. We are confident that the revised submission will be a vastly improved and robust scheme compared to the proposals set out in recently withdrawn Croudace application.

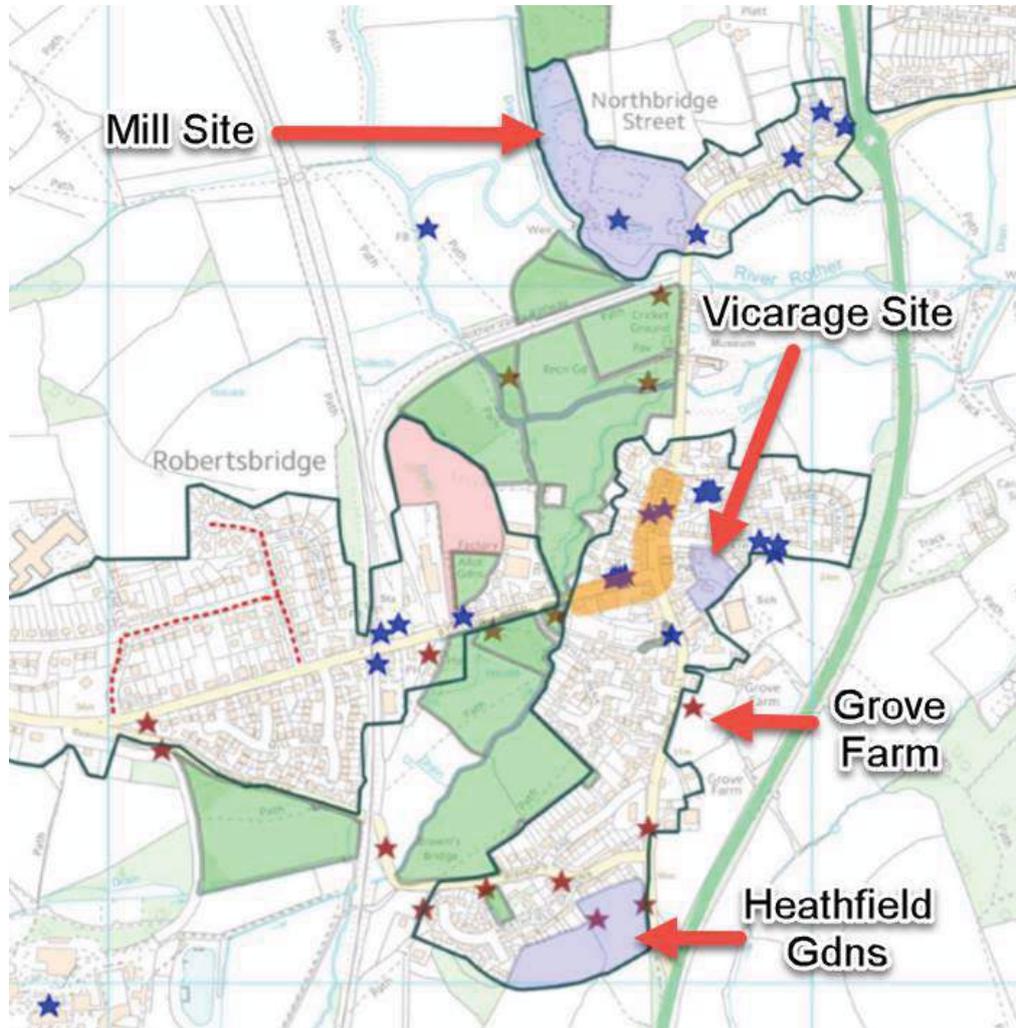
However, we are concerned with the emerging SRNP on the basis that it is proposing to effectively replace 'saved' Policy VL7 of the Rother District Local Plan (2006) and exclude the allocated Grove Farm site from its defined 'Development Boundary'. It is noted that any site outside the Development Boundary in the emerging SRNP is to be regarded as lying within the 'Countryside' designation of the adopted Core Strategy (2014) to which policy RA3 applies. Policy RA3 of the Core Strategy stipulates that development within the 'Countryside' should be for new agricultural buildings or the re-use of such buildings for employment and tourism uses and that new residential dwellings are only to be permitted in 'extremely limited circumstances'.

It is clear that the emerging SRNP is proposing to de-allocate the Grove Farm site for residential and, instead, is proposing the allocation of three alternative sites for housing under draft Policy HO3 (Site Allocations) to meet the required 130 no. of new residential units up to year 2028 as stipulated in the adopted Core Strategy (2014). The three alternative sites proposed by the emerging SRNP are as follows:

- Vicarage Land (approx. 10 no. of residential units)
- Mill Site (approx. 100 no. of residential units)
- Heathfield Gardens (approx. 40 no. of residential units)

A map of the above three sites as well as the Grove Farm site is shown in **Figure 1**.

Figure 1 – Locations of Emerging and Existing Site Allocations



It is noted that the emerging SRNP has identified a total of 150 no. of residential units (to include a minimum 10% additional housing buffer as required by Government) via the above three allocated sites for the period up to 2028. We consider the estimated housing numbers on each of the three sites to be over-optimistic and thereby unrealistic as there is insufficient evidence to support the projected housing numbers. We therefore strongly **object** to draft Policy HO3 of the emerging SRNP as it does not in general conformity with the strategic policies and Local Development Plan for the area. And are not planning positively for the local area as required by national guidance.

We request that the Independent Examiner reconsiders the allocation of the Grove Farm site as a sustainable housing development that will realistically provide at least 30 no. of residential units in meeting the projected housing need to 2028.

It is clear that we disagree with the projected number of new residential units on the Mill Site; Heathfield Gardens; and Vicarage Land and that we provide our justifications (below) as to the likely number of houses that could be viably delivered due to various site as well as planning related constraints.

Vicarage Land

As shown in **Figure 2**, Vicarage Land has a site area of approximately 0.45ha and is situated on the southern side of Fair Lane and being within circa 60m east of the High Street in Robertsbridge. The emerging SRNP considers that this site can deliver circa 10 no. of residential units, therefore, housing density is expected to be 22 dwellings per hectare (dph).

Figure 2 – Aerial Photograph of Vicarage Land



The Vicarage Land is considered to have the following site constraints:

- The site is situated within the Robertsbridge Conservation Area. According to the Character Appraisal published by the LPA in 2009, it noted that ‘the south side of the Lane is a curious small historic building purported to have been used as a village jail... it is an interesting structure and important in that it is evidence of the historical social functioning of the settlement’. Therefore, the site is constrained by the potential need to preserve the character of this part of the Conservation Area.

- Fair Lane is a relatively narrow road that would serve the new development on the site. Due to parked cars along Fair Lane, vehicular access for the planned 10 no. of new residential units will further exacerbate the traffic conditions along the road.
- The site sits on an elevated topography (approximately 3m higher) when compared to the ground level of the row of two-storey terraced dwellings along George Hill to the east of the site and that a separation distance of only 15-20m exists. Therefore, any new housing development on the site would likely to appear prominent and a dominant feature particularly when viewed from the habitable room windows to the rear elevations of the dwellings along George Hill.
- In light of the above site constraints, it is considered that single-storey bungalows would be more in keeping with the character of the surrounding area that would also be more likely to preserve the character and appearance of the Conservation Area.
- In light of the above, we question the deliverability of 10 no. of residential units on the Vicarage Land and that a lower number of units would likely be deliverable.

Mill Site

As shown in **Figure 3**, the Mill Site has a site area of approximately 4ha and is situated on the northern side of Northbridge Street. The emerging SRNP considers that this site could deliver circa 100 no. of new houses. Therefore, proposed housing density is 25dph.

Figure 3 – Aerial Photograph of Mill Site



In terms of relevant planning history, it is noted that a previous outline planning application in 2007 for 'the construction of up to 1,301sqm of Class B1 business buildings, construction of up to 66 no. of residential units, construction of surgery premises of up to 557.4sqm, construction of café of up to 92.6sqm, associated landscaping, infrastructure, access roads and revised junction with Northbridge Street' (LPA Ref. RR/2007/2576/P) was refused by the LPA. It was subsequently subject of an appeal (Public Inquiry) and that it was ultimately dismissed by the Inspector on 26 August 2008 (PINS Ref. APP/U1430/A/08/2064297), which was primarily due to the following two reasons:

- The site was last occupied by a commercial firm as a feed mill with storage, offices and workshops. Local Plan Policy EM2 seeks to resist proposals to change the use of buildings or redevelop sites last in employment creating use, unless it is demonstrated that there is no prospect of its continued use for business purposes or that it would perpetuate serious harm to residential amenities. On this point, the Inspector concluded that the full employment possibilities of the site have not been adequately explored such as to justify giving up a site with locational, topographical and economic advantages.
- The proposed commercial block to the south of Hodson's Mill would harm the character and appearance of the area.

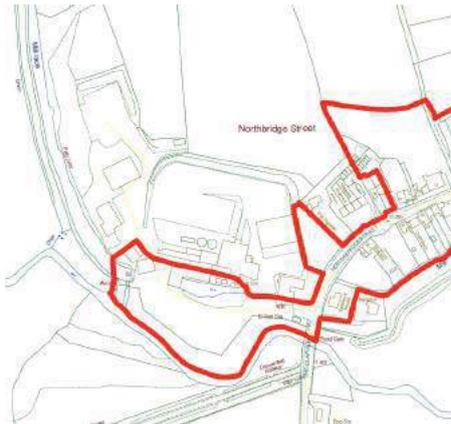
A copy of the appeal decision and the proposed layout of the site are contained at **Appendix 1**. Extract of the proposed layout featured in the 2008 appeal is shown in **Figure 4**.

Figure 4 – Proposed Site Layout of 2008 Appeal



Since the appeal decision, the LPA has also designated the southern portion of the site to be within the Northbridge Street Conservation Area as shown in **Figure 5**. It is noted that both the Grade II listed building (i.e. Former Oasthouse to Mill Farm) and Hodson's Mill are part of the Conservation Area.

Figure 5 – Northbridge Street Conservation Area



According to the developers' consultation website of the Mill Site (website: <http://www.hodsonsmill.com/>), a preliminary scheme of 102 no. of new houses and 720sqm of non-residential floorspace are proposed. Images of the emerging scheme design are shown in **Figure 6**.

Figure 6 – Preliminary Proposals for the Mill Site





Having reviewed the constraints of the site and taking into consideration the 2008 appeal decision, we have significant doubts as to how the Mill Site will be able to deliver circa 100 no. of new housing units particularly when an earlier appeal scheme of 66 no. of new housing was dismissed by the Inspector.

Our view is that the developer has clearly maximised the proposed number of housing in the 2008 scheme (i.e. at 66 no. of new housing units) but given the subsequent inclusion of the southern portion of the site as a Conservation Area and that the site area remains the same, it seems illogical as to how the latest proposal could now viably achieve the circa 100 no. of residential units in the area. Furthermore, the following should also be noted:

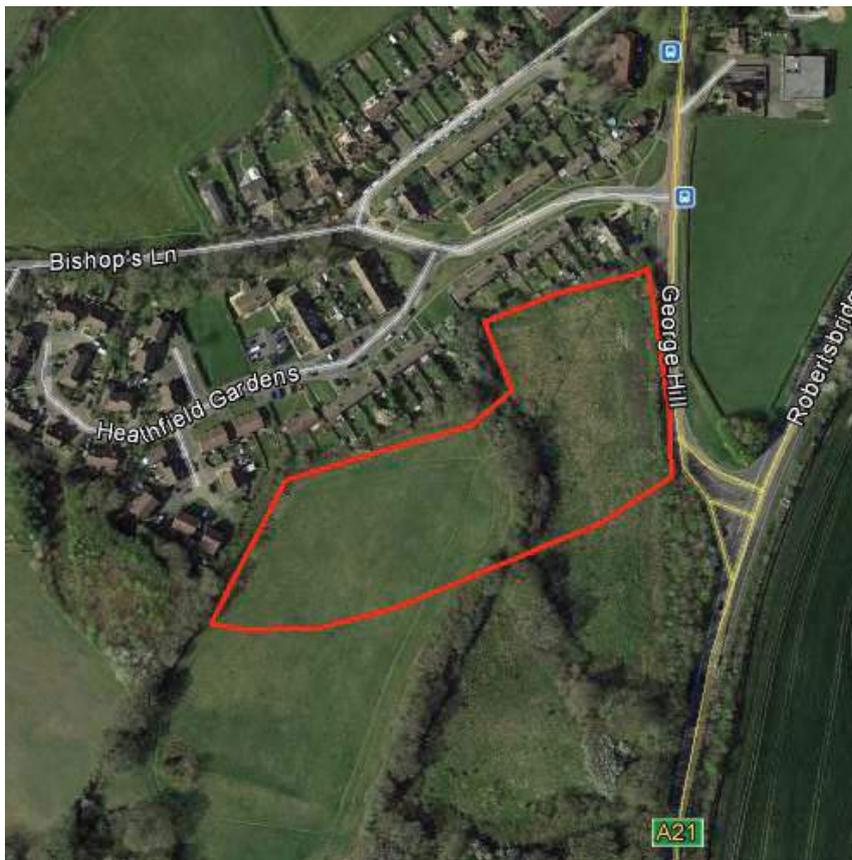
- As shown in the 3D perspective view of the proposal in Figure 6, the increased residential density to the north of the Hodson's Mill in the latest preliminary proposals are likely to cause significant harm to the character and appearance of the Conservation Area due to over-development. A significantly lower residential density is likely to be required in order to preserve the setting of the Conservation Area and the buildings within it.
- Potential flood risk and drainage issues that could limit the number of houses on the site.
- Potential impact to the setting of the Grade II listed building on site.
- The preliminary scheme appear to be significantly under-providing the required number of car parking spaces to accord with County Highways standards, which would further limit the number of housing units that could be delivered.
- The site is situated at a further distance away from Robertsbridge train station (at over 800m) compared to the Grove Farm site (at approximately 500m). Therefore, the Mill site is considered less sustainable from a sustainable transport perspective.

- In light of the above constraints, we consider that a more realistic figure of circa 60 no. of new houses may be possible and to be broadly in-line with the 2008 appeal scheme.

Heathfield Gardens

As shown in **Figure 7**, the Heathfield Gardens site has a site area of approximately 1.7ha and is situated on the western side of George Hill. The emerging SRNP considers that this site could deliver circa 40 no. of new houses. Therefore, the proposed housing density is 24dph.

Figure 7 – Aerial Photograph of Heathfield Gardens



The Heathfield Gardens site is a greenfield site that is approximately 370m south of the Grove Farm site and is currently recognised in the Proposals Map of the 'saved' Rother District Local Plan (2006) as being outside the Development Boundary.

The following planning issues are considered evident on this site:

- The site is located on the southern edge of Robertsbridge, thereby it is comparably less sustainable than the Grove Farm site as it is located further away from Robertsbridge

village centre. Development should be focused within the village centre (such as the Grove Farm site) before out-of-centre sites such as the Heathfield Gardens site should be considered.

- The Heathfield Gardens site is a complete greenfield site; whereas the Grove Farm site contain approximately a third of previously developed land. We therefore question whether the site meets the 'sustainable development' test as set out in the National Planning Policy Framework (NPPF)(2012).
- Similar to the Vicarage Land site, the Heathfield Gardens site is located on an elevated topography (circa up to 8m) compared to the nearby ground level of the two-storey residential dwellings to the north. Therefore, any new housing on the site would likely appear a dominant feature in the landscape that may cause harm to the amenity of nearby occupiers of neighbouring dwellings. We therefore question the planned density of the site in light of the constraints as outlined above.

Summary

Based on our assessment of the above three sites, the emerging SRNP is considered inflexible/over optimistic and appears to be placing too much emphasis on the three sites to deliver the required housing target up to 2028. This is in the absence of not having undertaken a more detailed exercise in understanding its true housing deliverability in light of obvious site constraints as highlighted in this letter. We consider that a more flexible approach to housing delivery is required and that other sites such as Grove Farm should be reconsidered for allocation in the emerging SRNP in order to help meet the housing target of the village up to 2028.

The site selection process has not been undertaken positively, contrary to national guidance, by unallocating Grove Farm, and placing the Neighbourhood Plan under pressure by not being in a position where it can no longer meet the housing needs of the Neighbourhood Plan Area. The Plan is also not in general conformity with the strategic development policies for the area and the adopted Local Plan.

We also **object** to how the above three sites as well as the Grove Farm site were assessed in the Strategic Environmental Assessment (SEA) that accompanied the emerging SRNP. Having reviewed the SEA, we consider the assessment as having significant flaws that fails to meet the basic condition of being compatible with EU obligations. Therefore, we would request the Independent Examiner to undertake a thorough review of this against the 'The Environmental

Assessment of Plans and Programmes Regulations 2004' (SI 2004 No. 1633). Our further justifications are set out below.

Strategic Environmental Assessment

The emerging SRNP is accompanied by a Strategic Environmental Assessment (SEA) – 'Environmental Report' (published in December 2016). In a letter from the LPA dated 15 June 2016, it confirmed that an SEA would be required in support of the emerging SRNP as it 'is likely to have significant effects on the environment'. In particular, the letter from the LPA highlighted that the SRNP should have due consideration for the following:

- The area of the SRNP is wholly within the High Weald AONB and enjoys the highest degree of protection in relation to landscape and scenic beauty.
- There are many key features of the AONB within the Parish including historic field boundaries, historic routeways etc.
- There are significant heritage constraints including two conservation areas, significant numbers of listed buildings, unlisted buildings of architectural interest, and archaeological notification areas. There are potential direct impacts where sites contain, or lie within these assets, as well as indirect impacts through development in the setting of the assets.
- Large swathes of land along the course of the Rivers Rother and Darwell and their tributaries that are within Flood Zones 2 and 3.
- The Rother and Darwell Valleys are also identified within the 'Rother, Brede and Tillingham Woods Biodiversity Opportunity Area', which overlaps with sites under consideration for development.

Having reviewed the SEA, we would like to draw the Independent Examiner to the following:

1. The SEA themes make no explicit reference to transport/accessibility or socio-economics, and the theme dealing with air quality and human health should probably also refer to noise.
2. It is not clear in the SEA whether any alternative sites were assessed and no reasoning appear to have been provided.
3. The three sites put forward in the emerging SRNP for allocation (i.e. Mill Site; Vicarage Land; and Heathfield Gardens) have made it through to satisfy the requirement to accommodate circa 150 homes. The justifications for this (and for rejecting the other 10 sites) have not been explicitly made clear in the SEA.

4. The assessment of policies (Section 7) is very repetitive and generic, whilst the alternative of re-worded policies have not been clarified in the SEA.

We also question the validity and robustness of the assessments of the three sites that have been put forward for allocation in the emerging SRNP (i.e. Mill Site; Vicarage Land; and Heathfield Gardens). In addition, we question the objectiveness as to how Grove Farm was assessed in the SEA, in particular, certain elements were considered unfairly 'marked down'.

We have undertaken a comprehensive review of the assessment of the four sites in the SEA and this is contained in **Appendix 2**. In summary, we have major concerns as to how the four sites have been assessed. The draft Neighbourhood Plan therefore fails the additional test of not complying with EU Regulations. This is a serious legal flaw in the process and needs remedied before the Neighbourhood Plan can progress.

In light of the above, we formally request that we are given the opportunity to make oral representations to the Independent Examiner at a public hearing.

We trust this letter clearly sets out my client's position in relation to the consultation document. However, should you have any queries, please do not hesitate to contact me.

Yours faithfully,

Wai-kit Cheung
Turnberry

Appendix 2

2008 Hodson's Mill Site Appeal and related Proposed Site Layout Plan



Appeal Decisions

Inquiry held on 8, 9, 10, 11 & 24 July 2008

Site visit made on 11 July 2008

by **John Papworth** DipArch(Glos) RIBA

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

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

Decision date:
26th August ,2008.

Appeal A: APP/U1430/A/08/2064297

Former Mill Site, Northbridge Street, Robertsbridge, E Sussex TN32 5NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by PREM (Rooster) Limited against Rother District Council.
- The application Ref RR/2007/2576/P is dated 31 August 2007.
- The development proposed is construction of up to 1,301 square metres of Class B1 business buildings, construction of up to 66 residential units, construction of surgery premises of up to 557.4 square metres, construction of café of up to 92.6 square metres, associated landscaping, infrastructure, access roads and revised junction with Northbridge Street.

Appeal B: APP/U1430/E/08/2064309

Former Mill Site, Northbridge Street, Robertsbridge, E Sussex TN32 5NY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
- The appeal is made by PREM (Rooster) Limited against Rother District Council.
- The application Ref RR/2007/2560/L is dated 31 August 2007.
- The works proposed are conversion and works to existing listed building and adjoining building into two residential units.

Appeal C: APP/U1430/A/08/2064322

Former Mill Site, Northbridge Street, Robertsbridge, E Sussex TN32 5NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by PREM (Rooster) Limited against Rother District Council.
- The application Ref RR/2007/2696/P is dated 21 September 2007.
- The development proposed is change of use and conversion of redundant mill building, listed building and abutting building to form 13 residential units including alteration to an existing vehicular access, construction of new road and provision of parking spaces.

Decisions

1. I dismiss Appeal A and refuse outline planning permission for construction of up to 1,301 square metres of Class B1 business buildings, construction of up to 66 residential units, construction of surgery premises of up to 557.4 square metres, construction of café of up to 92.6 square metres, associated landscaping, infrastructure, access roads and revised junction with Northbridge Street.
-

2. I allow Appeal B, and grant listed building consent for conversion and works to existing listed building and adjoining building into two residential units at Former Mill Site, Northbridge Street, Robertsbridge, E Sussex TN32 5NY in accordance with the terms of the application Ref RR/2007/2560/L dated 31 August 2007 and the plans submitted with it subject to the following conditions:
 - 1) The works hereby authorised shall begin not later than 3 years from the date of this consent.
 - 2) No works shall take place until samples of the materials to be used in the construction of the external surfaces of the conversion of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) Before commencement of the works hereby approved, details of all new joinery, including windows, doors and partitions, at a scale of 1:10 elevations with full size sections through cills, frames and opening lights, including glazing bars and mullions and showing their position and the relationship to the existing structure, shall be submitted to and approved in writing by the local planning authority and only those approved details shall be employed within the works and thereafter retained.
 - 4) Before commencement of any external building works/alterations or repairs as hereby approved, details of all rainwater goods and other external pipework, (to be of cast metal and painted black), drawn to a scale of 1:5, indicating section sizes and profiles shall be submitted to and approved in writing by the local planning authority. Such goods and pipes shall be completed and retained in accordance with the approved details only.
3. I dismiss Appeal C and refuse planning permission for change of use and conversion of redundant mill building, listed building and abutting building to form 13 residential units including alteration to an existing vehicular access, construction of new road and provision of parking spaces.

Main Issues

4. I consider the main issues to be as follows:

In the case of Appeal A;

- The effect of the development on the provision of industrial and commercial sites and the supply of housing
- The effect of the development on the setting of a listed building and on the High Weald Area of Outstanding Natural Beauty
- The effect of the development on the control of flood risk

and in the case of Appeals B and C;

- The effect of the proposals on the listed building and its setting within the High Weald Area of Outstanding Natural Beauty

Reasons

Supply of Commercial Sites

5. The site was last occupied by a commercial firm as a feed mill with storage, offices and workshops. Local Plan Policy EM2 seeks to resist proposals to change the use of buildings or redevelop sites last in employment creating use, unless it is demonstrated that there is no prospect of its continued use for business purposes or that it would perpetuate serious harm to residential amenities. In the event of these qualifications being met, first consideration will be given to mixed-use development in accordance with Policy EM1 and the criteria in Policies DS1 and GD1 which contain general development strategies and principles. Policy EM1 is in two parts the first relating to large sites being focussed on established and allocated business areas, and the reference to business being part of a residential use falls within the second section on smaller-scale business activities. It is this second part therefore that is the link from Policy EM2. The draft South East Plan contains Policy RE2 which states that accessible and well-located industrial and commercial sites should be retained where there is a good prospect of employment use and promotes mixed use development where appropriate and subject to replacement of land and premises lost to non-employment uses. Planning Policy Statement 3 "*Housing*" provides for consideration to be given to whether sites that are currently allocated for industrial or commercial use could be more appropriately re-allocated for housing development.
6. I acknowledge the history of commercial use on the site, which is long and particular to the agricultural setting and more recently the needs of the owners in servicing a variety of poultry rearing premises. I accept that this is not a traditional industrial estate or business park. I also acknowledge the findings of the Local Plan Inspector whose report was received in winter 2005 from an Inquiry in autumn 2004, being relatively up-to-date findings. These were that the site should remain for employment but if this was shown to be not feasible, there should be a preference for mixed use including employment. There has been acceptance of the prospect of mixed use within the site through the proposed conversion of the listed building and Hodson's Mill to residential use and having regard to the characteristics of the buildings and their location, I do not differ from that view.
7. There are two Local Plan sites within Robertsbridge that are relevant in my view. Land at Grove Farm, Policy VL7, is held in reserve for development of at least 30 houses if the 'Mill Site' or other development on previously developed land does not meet housing need. There appears therefore an acceptance of at least the possibility of housing on the appeal site, the 'Mill Site'. I consider the VL7 site more strongly related to the village centre, shops and transport than the appeal site and to appear in plan form as a rounding off of the development boundary. Against those advantages is the greenfield nature of the site.
8. The other is land to the rear of Culverwells on Station Road, Policy VL8, where previous versions of the plan had put forward business uses but this has not been implemented. The site is stated to be the most suitable for employment use in the village and mixed employment and residential use is now envisaged with a limited amount of residential development to take place to enable employment use development on the remainder of the site. I consider the VL8

site is less well related to the A21, as a commercial location, being on a minor road leading to the narrow, busy High Street by way of a difficult junction.

9. From this preamble I attach significant weight to the reference at VL8 to 'limited amount' of residential and 'enabling' which reinforces my view on the appeal site that as a next step from full employment use, the aim should be to maximise employment. This concurs with the view of the Council that once some residential use is accepted, that does not mean that the employment is lost entirely and I do not consider that employment should be arbitrarily reduced. I acknowledge that there is no explicit policy requiring balancing calculations to justify the split, as there might be in a listed building enabling development context, but a marketing exercise is accepted as a way of gauging demand.
10. Looking now at the location of Robertsbridge in the market and geographically, before considering comparator sites. I heard of a buoyant commercial market to the north, nearer London with access to employees and markets, and nearer the M25 with access to the rest of the country, resulting in higher values and demand for commercial land and buildings. This compares with a more depressed market to the south end of the A21 at Hastings and along the coast, being relatively remote, having a single-sided catchment area and a resulting lower demand for land and buildings and lower values. Clearly Robertsbridge lies somewhere between the two, the question being where. Allied to this is the higher residential values, and hence the attractiveness of such development, on sites towards the north of the Council's area, with more ready access to London and the areas of stronger economic activity.
11. Geographically I consider Robertsbridge to be well on the way to these stronger areas to the north, compared with Bexhill, Rye and Hastings, or even Battle. The A21 from the Northbridge Street roundabout passes only through Hurst Green as a real settlement, shortly after leaving the town. After that there appear to be slowings at traffic lights at Flimwell, the downgraded dual carriageway soon after and then intermittent reasonable road and modern two-lane dual carriageways until the main motorway network is reached near Sevenoaks. This route also gives access to Tunbridge Wells, Tonbridge and links to Paddock Wood, Maidstone and further. More locally, the appeal site is very close to the A21 and this link would have been used by lorries from the site when in use distributing feedstuffs to the rearing locations.
12. I do not find most of the commercial areas to the south to be so well placed. Sites referred to in Hastings, Bexhill and Rye appear to be predominantly within urban areas that would need to be travelled through to access the main road network, and the A259 and A21 nearby are mainly single carriageway roads and somewhat constricted. The site near Battle Station is closer to Robertsbridge but requires negotiation of Battle High Street which appears congested. Those on Marley Lane appear more readily accessible to the A21, but just that few miles further away.
13. These considerations lead me to the view that the appeal site should be compared more favourably with the sites to the north than with those to the south. Whilst attaching limited weight to the stated value of the former Little Chef site just up the road, as this might be a false indication, I consider the location of the site to be one that I would have expected to suit investors and

employers seeking lower costs without unduly sacrificing accessibility. Added to these locational factors is the former commercial character and appearance of the site and the existence of large terraced and clear plots, a rarity in my opinion in an area of either flat land on flood plains or the higher ground being often sloping and wooded. There is a marked degree of support in representation, for its continued commercial use. I attach significant weight to the Council's later evidence on development costs and returns, based on an allowance for an upgraded version of the sketch scheme put forward by the Council, removing some of the flaws exposed in the earlier version. Whilst work would be required and there is doubt over the significance of the amount paid for the site, I am of the view that there could be a viable scheme for more commercial and less new-build residential.

14. I turn now to consider the marketing exercise, as a way of finding whether, in the terms of Policy EM2, there is no prospect of its continued use for business purposes. It is easy to criticise an unsuccessful marketing campaign, things might have been done differently, but whether the end result would have changed can only be conjecture. However, I am concerned, having mind to my views on the market to the north, that reliance was placed only on an agent working to the south, whereas for another site nearer Battle, and further to the south, a joint exercise was carried out. The use of a dedicated internet site should have opened the search area, but I find the information captured as to 'hits' sketchy. I therefore do not have a clear picture over whether the lack of firmly expressed interest is due to the information not getting to the right potential firms in the first place rather than any shortcoming of the site or its location.
15. I have the impression also that the appellant has been dismissive of the possibilities in what has been described as the lower end of the market. I understand the risks of operating at this level but it appears to me that this market is not going to cease to exist, but will carry on in a variety of dispersed, possibly rural, sites, some unsuitable for landscape or neighbour reasons. The appeal site is within the AONB, but there again a very high proportion of the Council's rural area is, and the last use was a process-based industry rather than purely offices, warehouses or covered units. The apparent lack of an adverse history relative to neighbours is notable in my view. I am not persuaded that the site is particularly prominent in the AONB or in such proximity to residential use as to preclude the possibility of these other types of commercial use being further investigated. On this section of the main issue I conclude that the full employment possibilities of the site have not been adequately explored such as to justify giving up a site with locational, topographical and economic advantages.
16. The proposal is for a mixed use with housing on the flat terraces to the north, as well as in the retained buildings, an element of commercial to the south, where flood concerns may indicate housing would be inappropriate and the provision of the surgery and ancillary uses referred to in the application. I shall now consider the benefits of these uses and the need.
17. Without rehearsing the Inquiry evidence on a five year supply of housing land, it appears to me that, subject to certain elements such as the land north-east of Bexhill coming forward, there is an adequate supply of housing land. I acknowledge the advice to seek increased housing production and the

Secretary of State's proposed changes to the South East Plan, as well as the need to look critically at allocations of employment land but in the balance between the need for places to live and places to work, I do not consider that the figures indicate an overriding need for the amount of housing proposed in the outline application at the expense of employment. The terraced formations suit employment whereas this attribute would not be essential for housing.

18. However, the ability of a proposal of this size to yield affordable housing of the numbers put forward is a significant consideration in my judgement. There is a clear need for more affordable housing, and evidence I heard on the increase in housing costs towards the north of the council district adds weight to there being such provision in this locality. I do not however consider it essential that this provision be on the appeal site and am of the view that the Local Plan policy is robust enough with a requirement of 40% to continue to deliver affordable housing in locations that are suitable.
19. There is evidence also of the need and willingness to relocate the local surgery to this site, and I attach weight to this also. However, I am not persuaded that this use could not be provided elsewhere in the settlement or even on the site in conjunction with some other mix of residential and commercial.
20. In conclusion on this issue, here is a site with a previous commercial use which does not appear to have caused problems, with terraced plots, located close to a trunk road with easier access to higher performing areas of the south-east than sites in the coastal area and where there has been insufficient investigation of demand or the feasibility of a full range of employment uses and configurations of accommodation. Set chiefly against this is a need for affordable housing, but in the balancing exercise required I find that the attributes of the site, accessible and well-located in the words on the draft South East Plan policy, outweigh the provision of the total number of houses proposed, or even the numbers of affordable housing resulting. I am of the opinion that a lesser number of dwellings, and thus affordable ones, could be made-up for elsewhere on land unsuited to commercial use, whilst maintaining a higher level of employment use on this site. Hence I conclude that the proposals fail to accord with the aims of Local Plan Policies EM1 and EM2 to foster an appropriate scale of business development in order to meet the employment land and premises requirements of the district.

Listed Building Setting and the High Weald Area of Outstanding Natural Beauty

21. There are two buildings on the site that are proposed to be retained and re-used, the listed building and Hodson's Mill. Both are to be put into residential use. Whilst the disposition and precise quantity of the remainder of the built form is in outline at this stage, I consider it likely that the proposed residential new-build element would be on the upper parts, the surgery near the entrance but also on the higher ground, and the new-build commercial block on the lower ground south of Hodson's Mill as shown on drawing 0566/SK04E. On that basis, I am of the view that sufficient buffer space could be provided to preserve the setting of the listed building with regard to the new-build residential and that the space retained between the building and Hodson's Mill would preserve the setting relative to this other significant building.

22. I consider the main part of the residential uses and the surgery would be acceptably sited as shown, with housing screened from much of the wider AONB and set behind the substantial bulk of the Hodson's Mill building. The surgery could be an attractive public building at the frontage of the site, clearly visible from Northbridge Street and providing a suitable public face to the site. I have no reason to consider that detailed design and layout of these elements of the proposal would fail to preserve the setting of the listed building or the character and appearance of the area including the High Weald AONB.
23. Hodson's Mill is not listed and I acknowledge the rationale of this decision, but nevertheless consider it an attractive building worthy of retention as proposed, and with residential use as a suitable way of retaining the character and appearance of the building. However, the likely placing of the commercial building as indicated would, in my opinion, harm the setting and appreciation of the mill, divorcing it from the land to the south and eroding the impact of its appearance from the recreation ground to the detriment of that open space between the two parts of the village. The likely size and bulk of the new building would risk competing with the mill, reducing the pleasing impact of the building.
24. On this main issue I conclude that whilst much of the proposed development would accord with Local Plan Policy GD1(v) in the conservation of the natural beauty of the High Weald Area of Outstanding Natural Beauty, and with Policy GD1(viii) on the setting of a listed building, the indicative siting and likely size of the commercial block to the south of Hodson's Mill would harm the character and appearance of the area and hence would not accord with the Local Plan policy.

Flood Risk

25. It is common ground, among other things, that the proposed new-build residential and the listed building would be in flood zone 1, that Hodson's Mill, the new-build commercial, the café and the surgery would be in flood zone 3a, but that there would be no risk of internal flooding due to usable floor levels being higher and pedestrian access to these buildings in zone 3a would be provided to the higher parts of the site. The main concern appears to be with regard to the commercial use in zone 3a. Table D.2 in the annex to Planning Policy Statement 25 "*Development and Flood Risk*" identifies uses that include that proposed in this case as being in the category of 'less vulnerable' and Table D.1 states that these are acceptable in this zone. The highly vulnerable uses in Table D.2 should not be permitted in this zone and the more vulnerable uses should only be permitted in this zone if the exception test is passed.
26. Were all else acceptable I am of the view that conditions could secure the implementation of the measures put forward to ensure that a safe access is provided for emergency vehicles and that pedestrians could gain access to the development or away from it if need be. Whilst not accepting that life should go on as normal, during the limited time period assumed, it does seem reasonable to me that families should be re-united, especially children away at school when an event occurs. With those conditions I consider the development capable of satisfying the aims of Local Plan Policies DS1(xi) and GD1(xv) that development be safe from flooding, minimising and managing the risk.

Listed Building Conversion

27. My considerations here refer to only the listed building consent application (now Appeal B) which concerns works of conversion to form 2 residential units. That therefore excludes the proposals for the unlisted Hodson's Mill, although both buildings are covered by the accompanying full planning application (now Appeal C).
28. The Council raised no objection to this proposed conversion at the Inquiry and had refused consent on the basis that this should be determined in the context of an acceptable and comprehensive scheme for the whole of the site. Whilst I concur with the view with regard to the accompanying full planning application, as it includes questions of access and the use of the Hodson's Mill building, it appears to me that the need for listed building consent relates specifically to the building and its curtilage. In terms of Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, I consider the proposed conversion does preserve that which is of interest in the building and would provide a long term secure use that would ensure the continued preservation of the building. There are new openings, and some ambiguity over exactly where rooflights would be placed, but this could be dealt with by condition. Generally I find the proposed intervention and changes limited and acceptable and that the essential character and details of the building would be conserved. Hence it is my view that the proposals accord with advice in Planning Policy Guidance Note 15 "*Planning and the Historic Environment*" on works to a listed building and with Structure Plan Policy S1(m) and Local Plan Policy GD1(viii) which seek to protect listed buildings.
29. Conditions would be required concerning materials and further constructional details for approval. However, the suggested change to the period for commencement of the work to five years was in relation to a likely longest period allowable under an outline consent, that being three years for the submission of reserved matters and two years from the approval of the last of the reserved matters. I do not consider it appropriate or necessary to make this change if this were to be the only one of the three applications allowed.

Undertaking

30. A signed and dated Section 106 undertaking was presented covering the affordable housing referred to previously as well as provisions for local sustainability contributions including schools and household waste, and highways/travel plan. I consider this undertaking satisfies the tests in Circular 5/05 "*Planning Obligations*"; it is relevant to planning, necessary to make the proposal acceptable in planning terms, directly related to the development, fairly and reasonably related in scale and kind to the development proposed, and reasonable in all other respects. I therefore attach full weight to it in my considerations and conclusions.

Conclusions

31. I consider residential conversion of the listed building acceptable and that there is no reason to withhold listed building consent for this work. However, I do not consider the case has been made for the loss of employment-providing

commercial land, contrary to the aims of Development Plan policies which seek to meet the employment land and premises requirements of the district. There is not an overriding need for housing land and the need for affordable housing does not outweigh the advantages of retaining commercial use on this site due to its locational, topographical and economic advantages, the lack of a history of complaints over a long commercial use and the representation in favour of the retention. Though indicative only at this stage, the proposals would be likely to place the remaining commercial use to the south of Hodson's Mill, causing harm to the character and appearance of the area. For those reasons I consider that the outline application should be refused and that the full application for the residential use of the mill and the listed building should also be refused due to the uncertainties over the use and configuration of the rest of the site. Whilst an undertaking would provide benefits in addition to affordable housing, these mainly address the need for facilities as a result of the introduction of housing and do not, in my judgement, outweigh my conclusions. For the reasons given above I conclude that Appeals A and C should be dismissed and planning permission refused in each case, but that Appeal B should succeed.

S J Papworth

INSPECTOR

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DOCUMENTS SUBMITTED DURING INQUIRY

Joint Council/Appellant Documents

Document	J/1	Statement of Common Ground 4 July 2008
Document	J/2	Statement Waring/Walton 9 July 2008
Document	J/3	Bundle of Conditions discussed at Inquiry
Document	J/4	Bundle of e-mails to PINS from Council and Appellant re. conditions and Appellant's closing submissions, each copied to other

Council's Documents

Document	C/1	Statement by D Marlow, Principal Planning Officer Re. monitoring practice
Document	C/2	Note by C Wojtulewski 11 June 2008 "Employment Statistics"
Document	C/3	e-mail and details B Hough to Core Commercial 8 July 2008 Horsehoe Filling Station Hurst Green
Document	C/4	Photograph East Farleigh property
Document	C/5	Set of tables "Development Appraisal"
Document	C/6	e-mail D Edwards, Legal Services Manager to G Fifield re. Section 106 – payments in lieu of affordable housing
Document	C/7	D Marriott statement 10 July 2008 re. base cost £2m
Document	C/8	"Five Year Land Supply Position Update"
Document	C/9	Note by C Wojtulewski on the Secretary of State's Proposed Changes to the Draft Regional Spatial Strategy for the South East (July 2008)
Document	C/10	Environment Agency extract from FD2321/TR2
Document	C/11	Environment Agency letter to Council 2 July 2008
Document	C/12	Council's Closing Submissions

Appellant's Documents

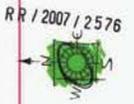
Document	A/1	Dataset: Employment by Industry, 1995 to 2006 – Districts
Document	A/2	Economy profile for Rother
Document	A/3	OS extract of escape route and Culverwells Site VL8
Document	A/4	Travel distances and road type Hastings to M25
Document	A/5	Clarification of C Wojtulewski Supplementary Proof, Appendix 9, Table 1
Document	A/6	Signed Unilateral Undertaking dated 8 July 2008
Document	A/7	Extract "Manual for Streets"
Document	A/8	Extract ESCC "Design Standards for Industrial Roads"
Document	A/9	Council Cabinet 21 February 2005 "Hastings and Rother Joint Housing Delivery Action Plan"
Document	A/10	Note by D Lawson on the Secretary of State's Proposed Changes to the Draft Regional Spatial Strategy for the South East (July 2008)
Document	A/11	Note by D Lawson re. 276 Turkey Road
Document	A/12	Note on "Direction of Travel" in Housing Requirements
Document	A/13	Business case re. Provision of Oldwood Surgery
Document	A/14	Use of 1,000m ² Threshold for Monitoring Employment

Document A/15 Floorspace Completions in AMRs
Note by D Lawson re. Five Year Housing Requirement
Document A/16 Appellant's Closing Submissions

Interested Party's Documents

Document I/1 Statement of T Strapp on behalf of Robertsbridge Enterprise
Group
Document I/2 Salehurst and Robertsbridge Local Action Plan 2007-8
Document I/3 Speaking Notes R Clymo, resident
Document I/4 Letter 7 July 2008 from H Monro, Chairman East Sussex
Economic Partnership

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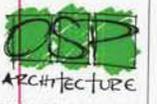
ROTHER DISTRICT COUNCIL
PLANNING DEPT.
18 SEP 2007
REGISTERED



REV. DATE	REVISIONS	REV. DATE	REVISIONS	REV. DATE	REVISIONS

CLIENT:	Prem Rooster	PROJECT:	Northbridge Street Robertsbridge
SCALE:	1:500 (A1 ORIGINAL)	DRAWING:	Master Plan
DRAWN:	cd		
DATE:	16.08.07		

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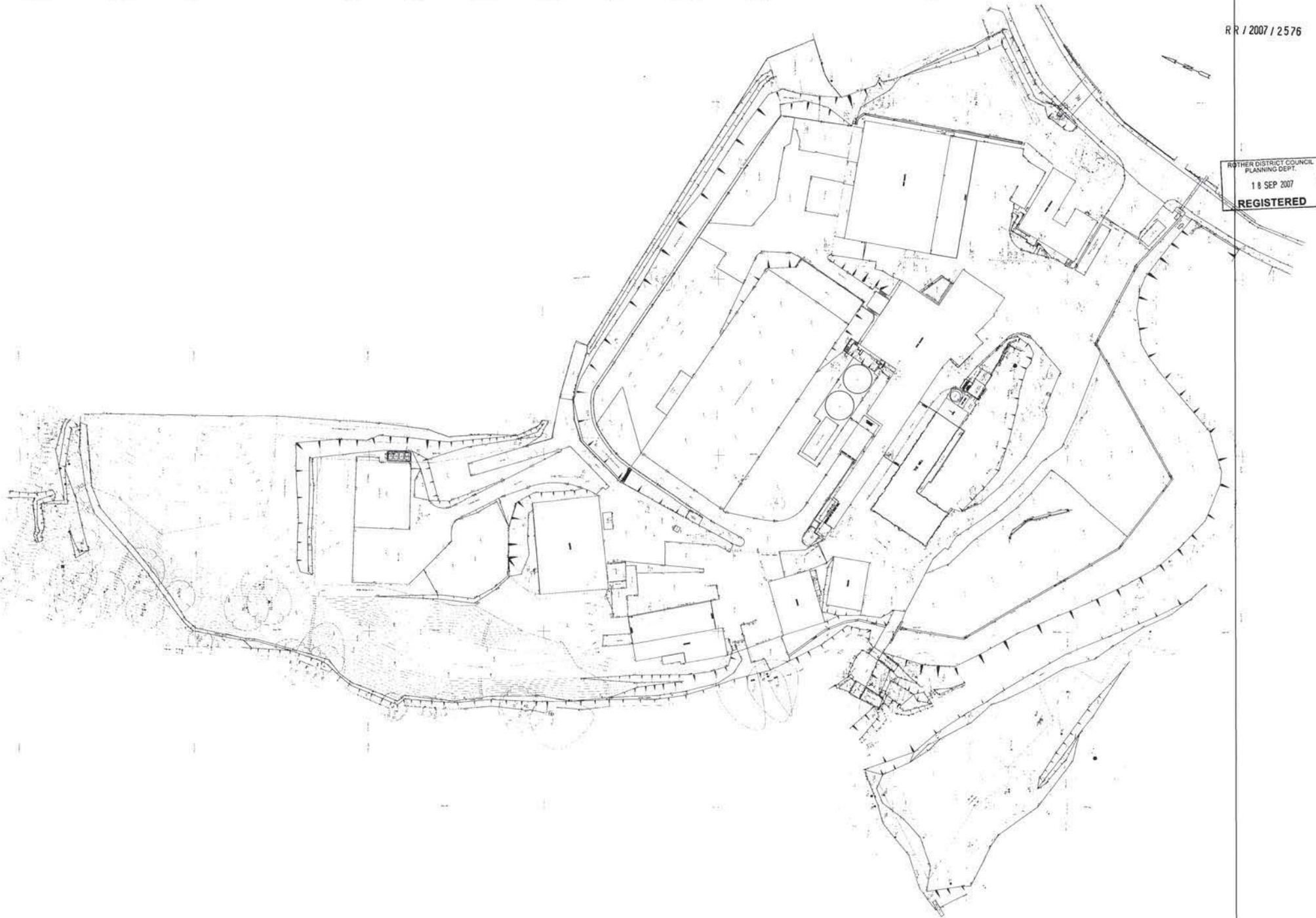


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REV. DATE	REVISIONS	REV. DATE	REVISIONS	REV. DATE	REVISIONS

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CLIENT:	Prem Rooster	PROJECT:	Northbridge Street Robertsbridge
SCALE:	1:500 (A1 ORIGINAL)	DRAWING:	Site Survey
DRAWN:	Aworth		
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Appendix 3

Proposed Site Layout Plan of 2017 Application (RR/2017/382/P)

Appendix 4

Flood Risk Sequential Assessment and Exception Test (June 2017)

**FLOOD RISK SEQUENTIAL ASSESSMENT
AND EXCEPTION TEST**

HODSON'S MILL LIMITED

**IN SUPPORT OF
PLANNING APPLICATION AT
HODSON'S MILL, ROBERTSBRIDGE**

JUNE 2017

Contents

1. Introduction
2. Site and Surroundings
3. Flood Risk Status of Site
4. Development Proposal
5. Planning Policy Context
6. Scope of Sequential Assessment
7. Assessment of Sites
8. Exception Test
9. Conclusions

Appendices

1. Site Location Plan
2. EA Consultation Response 19th June 2017
3. Wyre Council Sequential Assessment and Exception Test Guide (May 2015)
4. Sequential Site Plans
5. Sequential Assessment Tables

1 INTRODUCTION

- 1.1 This Statement is prepared by Hodson's Mill Limited ('the Applicant'), and is submitted in support of proposals for a full planning application and listed building consent at Hodson's Mill, Northbridge Street, Robertsbridge ('the Site', as delineated on the location plan attached at **Appendix 1**).
- 1.2 Planning permission is sought for a residential-led mixed use scheme to enable the sustainable mixed use regeneration of the Site. The scheme will comprise the following:
- 98 no. residential dwellings (Use Class C3);
 - Non-residential commercial floorspace 1,200 sqm (Use Class B1 and A3);
 - Open space, strategic landscaping and other green infrastructure; and
 - Other associated road and drainage infrastructure.
- 1.3 The purpose of this report is to demonstrate that the Sequential and Exception test has been correctly applied in line with the NPPF's Flood Risk Practice Guidance and that the proposed development should be considered acceptable and supportable in these terms.
- 1.4 In terms of supporting documentation, please refer in particular to the submitted Flood Risk Assessment prepared by UNDA and relevant correspondence received from the Environment Agency on 21st April 2016 and 19th June 2017 (**Appendix 2**).

2. SITE AND SURROUNDINGS

SITE AND SURROUNDINGS

- 2.1 The Site extends to 4.38ha in size and is located to the north east of Robertsbridge in East Sussex. The Site is located approximately 0.6miles from Robertsbridge Railway Station, and is accessed from Northbridge Street which is situated immediately to the east.
- 2.2 The Site was formerly known as Mill Farm and comprised a large four storey brick building known as Hodson's Mill, which was built in the late eighteenth century, amongst a number of other industrial units. The site was latterly occupied by Grampian Country Food Group, for the production of chicken feed.
- 2.3 Production at the Site ceased in November 2004 (resulting in the loss of a total of 17 jobs) and almost all of the industrial buildings have since been removed.
- 2.4 The Site currently comprises the disused Hodson's Mill and listed Oast House industrial buildings together with extensive areas of hardstanding.
- 2.5 The undeveloped areas of the Site comprise grassland, scrub, hedgerow and scattered trees within the main building areas together with steeply sloping areas which are wooded. A mill pond is present in association with the former Hodson's Mill. There are no Tree Preservation Orders (TPOs) present on the Site.
- 2.6 The Site is situated to the north of Robertsbridge, lying almost entirely within the existing settlement boundary.
- 2.7 The ground levels vary considerably across the Site. It is relatively low lying adjacent to the River Rother and levels rise significantly at the northern section of the Site. A series of terraces have been cut into the valley slope to provide level platforms for previous buildings and areas of hardstanding.
- 2.8 The vehicular access to the Site is provided off Northbridge Street and lies at the south eastern edge of the Site opposite Salisbury House. A public footpath also enters the Site at this point, and extends through the landholding.
- 2.9 To the north of the Site is open agricultural land and woodland, while residential dwellings on Northbridge Street lie to the east and north east, including a number of listed buildings. To the south the Site is bounded by the River Rother and to the west is the Mill Race. Beyond the River Rother are flood meadows.

3. FLOOD RISK STATUS OF SITE

- 3.1 The site is located partially within Flood Zone 3 (High Probability), Flood Zone 2 (Medium Probability), and Flood Zone 1 (Low Probability). The risk would appear to be predominantly fluvial, and originates from the River Rother and Mill Race.
- 3.2 However, taking into account the local flood defences between the River Rother, the Mill Race and the site, the risk is significantly reduced.
- 3.3 As the Site is defended to at least the 1:75 year level, the Site does not fall within Functional Floodplain, and as agreed with the EA (see at Appendix E of the FRA), the FRA has been informed by the 1:100 year plus 20% increased flows climate changes allowances, which advises that:
- The layout of the Site has been designed to ensure that that the majority of residential uses and the proposed under croft car parking are situated outside the modelled 1:100 year flood extent with allowance for climate change.
 - In line with EA guidance, all residential floors will be set at least 600mm above the modelled 1:100 year flood level allowance with climate change, with a finished floor level of 12.69mAOD and all sleeping accommodation at least 12.99mAOD.
 - A number of flood resistant design measures, in consultation with Rother DC's building control department, could include inter alia, solid concrete ground floor slab, with waterproof membrane, boilers, control and water storage/immersion installed at first floor level or above, and non-use of MDF carpentry.
 - A formal flood warning and evacuation plan will be prepared and agreed with the Rother DC's Emergency Planner, and to be tied with emergency plans for the local area. An existing public footpath to the north of the Site however is also provided for emergency pedestrian access, outside the modelled flood extent.
 - There will be a net gain in flood storage of 296m³ on Site post-development (as detailed within the Flood Risk Assessment prepared by UNDA and submitted as part of the planning application). This is achieved primarily through the net lowering of land levels within the site.
- 3.4 The Flood Risk Assessment concludes that there will be no adverse flood risk impacts within the locality, subject to the development complying with the proposed mitigation measures and design recommendations.
- 3.5 The plan below shows the Environment Agencies Flood Map for Planning (Rivers and Seas) with dark and light blue indicating Flood Zones 3 and 2 respectively.

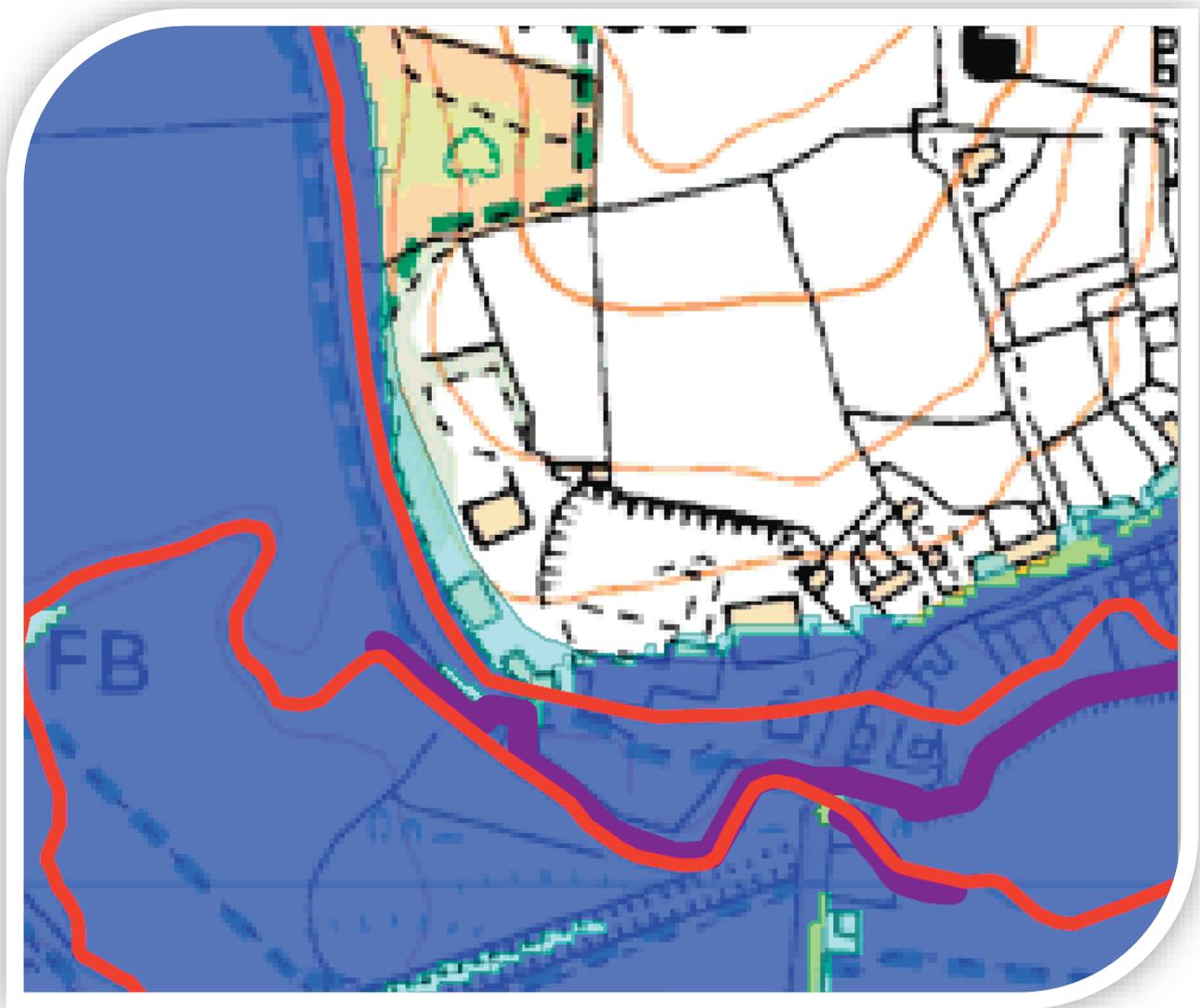


Figure 1 - Environment Agencies Flood Map for Planning

4. THE PROPOSAL

4.1 This application seeks full planning permission and listed building consent for a residential-led, mixed use scheme and associated open space and infrastructure as follows:

- 98 no. residential dwellings (Use Class C3);
- Non-residential commercial floorspace 1,200 sqm (Use Class B1 and A3);
- Open space, strategic landscaping and other green infrastructure; and
- Other associated road and drainage infrastructure.

Residential Uses

4.2 The proposed 98 no. residential dwellings will include a mix of unit types (flats, semi/detached), comprising market, affordable and retirement housing (Use Class C3).

4.3 The following mix of dwellings is provided, as appropriate to the Site and its context:

No of Beds	No of Units	% Total
1 bed units	24	25%
2 bed units	20	21%
3 bed houses	25	25%
4 bed houses	25	25%
5 bed houses	4	4%

Table 1. Overall Proposed Housing Mix

4.4 Within the Mill building and its extension, 28no. retirement flats comprising 12no. 2bed and 16no. 1 bed are proposed. The remaining flatted development is proposed at Ockham Court (4no. 2bed flats) and Rother Court (4no. 1 bed flats).

4.5 The remainder of the proposed housing comprises 54no. detached and semi-detached houses of varying domestic height (2 to 3 storeys) and format with on-site parking/garages.

4.6 The Design and Access Statement, prepared by add architects, describes the proposals in further detail.

Non Residential Uses

- 4.7 A total of 1,200 sqm of commercial floorspace is proposed as follows to provide additional employment related benefit to the local community in response to Rother DC Officers' feedback:
- Hodson's Mill - to be retained, refurbished and converted with new extension to provide 280 sqm A3 floorspace at ground floor level.
 - Wealden Hall House – newly constructed 'Wealden Hall House' style building to provide 520 sqm B1 office floor space.
 - Oast House – to be repaired and refurbished to provide 400 sqm B1 office floor space.
- 4.8 The redevelopment of the Site has been informed extensive pre-application discussions with Rother DC Officers and statutory consultees including the EA, Historic England and Salehurst and Robertsbridge Parish Council, as well as local residents.
- 4.9 Key design considerations include:
- The existing landmark buildings, including the Mill building and Oast House that were closely associated with Robertsbridge's industrial heritage and are to be restored and brought back into use for commercial/residential purposes.
 - The Site's physical characteristics, typography and wider location within the High Weald Area of Outstanding Natural Beauty and from being partially situated within Northbridge Street and Robertsbridge Conservation Area.
 - The need to provide for commercial employment space (Use Class B1).
- 4.10 The proposed development will result in a residential density of 22 dwellings per hectare.
- 4.11 Respecting the existing retained buildings on Site and taking into account the topography, higher density development is proposed behind the Mill building on the main plateau, and lower density moving away from the Mill building, towards the open countryside.
- 4.12 Most importantly, the majority of new residential development (given its classification as a more vulnerable use) has been located within the area of the site classified as low flood risk (Zone 1) following pre-application discussions with the Environment Agency (EA).

5. PLANNING POLICY

5.1 This section provides a summary of relevant policy as set out by the Government within existing policy guidance, as well as the Development Plan.

NATIONAL POLICY

5.2 Relevant central government policy is contained within the National Planning Policy Framework (NPPF), published in March 2012.

5.3 This document replaces the Government's previous planning guidance of flood risk set out in PPS25 – Development and Flood Risk. The NPPF also advises that all existing local planning policies should be read in conjunction with the Framework. Where there is a conflict between existing planning policies and the Framework the weight that should be applied to existing policies in the decision making process should be reduced (paragraph 215).

5.4 The NPPF confirms that the aim of the Sequential Test is to steer new development to areas with the lowest risk of flooding. Developments should not be permitted if there are reasonable alternative sites available for the proposed development in areas with a lower probability of flooding. A sequential approach should be used in areas known to be at risk of any form of flooding.

5.5 If, following application of the Sequential Test, it is not possible or consistent with wider sustainability objectives for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate. For the Exception Test to be passed:

- It must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a Strategic Flood Risk Assessment where one has been prepared; and
- A site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

5.6 Both elements of the test will have to be passed for development to be allocated or permitted.

TECHNICAL GUIDANCE

5.7 The Technical Guidance to the Framework provides further guidance on the use of the Sequential and Exception Tests. It is the confirmed aim of the Sequential Test to steer the development to areas with the lowest probability of flooding. The EA Strategic Flood Risk Assessment and the EA Flood Maps for Planning should be the starting point for the sequential test.

5.8 Flood Zones 2 and 3 are shown on the EA Flood Maps, with Zone 1 being all land falling outside of Zones 2 and 3. Developments should be directed towards the zones with the lowest floor risk where possible. Where there are no reasonable available sites in Flood Zone 1, local planning authorities when allocating land in Local Plans or determining planning applications for development at any particular location, should take into account the flood risk vulnerability of

land uses as set out in Table 2 of the Framework's Technical Guidance and consider reasonably available sites in Flood Zone 2 applying the exceptions test if required. Only where there are no reasonably available sites in Flood Zone 1 or 2 should the sustainability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the exceptions test if required.

- 5.9 Table 1 – Flood Zones, of the technical guidance confirms the types of development that are appropriate within each Flood Zone. There are no restrictions on the types of land uses appropriate within Flood Zone 1. In Flood Zone 2, it is advised that 'essential infrastructure', 'water compatible developments', 'less vulnerable' and 'more vulnerable' uses are appropriate. 'Highly vulnerable' uses are only appropriate in Zone 2 if the Exceptions Test is passed. In Flood Zone 3a 'water compatible' and 'less vulnerable' uses are appropriate. 'More vulnerable uses' should only be permitted if the exception test is passed.
- 5.10 Flood Risk Vulnerability Classification, confirms that residential development is a 'more vulnerable use'. Residential development on the Application Site is, therefore, only appropriate subject to the Sequential Test and Exception Test being passed.

LOCAL POLICY

- 5.11 Policy EN7 (Flood Risk and Development) of the adopted Rother Core Strategy advises flood risk will be taken into account at all stages in the planning process to avoid inappropriate development in areas at current or future risk from flooding, and to direct development away from areas of highest risk.
- 5.12 Development will be permitted providing the following criteria are met:
- Where development is proposed in an area identified as at flood risk, the applicant will be required to submit a site-specific Flood Risk Assessment which demonstrates that the development will be safe, will not increase flood risk elsewhere, and, where possible, will reduce flooding;
 - When development is, exceptionally, acceptable in flood risk areas, consideration is paid to the layout and form of development to minimise flood risk;
 - Drainage systems and sustainable drainage systems for all new development are in accordance with the Flood and Water Management Act 2010;
 - Where it is appropriate, contributions will be sought for improvements to infrastructure to mitigate against flood risk.

- 5.13 The amplification to Policy EN7 (at paragraph 17.63) explains that:

*"Where new development is, exceptionally, necessary in flood-risk areas, it must be made safe, without increasing flood risk elsewhere and, where possible, reducing flood risk overall in line with the 'sequential test' outlined in the PPG. **This may, exceptionally, include development on previously-developed land within areas vulnerable to flood risk, which is important to the economic or social needs of the community.** In any event, all*

development in flood risk areas should be appropriately flood resilient and resistant, and demonstrate that any residual risk can be safely managed.”

SUMMARY

- 5.14 Relevant policy set out at national and local level confirms that more vulnerable uses such as residential can be considered acceptable in areas of higher flood risk (namely Zones 2 and 3) provided that the scheme is demonstrated to comply with the sequential assessment and exception test.
- 5.15 Accordingly, the adopted Core Strategy confirms that development on brownfield sites vulnerable to flood risk may be considered acceptable on the basis that development would be important to the economic or social needs of the community.

6 SCOPE OF SEQUENTIAL ASSESSMENT

AREA OF SEARCH

- 6.1 On the basis that the site represents one of the three preferred draft housing allocations within the emerging Robertsbridge and Salehurst Neighbourhood Plan (and the largest in terms of potential yield) the proposed area of search for sequentially preferable sites is focussed upon the settlements of Robertsbridge and Salehurst.

SIZE OF SITES TO BE ASSESSED

- 6.2 The proposed development comprises a major residential led mixed-use regeneration scheme, which is inappropriate to disaggregate.
- 6.3 Put simply, if the number of units currently situated within Flood Zones 2 or 3 were to be removed from the wider scheme, this would result in the scheme being unviable and would prevent the wider site from being brought forwards for redevelopment (with its associated range of significant planning benefits covered in detail at paragraph 7.3).
- 6.4 Accordingly, we consider that it is appropriate to assess sites capable of accommodating the proposed redevelopment proposal (allowing for appropriate flexibility in terms of site area). We will not assess any sites that fall within Flood Zone 3a or 3b.
- 6.5 This is in accordance with advice set out within the Planning Practice Guidance for applying the Sequential Test to individual developments, which states that *“a pragmatic approach on the availability of alternatives should be taken”*.
- 6.6 The Guidance also confirms that there will be instances where the disaggregation of sites will not be appropriate, stating that *“for example, in considering planning applications for extensions to existing business premises, it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere”*.
- 6.7 Whilst Rother DC has not published any guidance on the individual application of Sequential Assessments and the Exception Test, other local authorities have chosen to do so in order to provide additional assistance for applicants. An example is Wyre Council who published the document *“Flood Risk Sequential Test: Advice for Applicants”* in May 2015.
- 6.8 This document (copy attached at **Appendix 3**) confirms on page 3 that:
- “In some cases the “red-edge” boundary of a proposed development may fall across Flood Zone 1 and Flood Zones 2 or 3. Where this is the case, the application of the sequential test will depend on the nature and layout of the development proposed. In such cases, where “hard” development is proposed to be located in Flood Zone 2 or 3, then the normal approach is that the **whole site** would be subject to the sequential test”*.
- 6.9 Clearly, whilst this guidance relates to a different local authority, it is a useful comparable and demonstrates that our approach to identifying the size of sites is reasonable and appropriate.

IDENTIFICATION OF SITES

6.9 Sites will be identified through the following means:

- A review of the emerging Neighbourhood Plan,
- A review of the Council's Strategic Housing Land Availability Assessment and
- A review of the adopted Development Plan.

6.10 We enclose at **Appendix 4**, plans which delineate 3 sites which are of a broadly comparable size, which are located in Flood Zones 1 or 2 in Robertsbridge and Salehurst. These sites have been identified from one or both, of the above sources.

6.11 For the purposes of the sequential test exercise, only these sites will be reviewed. We trust that you agree that there are no further sites which should be assessed as part of the sequential test exercise. However, should this not be the case, we would ask you to provide details of any further sites for our consideration.

CRITERIA FOR DISCOUNTING SEQUENTIALLY PREFERABLE SITES

6.12 In assessing sites in lower flood risk zones, we propose to discount sites when assessed against the following criteria, namely:

- If the site is greenfield;
- If the site is the subject of a current planning application or planning permission for a development which does not accord with the proposed redevelopment;
- If there are ecological constraints which would preclude the comprehensive redevelopment of the site;
- Inappropriate neighbouring uses which would warrant the redevelopment of the site for the proposed mix of uses unacceptable;
- A Development Plan allocation for uses which do not accord with the proposed redevelopment mix of uses, or an emerging allocation/policy framework e.g. Neighbourhood Plan;
- Access constraints;
- Topographical constraints, such as an severely undulating topography, which could preclude the successful redevelopment of the site;
- The presence of Conservation Area or listed building constraints which could preclude the redevelopment of the site;
- A site configuration which would render the site unsuitable for the proposed redevelopment scheme e.g. a very narrow strip of land; and

- Any other unique site-specific considerations that could warrant the site unsuitable.

REPORTING STRUCTURE

- 6.13 The results of the sequential test exercise are presented in a tabulated format at **Appendix 5** clearly identifying the subject site, its site area and a commentary explaining why the site has been discounted, as appropriate.

7 EXCEPTION TEST

- 7.1 The NPPF states that if following application of the Sequential Test, it is not possible or consistent with wider sustainability objectives for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate.
- 7.2 For the Exception Test to be passed, it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, and a site-specific flood risk assessment must demonstrate that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.
- 7.3 We have therefore considered whether the proposed development passes the Exception Test. The principal reasons why we consider it does are set out below:
- The scheme proposes a mixed use residential-led development that is reflective of evolving market demand. It will enable the regeneration of an underutilised brownfield asset that has remained vacant since 2004;
 - The proposed development accords with the prevailing planning policy in terms of the NPPF (not least due to its sustainable credentials), the Development Plan and the emerging Salehurst and Robertsbridge Neighbourhood Plan;
 - In particular, the emerging Neighbourhood Plan represents the key local policy document for Robertsbridge and identifies the Mill site as the preferred location to accommodate major residential development within Robertsbridge (circa 100 dwellings);
 - The proposed development will provide a high quality, attractive residential-led mixed use scheme environment, that responds to the site's history and surrounding context and enables the historic Mill and Oast House buildings to be restored and brought back into beneficial use;
 - The Site represents a sustainable location for housing development which will make a significant contribution towards addressing Rother's existing shortfall in its housing land supply;
 - The proposal, if consented, will secure economic development and growth. It will lead to the creation of new employment opportunities that would significantly exceed the number of jobs generated by the site when it was last occupied in 2004.
- 7.4 Aside from the above reasons, the scheme has evolved as a result of discussions with the Environment Agency to ensure the majority of the development is confined to Flood Zone 1 only.
- 7.5 The submitted Flood Risk Assessment is site-specific and demonstrates that the development will be safe for its lifetime as a residential development without increasing flood risk elsewhere.

8 CONCLUSION

8.1 The site is located partially within Flood Zone 3 (High Probability), Flood Zone 2 (Medium Probability), and Flood Zone 1 (Low Probability).

8.2 As an element of the proposed development falls within Flood Zone 3, a Sequential Assessment has been undertaken in accordance with the NPPF and its accompanying practice guidance.

8.3 A total of three sites were identified for assessment. All three were discounted as not representing reasonably available or suitable sites for development on the following grounds:

Bishop's Lane

8.4 The site is greenfield, situated outside of the settlement boundary and too small to accommodate the scale of development proposed.

Heathfield Gardens

8.5 The site is greenfield, situated outside of the settlement boundary and too small to accommodate the scale of development proposed.

Grove Farm

8.6 Even if Phase 1 and 2 were brought forward together, the site would still not be large enough to accommodate the scale of development proposed at the Mill Site. Both sites are greenfield and Phase 2 is situated wholly outside of the existing settlement boundary within open countryside.

8.7 Whilst Phase 1 benefits from a historical allocation for circa 30 residential units, this is subject to strict design criteria and is not reflective of recent assessment work undertaken in preparation of the Neighbourhood Plan, which concludes that Grove Farm is not a suitable option for residential development.

8.8 On the basis of the above information, we assert that there are no sequentially preferable sites to accommodate the proposed development.

8.9 As such, we have applied the Exception Test in accordance with the NPPF and accompanying guidance. The proposed development will generate wide-ranging sustainability benefits and will be delivered in a manner which will not result in an increased flood risk either on or off-site.

8.10 Accordingly, the proposed scheme passes the Sequential and Exception tests. There is no reason why the application should be refused in these terms.

APPENDIX 1



SITE LOCATION PLAN

Hodsons Mill
 Northbridge Street
 ROBERTSBRIDGE TN32 5NY



Scale @ A4 : 1:1250

Plan No. : 477/58/1_SLP01

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APPENDIX 2



Wyre Council Flood Risk Sequential Test: Advice for Applicants

V1.1

May 2015

Introduction

As a coastal authority containing major water courses and a large low lying rural area, flood risk is a significant concern for Wyre's local communities and can act as a constraint to development.

National planning policy on managing flood risk is set in the first instance by the National Planning Policy Framework (NPPF) available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

This is supported by more detailed guidance in the form of National Planning Practice Guidance (NPPG) on Flood Risk and Coastal Change, available from <http://planningguidance.planningportal.gov.uk/blog/guidance/flood-risk-and-coastal-change/>

Both documents state that inappropriate development in areas of flooding should be avoided by directing development away from areas of highest risk through the application of the "sequential test". This requires local planning authorities to refuse new developments if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

In terms of the decision-making process, the sequential test is the first stage in addressing flood risk where this is an issue in the determination of a planning application. Both the NPPF and NPPG establish a two part exception test the aim of which is to ensure that wider sustainability benefits and the safety of users of a development are taken into account in the decision-making process.

Potential applicants are urged to satisfy themselves that their proposals are capable of passing **both the sequential and exception** tests before submitting an application. The Council will refuse applications that fail the sequential test even where the exception test has been passed.

This Advice for Applicants explains how the Council will apply the sequential test. It will be treated by the Council as a material consideration in the determination of planning applications. Applicants may also wish to consult the on-line advice provided by the Environment Agency which this Guidance reflects – see <https://www.gov.uk/flood-risk-assessment-the-sequential-test-for-applicants>

What is "flood risk"?

For the purposes of applying the sequential test, the definition of "flood risk" is taken from the NPPG and refers to:

*A combination of the probability and the potential consequences of flooding from **all sources** – including from rivers and the sea, directly from rainfall on the ground surface and rising groundwater, overwhelmed sewers and drainage systems, and from reservoirs, canals and lakes and other artificial sources.*

The Environment Agency (EA) provides mapping of flood risk arising from sea and river sources, available at: <http://watermaps.environment-agency.gov.uk/wiyby/wiyby.aspx?topic=floodmap#x=357683&y=355134&scale=2>

This mapping does **not** take into account the presence of flood defences nor does it account for the potential impact of climate change, including sea-level rise and extreme weather events.

Flood risk is mapped according to the probability of flooding which is expressed in three “Flood Zones”:

Flood Zone	Definition
Zone 1 Low Probability	Land having a less than 1 in 1,000 annual probability of river or sea flooding. (Shown as ‘clear’ on the Flood Map – all land outside Zones 2 and 3)
Zone 2 Medium Probability	Land having between a 1 in 100 and 1 in 1,000 annual probability of river flooding; or Land having between a 1 in 200 and 1 in 1,000 annual probability of sea flooding. (Land shown in light blue on the Flood Map)
Zone 3a High Probability	Land having a 1 in 100 or greater annual probability of river flooding; or Land having a 1 in 200 or greater annual probability of sea flooding. (Land shown in dark blue on the Flood Map)
Zone 3b The Functional Floodplain	This zone comprises land where water has to flow or be stored in times of flood. (Not separately distinguished from Zone 3a on the Flood Map)

Planning applications within Flood Zones 2 and 3 (a and b) **MUST** always address the sequential test in line with the approach set out by government policy as elaborated upon in this guidance note.

It is important to note that where a development proposal falls within Flood Zone 1, in some circumstances the sequential test (plus the exception test) may still need to be addressed, for example where there are other sources of flooding (as defined above) within the site.

In some cases the “red-edge” boundary of a proposed development may fall across Flood Zone 1 and Flood Zones 2 or 3. Where this is the case, the application of the sequential test will depend on the nature and layout of the development proposed. In such cases, where “hard” development is proposed to be located in Flood Zone 2 or 3, then the normal approach is that the **whole** site would be subject to the sequential test. Where an outline application is submitted for a site that includes Flood Zone 1 and zones 2 or 3, the Council will expect an applicant to submit sufficient detail, for example through a site layout, to allow a judgement to be made on the need for a sequential test.

However, where it is proposed to locate “hard” development in the part of the site in Flood Zone 1 only, and assuming there are no other flood risk issues, then the sequential test would not be required.

Are there exceptions to this rule?

The NPPF allows for “minor development” to be excepted from the need for a sequential test. The NPPG defines minor development as:

- **Minor non-residential extensions:** industrial/commercial/leisure etc. extensions with a footprint less than 250 square metres.
- **Alterations:** development that does not increase the size of buildings e.g. alterations to external appearance.
- **Householder development:** For example; sheds, garages, games rooms etc. within the curtilage of the existing dwelling, in addition to physical extensions to the existing dwelling itself. This definition excludes any proposed development that would create a separate dwelling within the curtilage of the existing dwelling e.g. subdivision of houses into flats.

The sequential test does not apply to changes of use **except** for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site.

If you have any doubt as to whether or not your proposal falls within this definition, you are strongly advised to contact the Development Management team at Wyre Council for clarification. This will save you the possibility of incurring additional or unforeseen cost and delay should you submit a planning application for a development which is subsequently judged to fall outside of the definition of “minor”, without addressing the sequential test.

Vulnerability

The NPPG identifies some uses as so vulnerable that they should not be permitted within Flood Zone 3. Applicants should ensure that their proposals do not involve these uses before undertaking the sequential test.

Mixed –Use Schemes

The sequential test for schemes for more than one use will be dealt with on a case-by-case basis. In doing so, the Council will consider:

1. Whether or not the proposal includes “minor development” as defined above or a change of use; and
2. Whether or not the proposed uses must sit together on the same site or whether or not they should be disaggregated for the purposes of identifying alternative sites.

Who is responsible for the Sequential Test?

The onus is on the applicant to demonstrate that the sequential test can be passed. The applicant’s responsibility is not limited by lack of information held by the Council.

It is for the Council to consider the extent to which sequential test considerations have been satisfied.

What does the Sequential Test involve?

In applying the sequential test, the NPPG establishes the following principles:

1. The geographical area across which the sequential test should be applied will be defined by local circumstances relating to the catchment area for the type of development proposed.
2. Where there are large areas in Flood Zones 2 and 3 **and** development is needed in those areas to **sustain** the existing community, sites outside them are unlikely to provide reasonable alternatives.
3. When applying the sequential test, a pragmatic approach to the **availability** of alternatives sites should be taken.

There are three basic elements to applying the sequential test in Wyre:

1. The geographical area across which the test is applied.
2. The range of alternative sites to be considered.
3. The definition of “reasonably available”.

The geographical area

For developments that have a sub-regional, regional or national significance, the sequential test area of search will include the whole Borough and areas outside of the borough boundary in line with the catchment area for the development.

For **all other** applications the normal area of search is the **whole borough**.

Any departure from a “whole-borough” approach which seeks to apply a reduced geographical area in the search for alternative sites must be clearly and rigorously justified by reference to one or more of the following:

1. Evidence that there is a specific need for the proposed development in that locality;
2. Evidence that the proposed development is needed to sustain an existing community which is wholly or largely identified as lying within Flood Zone 2 or 3, or is otherwise subject to flood risk. This may include reference to Census figures and population decline or to surveys of the take-up of local services/ facilities; or
3. The functional requirements of the proposed development as a whole or in part;
4. For affordable housing, the Rural Housing Needs Survey (2010) http://www.wyre.gov.uk/info/200318/evidence_base/824/rural_housing_needs_assessment which provides an assessment of need based on a parish by parish basis, and the 2014 Strategic Housing Market Assessment (SHMA). http://www.wyre.gov.uk/info/200318/evidence_base/825/fylde_coast_strategic_housing_market_assessment

It is strongly recommended that applicants agree the geographical area to which the sequential test applies with the Council before submitting a planning application. In relation to (1) above, for the avoidance of doubt, the 2012 Core Strategy Preferred Options document does not constitute an up-to-date expression of the future distribution of housing or other development requirements and carries very little weight in this matter. The Council views residential development **of all sizes** as a strategic matter which will normally be considered on a whole-borough basis.

In all cases where a reduced area of search is accepted by the Council, the remaining elements of the sequential test need to be addressed and, if possible, agreed with the Council.

The range of alternative sites to be considered (comparator sites)

In order for applicants and the Council to be able to consider whether or not there are reasonably available alternative sites appropriate for a proposed development, comparator sites need to be identified and their availability assessed.

It is strongly recommended that prior to the sequential test being undertaken applicants agree with the Council a reasonable comparator site threshold.

For residential schemes, this may be based on site **area or capacity**. The Council will normally apply a +/-10% buffer to create a range within which comparator sites can be identified. For example, if site capacity is used as the basis for determining comparability, a residential scheme of 20 dwellings would generate a comparator site threshold of 18-22 dwellings.

On the same basis, a scheme on 0.6ha of land would generate a comparator site threshold of 0.54ha to 0.66ha. The method used will depend on the circumstances of the site and proposal. For higher density developments, for instance flats, the size threshold should normally be used. For lower density developments, for instance large detached houses, the site capacity should normally be used. For residential development, in some cases, the Council may wish to apply *both* site capacity and site size parameters.

For non-residential schemes, the Council will make a case-by-case judgement, having regard to the site area and type and scale of development proposed.

In all cases, the Council will consider whether or not the site size agreed should represent the net or gross developable area of the proposed scheme.

Comparator sites should be capable of accommodating the general objective of the proposed development (for example, the provision of housing) within the agreed thresholds **but not necessarily the form or layout**.

Where the Council considers that a comparator site is sequentially preferable, this does not necessarily imply that a planning permission for the development in question would be forthcoming on that site.

Applicants can use the following sources to identify comparator sites:

- The Saved Policies of the Wyre Local Plan, available at:
http://www.wyre.gov.uk/downloads/file/347/resaved_policies_of_the_wyre_borough_adopted_local_plan
- The Fleetwood-Thornton Area Action Plan, available at:
http://www.wyre.gov.uk/info/200320/current_planning_policies/424/fleetwood_thornton_area_action_plan
- Employment Land Monitoring Report, available at:
http://www.wyre.gov.uk/info/200318/evidence_base
- The 2010 Strategic Housing Land Availability Assessment (SHLAA), available at:
http://www.wyre.gov.uk/info/200318/evidence_base
- Housing land monitoring information. To assist applicants with the identification of potential reasonably available alternative sites, the Council has published a list of sites with planning permission as of May 2015. To make it more accessible the list has been separately sorted by size and by capacity and is available at:
 - Housing sites at 12 05 15 BY CAPACITY
http://www.wyre.gov.uk/downloads/file/3084/housing_sites_at_12_05_15_by_capacity
 - Housing sites at 12 05 15 BY SIZE
http://www.wyre.gov.uk/downloads/file/3085/housing_sites_at_12_05_15_by_size

Applicants will not normally need to consider undecided planning applications for the purposes of identifying comparator sites.

Please note that in all cases, up-to-date Environment Agency mapping of flood risk should be used to identify the potential flood risk associated with comparator sites.

To ensure a comprehensive approach is taken to the identification of comparable sites, applicants will normally be required to consult professional property agents with demonstrable knowledge and understanding of the local land and property market in Wyre. It is recommended that a minimum of three agents who individually or collectively cover the agreed area of search are used. Where this is not possible, the applicant should evidence that the number of agents used provides appropriate coverage of the agreed area of search and provides a comprehensive view of the market in question. In any event, applicants should provide written evidence (for example e-mails or letters that include company and contact details) detailing the nature and outcome of the contact with agents. The Council will not accept the use of web-based search engines or web-only site searches as the sole means of meeting this requirement.

In some cases, it may be necessary for the applicant to undertake a bespoke survey of potentially available land within the agreed parameters of the Sequential Test.

The definition of “reasonably available”

In accordance with national planning policy, in order for development to pass the sequential test it has to be demonstrated that there are no **reasonably available** alternative sites appropriate for the proposed development located in areas with a lower risk of flooding.

The Council views reasonably available sites as those that are deliverable and developable (as defined by the NPPF, para. 47 and footnotes 11 and 12) for the uses proposed and:

1. Lie within the agreed area of search; *and*
2. Are within the agreed comparator site threshold; and
3. Can accommodate the general requirements of the development; *and*
4. Are, in principle, in conformity with the objectives and policies of the Adopted Development Plan **and** the objectives and policies of the National Planning Policy Framework and its associated National Planning Practice Guidance (or similar), including those relating to flood risk and relevant aspects of climate change, where they offer more up-to-date guidance.

The Council would normally accept that a site is not reasonably available if:

1. It contains an existing operational or business use unless a planning approval for development proposes to extinguish that use; or
2. It has a valid planning permission for development of a similar type and scale which is likely to be implemented.

Evidence that a planning permission is likely to be implemented can include:

1. The discharge of conditions (or the submission of an application to discharge conditions); or
2. Indication from the landowner(s), applicant or developer that a development is being brought forward: or
3. The approval of reserved matters (or an application for reserved matters).

Where contact has been made with a landowner under (2) above, applicants should detail the nature and timing of this contact and where possible provide the name of the owner in question. If a landowner is unwilling to make the site available for the use in question, then written evidence of this should be provided where possible. The Council reserve the right to adopt due diligence in such cases and may contact landowners to verify site availability.

Applicants are advised to submit as much detail as possible on the search for alternative sites to avoid delays in the planning process. The following information should be submitted as a matter of course:

- A map and statement identifying and justifying the area of search;
- A map of all sites considered; and

- A statement detailing known relevant information on each site. This may include matters such as size, ownership and constraints. This may be presented in tabular format with a statement outlining the conclusions.

Statements on the non-availability or unsuitability of a comparator site for whatever reason, including the presence of constraints or viability issues, will need to be justified and evidenced in writing.

Applicants are reminded that this is **not** a test of relative sustainability between different sites. The fact that a comparator site is considered to be less sustainable by reference to factors such as location and proximity to local services, is **not in itself** a justification for supporting the development of a site in an area at risk of flooding. It is clear from the National Planning Policy Framework that avoiding development in areas at risk of flooding where possible and appropriate is itself an important aspect of sustainability. Evidence should be as comprehensive as possible where the presence of a constraint is being used to discount a site from the search process. Where possible a photographic record of any constraints present should be provided. The Environment Agency provides guidance on the nature of constraints that may render a site unsuitable as a comparator site. These include:

- Physical problems or limitations;
- Potential impacts of development; and
- Environmental conditions that would be experienced by potential residents.

Local plan designations may also be a constraint to development.

The Council will take a proportionate and reasonable approach to the need for supporting evidence. However, it must be borne in mind that it is for the applicant to provide sufficient information to allow the Council to make a reasoned judgement as to whether or not the sequential test has been passed. The Council may refuse applications where this information is considered to be deficient.

The Test of Impracticality

As noted above, the NPPG states that when applying the sequential test a pragmatic approach to the availability of alternative sites should be taken. It gives an example of a planning application for an extension to an existing business premises and suggests that it **might be impractical to** suggest that there are more suitable alternative locations for that development elsewhere.

Not all development is stand alone or involves a cleared site. As the NPPG suggests, in some cases developments may involve an extension to an existing use. A development proposal may also involve the intensification or partial re-development (in whole or part) of an existing use.

In such circumstances, and particularly where the proposal involves an existing business premises or operation, it may well be impractical to identify comparator sites. Where possible, and by reference to appropriate evidence, this should be agreed with the Council prior to the submission of a planning application. Where the Council does agree that it is impractical to identify comparator sites, applicants should still address this issue under the

heading of “sequential test”, with appropriate evidence, such as a statement of operational circumstances, as part of the planning application. Even where it is accepted that the identification of alternative sites is impractical, applicants are reminded that consideration of the exception test may still apply.

Conversions, Changes of Use and Alterations

The NPPG states that the sequential test does not need to be applied to minor development or changes of use (except for a change of use to a caravan, camping or chalet site, or to a mobile home or park home site). Conversions are not specifically considered although the NPPG states that the creation of a separate dwelling within the curtilage of an existing dwelling – for instance the sub-division of a house into flats – **cannot** be considered “minor development”.

Given that the NPPG excludes changes of use from the need to undertake a sequential test, and given the need to allow flexibility within existing stock of dwellings and other buildings to allow their efficient and effective use, for the purposes of this guidance note conversions and changes of use **are exempt** from the need to undertake a sequential test. This exemption includes the sub-division of dwellings.

It should be noted that in applying this guidance the Council will have regard to the scale of any proposed alterations. The NPPG makes it clear that only alterations that do not increase the size of a building can be classed as “minor development”. However, householder development that consists of a physical extension is an exception to this general rule and falls within the definition of minor development.

Applications for residential development – the 5 year land supply position and the sequential test

NPPF Para 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply. However, the NPPF also specifically recognises that flood risk can be considered to be a constraint to development and therefore the approach to steer development away from flood risk areas in the NPPF still has considerable weight **even in the absence of a 5 year land supply**. Thus the Council will not accept a lack of five year supply as an argument for disregarding the need to address the sequential approach to development in an area of flood risk.

Further Advice

Pre-application advice on the applicability and conduct of the sequential test in relation to specific development proposals is available from Wyre Council Planning Department. The Council may charge for this service. Further details of the charges to be applied in relation to the flood risk sequential test are available from http://www.wyre.gov.uk/downloads/file/2864/flood_risk_sequential_test_charging_schedule

APPENDIX 3

Rother District Council
Development Control
Town Hall
London Road
Bexhill-on-Sea
East Sussex
TN39 3JX

Our ref: KT/2017/122684/01-L01
Your ref: RR/2017/382/P
Date: 19 June 2017

Dear Sir/Madam

**98 NO. RESIDENTIAL DWELLINGS (USE CLASS C3), NON-RESIDENTIAL FLOORSFACE COMPRISING 280 SQM (USE CLASS A3) AND 920 SQM (USE CLASS B1), AND ASSOCIATED ACCESS, CAR/CYCLE PARKING, OPEN AMENITY SPACE, STRATEGIC LANDSCAPING AND GREEN INFRASTRUCTURE AND RESTORATION WORKS TO THE MILL BUILDING AND OAST HOUSE.
HODSON'S MILL, NORTHBRIDGE STREET, SALEHURST/ROBERTSBRIDGE
TN32 5NY**

Thank you for consulting us on the above application and apologies for the delay in responding.

We **object** to this application in the absence of any evidence to demonstrate that the flood risk Sequential Test has been applied. We recommend that until then the application should not be determined for the following reasons.

Part of the application site lies within Flood Zone 3a defined by the Environment Agency Flood Map as having a high probability of flooding. Paragraph 101 of the National Planning Policy Framework requires decision-makers to steer new development to areas at the lowest probability of flooding by applying a 'Sequential Test'. In this instance no evidence has been provided to indicate that this test has been carried out. Although the site is defended to a standard of protection of 75 years (up to the 1.33% Annual Exceedance Probability (AEP) event), the residual risk from flooding during larger events is high with flood water depths in excess of 1m during the 100 year (1% AEP) event.

You can overcome our objection by providing evidence that the Sequential Test has been completed and demonstrates that there are no reasonably available alternative sites in areas with a lower probability of flooding that would be appropriate for the type of development proposed. Whilst we do not generally get involved with the details of the ST, given the low standard of protection on the site and the depths of flooding that could be experienced we do not feel we have seen the evidence required to demonstrate that the development, as proposed, passes the ST. If the LPA confirms that they are satisfied the ST has been passed, we would wish to be reconsulted to comment further on the detailed aspect of the design

NPPF requires developers to sequentially test a development site both in the context

of other available sites in lower flood risk areas and the site itself to ensure that the more vulnerable form of development is placed in the areas of lower risk. Whilst we accept that the conversion of the mill building is not subject to these tests, as the majority of the site lies within FZ1 we are disappointed to see that new residential units are to be placed in FZ3. The extension to the Mill Building, units 40 and 41 and Rother Court all lie within FZ3. Whilst the residential floor levels proposed are as previously agreed and are sufficiently above design flood level, we do not think the proposal as stands has followed the sequential approach. In a 1% AEP event residential units in FZ3 could potentially have depths of over 1m surrounding the buildings and flooding garages.

Access and Egress

The FRA confirms that living and sleeping accommodation will be set a minimum of 600mm and 900mm above the design flood level as agreed with us in pre-planning discussions. This aspect of the design is therefore acceptable. We are however concerned with the access and egress arrangements for the site. The Retirement Flats, Rother Court and units 40 and 41 all have their access in FZ3. NPPF Planning Practice Guidance states that access requirements should include voluntary and free movement of people during a design flood event (1% annual probability). It goes on to state that the acceptable flood depth for safe access will vary depending on flood velocities and the risk of debris within the flood water. Even low levels of flooding can pose a risk to people in situ (Para 39). Given the potential depth of flooding here it is clear that a flood event could pose a significant risk to the safety of people and property. There has been no attempt to assess the hazard posed by the depth of flooding in the FRA other than to confirm that it will not be possible to provide a safe escape route.

We have not specifically objected on the grounds of access and egress as it is your own Authority's decision as to whether the flood warning and evacuation plan is acceptable for the development as a whole. You may consider that the risk is manageable for the majority of the site that is above the flood level in FZ1. However, we do think this is a serious consideration for the new development proposed within FZ3. Ideally all of the residential 'More Vulnerable' element would be in FZ1, with the commercial 'Less Vulnerable' development being placed in FZ3. As a minimum we would wish to see an attempt to provide safe access for all new residential units (for example both the retirement flats and Rother Court are on the edge of FZ1 but the access has been placed within FZ3).

Main River and Flood Risk Activity Permits (FRAPs)

The submitted FRA hasn't specifically indicated what, if any, works will take place within 8m of Main Rivers both the River Rother and the Mill Lease. From the plans submitted it appears that the required 8m Byelaw margin has been left clear. Prior to any permission being granted we would want confirmation that our 8m Byelaw Margin (from the top of bank or toe of defence) will be kept clear. This is essential both for maintenance reasons and for potential improvements to the defences in the future. We will also need assurance that access to our control structure on the Mill Lease is fully maintained.

Applications for a FRAP will need to demonstrate

- There is no increase in flood risk either upstream or downstream
- Access to the main river network for maintenance and improvement is not prejudiced
- Works are carried out in such a way to avoid unnecessary environmental damage

Please Note:

If you are minded to approve the application contrary to our objection, we would be grateful if you could re-consult us as we have comments of interest regarding Groundwater Contaminated Land and Fisheries, Biodiversity & Geomorphology.

Yours faithfully

p.p. Randeep Dhanjal

Mrs Sophie Page
Planning Advisor

Direct dial 020 8474 8030

Direct e-mail sophie.page@environment-agency.gov.uk
-agency.gov.uk

APPENDIX 4

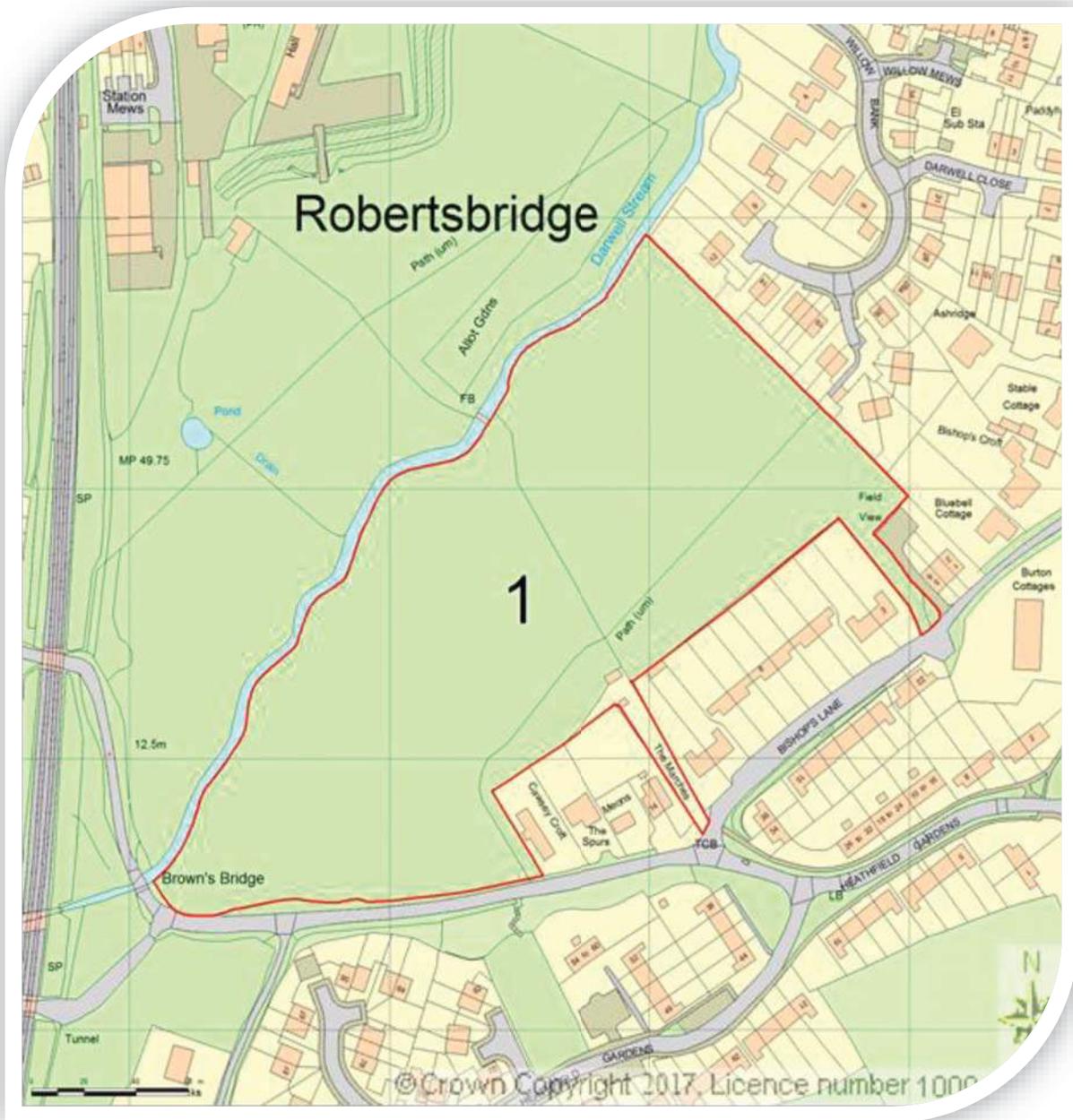


MIALEX

Innovative Planning Solutions

SITE 1 - BISHOP'S LANE

SCALE 1:2500 on A4

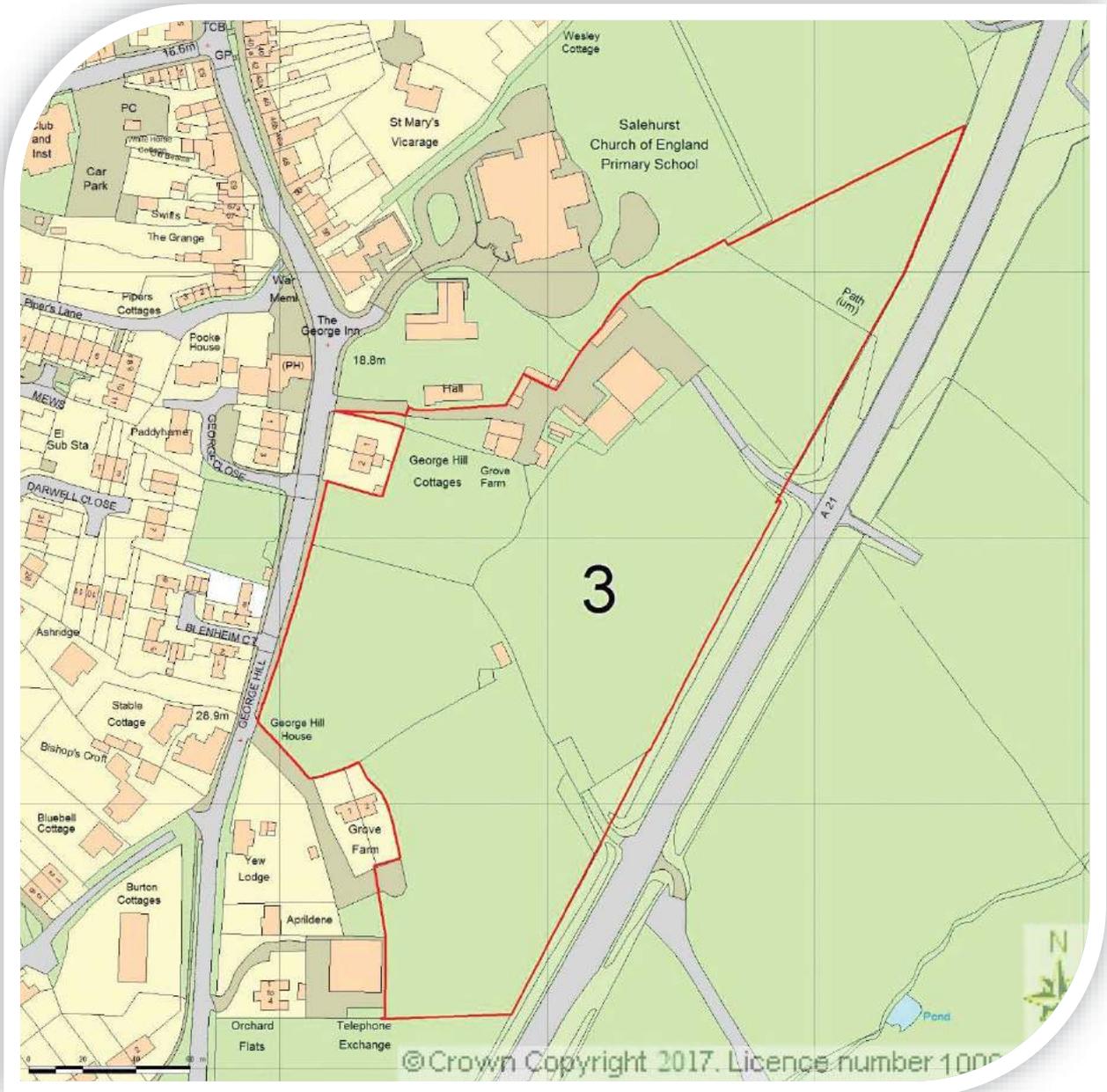


SITE 2 – HEATHFIELD GARDENS
SCALE 1:2500 on A4





SITE 3 – GROVE FARM
SCALE 1:2500 on A4



APPENDIX 5

Site Name	Area	Approximate Capacity	Flood Classification	Status of Site	Available	Overall Assessment
Bishop's Lane	3.1ha	50 dwellings	North/West boundary falls within Zone 3 but majority within Zone 1	Greenfield	No – Site is being promoted for residential development by the landowner and Devine Homes	<p>The site is not allocated within Rother's adopted Development Plan.</p> <p>It has been assessed and dismissed as an option for residential development within the emerging Neighbourhood Plan and has been designated as open green space (Ref GS16) on the basis that it comprises locally accessible meadows.</p> <p>The majority of the site falls within Flood Zone 1 but development is restricted to an extent to towards the northern and western boundaries which fall within Flood Zone 3.</p> <p>The site was assessed within Rother Council's 2013 SHLAA (Ref RB1) as not suitable to accommodate residential development. This was on the basis that development in this location would likely diminish the locally distinctive character of the village.</p> <p>Potential access could only be achieved following extensive highways works including appropriate road widening works to provide footway connection. Appropriateness of road widening and works at this point would impact on the area's rural character and tranquillity on a road defined by the High Weald AONB as a historic routeway.</p> <p>The site is not considered to represent a suitable or available option for development. As a greenfield site, it is clearly a less sustainable option and is not large enough to accommodate the scale of development proposed.</p>

Site Name	Area	Approximate Capacity	Flood Classification	Status of Site	Available	Overall Assessment
Heathfield Gardens	1.4ha	40 dwellings	Zone 1	Greenfield	No - land being promoted for development by landowner and other parties.	<p>The site is not allocated within Rother's adopted Development Plan.</p> <p>It has been included as a preferred site for residential development within the draft Neighbourhood Plan.</p> <p>The SHLAA assesses the site as potentially suitable for residential development (Ref RB13), albeit access issues need to be resolved.</p> <p>The site is discounted on the basis that it comprises greenfield land which is considered to be less sequentially preferable in sustainability terms.</p> <p>The site is not available and furthermore, is too small to accommodate the scale of development proposed (even allowing for an appropriate degree of flexibility).</p>

Site Name	Area	Approximate Capacity	Flood Classification	Status of Site	Available	Overall Assessment
Grove Farm	Phase 1 (0.9ha) Phase 2 (3.4ha)	Phase 1: 30 dwellings Phase 1 and 2 combined: 65 dwellings	Zone 1	Greenfield	<p>No – land being promoted for development by landowner.</p> <p>Two planning applications for the Phase 1 site have been submitted and subsequently withdrawn (Ref 2015/1929 and 2016/1722) on the basis that they were to be recommended for refusal by the Council.</p> <p>The landowner is now actively promoting a revised scheme for Phase 1 which proposes a reduced total of 30 dwellings.</p>	<p>The smaller element of the site (Phase 1) benefits from a historic saved Local Plan allocation (Ref VL7) for residential (circa 30 units) to be bought forward in the event that the housing needs of Robertsbridge cannot be met through previously developed land including the Mill site.</p> <p>The SHLAA identifies the wider site as potentially suitable for residential development including additional land adjoining Phase 1 to the rear (Ref RB2, 4, 5 and 7 – not all of which will be developable).</p> <p>Rother DC deemed the site to represent a sustainable option on the basis of its proximity to the village core.</p> <p>Notwithstanding this, the site has been assessed and dismissed as an option for residential development within the emerging Neighbourhood Plan.</p> <p>Irrespective of availability, there are clear issues associated with Phase 1 alone which results in the site representing a less sustainable option. In assessing the most recent application, Rother DC recommended the application for refusal on various grounds including:</p> <ul style="list-style-type: none"> • Unacceptable impact upon historic barn/farmstead and the wider Conservation Area; • Impact upon amenity of George Hill Cottages; • Insufficient archaeological/ecological information <p>To be considered large enough to accommodate anywhere near the scale of development proposed at the Mill Site,</p>

					<p>both phases would need to be delivered together. The Phase 2 site is situated wholly outside of the development boundary of the village within open countryside.</p> <p>Whilst a historical allocation is in place for residential development, this only relates a small part of the site. In any event, the allocation is outdated and not reflective of extensive assessment work undertaken by the Neighbourhood Plan Steering Group and local community in formulating the Salehurst and Robertsbridge Neighbourhood Plan (the key planning policy document for the area once adopted).</p> <p>This is reflected by the withdrawal of two planning applications for development of the Phase 1 site in 2016 and more recently in January 2017 on the basis that they were to be recommended for refusal on various grounds.</p> <p>Irrespective of this, the policy amplification for VL7 is clear that housing should only be brought forward in association with strict assessment criteria in the event that housing needs within the area are not met on more sustainable sites such as the Mill Site (para 13.41).</p> <p>Accordingly, the site is discounted on the basis that it is not available, suitable or large enough to accommodate residential development of the scale proposed. It is a greenfield site situated partially outside of the settlement boundary within open countryside and is less sustainable.</p>
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Appendix 5

Droitwich Appeal (PINS Ref. APP/H1840/W/16/3148838)

Appeal Decision

Hearing held on 3 August 2016

Site visit made on 3 August 2016

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 28 September 2016

Appeal Ref: APP/H1840/W/16/3148838

Pipe Supports Limited, Salwarpe Road, Droitwich Spa WR9 9BH

- 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 Hill and Smith Holdings Plc against the decision of Wychavon District Council.
 - The application Ref W/13/02032/OU, dated 25 September 2013, was refused by notice dated 1 December 2015.
 - The development proposed is residential development.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The application was submitted in outline, with only access to be determined at this stage. I have dealt with the appeal on that basis and I have taken the illustrative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development of up to 34 dwellings on the appeal site.
3. Since the application was determined by the Council the Wychavon District Local Plan has been replaced by the South Worcestershire Development Plan (SWDP). As a consequence, the policies of the Wychavon District Local Plan cited in the Council's decision notice no longer form part of the development plan and have been replaced by policies of the SWDP. I have accordingly determined the appeal on this basis.
4. A properly completed section 106 agreement has been submitted, the contents of which were discussed at the hearing. It secures financial contributions towards the provision of on-site affordable housing, local infrastructure and services. Its terms are addressed in more detail within the decision.

Main Issue

5. The main issue in this appeal is whether the appeal scheme comprises sustainable development as defined in the National Planning Policy Framework ('the Framework'), having regard to:
 - whether the proposal complies with the spatial strategy of the Framework in terms of minimising flood risk; and,
 - the accessibility of services and facilities from the site and the social, economic and environmental effects of the proposal.
-

Reasons

6. The appeal site is previously developed employment land within the settlement boundary of Droitwich Spa. On the basis that it has been unsuccessfully marketed for employment use for a number of years, the parties are agreed that there is no objection in principle, other than in relation to the issue of flooding, to its redevelopment for housing. I concur with that assessment.

Flooding

7. The appeal site is a rectangular area of land enclosed by a railway embankment to the east, the raised level of Salwarpe Road to the west, River Salwarpe to the north and Droitwich canal to the south. The main sources of flood risk to the site are the River Salwarpe and highway surface water runoff. Water from the Droitwich canal is also identified as a possible risk.
8. The site has not been allocated for housing in the recently adopted South Worcestershire Development Plan (SWDP). In such circumstances policy SWDP 28 of the SWDP states that proposals for development should clearly demonstrate that the Sequential Test, as set out in the latest version of the Strategic Flood Risk Assessment (SFRA), has been passed. Only where the Sequential Test is passed should the Exception Test be applied. This approach is consistent with the Framework and Planning Practice Guidance (PPG).
9. The SFRA for the area places the majority of the appeal site is located in Flood Zones 2 and 3. These are zones with a medium to high probability of flooding (1 in 1000 to greater than 1 in 100 annual probability of river flooding).
10. The SFRA advises that, in terms of defining the area to which the Sequential Test should be applied, the starting point should normally be South Worcestershire. However, it also allows that the area to which it is to be applied may be reduced, if justified by the nature of the proposed development or the objectives of the development plan. In this instance, given that the proposal is for housing, and being mindful that housing land supply is assessed at local planning authority level, I am satisfied that Wychavon District, or a significant part of it at least, is the appropriate starting point, as opposed to the whole of South Worcestershire. This approach is consistent with previous appeal decisions to which I have been referred¹.
11. The SWDP notes that Droitwich Spa is a main town and the largest settlement in Wychavon which has experienced the highest natural increase in population and has the greatest housing needs in the District. It is also separated from the other main town in the District, Evesham, by a reasonable distance. As a result, in relation to this case I agree with the appellant that the area to which the Sequential Test should be applied can properly be narrowed down to Droitwich Spa. Whilst there is general support for the re-use of previously developed land in the SWDP the appeal site is not within a specific area identified for regeneration area by this plan. Consequently, I am not persuaded that the search area should not be narrowed further to a particular area of the town.
12. The Sequential Test identifies twelve other potential housing sites within Droitwich Spa. A number of these are allocated for housing in the SWDP. In terms of deciding what constitutes sites that are 'reasonably available' some detail is provided in PPG² and the Environment Agency's guidance³ to which

¹ Appeal references APP/U2370/A/13/2209077, APP/L3245/A/13/2204719

² Paragraph: 033 Reference ID: 7-033-20140306

PPG refers. PPG advises that a pragmatic approach should be taken and that it is for the local planning authority to decide whether the Sequential Test is passed, taking into account the particular circumstances in any given case. At appeal that responsibility is transferred to the Inspector / Secretary of State.

13. There are two sites available within the search area which are on land of low flood risk (flood zone 1) that form part of the allocated urban extensions to the town. As a consequence, the Council is of the view that as these sites will deliver well in excess of the 34 dwellings the appeal site could provide, there are other reasonably available sites for the delivery of the amount of housing proposed. The appellant, on the other hand, maintains that as those sites are in the hands of a different developer they are not 'reasonably available' in the terms of the PPG. Furthermore, the appellant considers those sites to be too large to equate to a suitable alternative to the appeal site.
14. The Sequential Test stems from the sequential approach embraced by the PPG. The sequential approach seeks to ensure that areas at little or no risk from any source of flooding are developed in preference to areas of higher risk, the aim being to keep development out of medium and high flood risk areas. As set out in the PPG⁴, this will help ensure that development can be safely and sustainably delivered and developers do not waste their time promoting proposals which are inappropriate on flood risk grounds. It is clear, therefore, that in carrying out the Sequential Test, it is the strategic issue of the availability of housing land at lower flood risk for the type and amount of development proposed that is determinative, rather than private considerations of whether a particular housing developer would have the opportunity to purchase land of a similar size and capacity to the appeal site to develop. In this case, the evidence before me is that there is ample capacity to deliver the amount of housing proposed on other sites in the town which are at lower risk of flooding and are thus sequentially preferable. As a result, I conclude that the Sequential Test is not passed. Consequently, the proposed development would be contrary to policy SWDP 28.
15. Having regard to paragraph 100 of the Framework, the appellant states that in determining whether development is necessary, the objectives of the SWDP and the policies of the Framework as a whole should be considered. The SWDP and the Framework encourage the re-use of previously developed land. However, a core planning principle of the Framework is that planning should be plan led. Sites that involve the redevelopment of previously developed land in the town over the plan period have been allocated by policy SWDP 48, a number of which are likely to deliver housing over the medium term. Whilst the Council is reliant on windfall development to meet its housing requirement, at present the SWDP is providing a healthy supply of housing land comfortably in excess of five years on sites at lower flood risk in the town. Moreover, there is no evidence that the Council needs to rely on windfall sites of medium to high flood risk to meet its housing targets. For these reasons, I am satisfied that the proposed scheme is not necessary to meet the objectives of the SWDP.

Accessibility

16. The appeal site is approximately 750m by road, and a shorter distance away by the canal towpath, from the town centre and the wide range of shops, services

³ Flood risk assessment: the sequential test for applicants – Detailed guidance – www.gov.uk

⁴ Paragraph: 018 Reference ID: 7-018-20140306

and facilities that it has to offer. The railway station is approximately 500m away to the south and bus stops for services that link the site to the town centre, Worcester and other large settlements are within 400m of the site. The appeal site is therefore in an accessible location for development in compliance with policy SWDP4 which requires, amongst other matters, that new development offers sustainable transport choices.

Sustainable development

17. The Framework sets out a presumption in favour of sustainable development. The policies of the Framework as a whole constitute the Government's view of what sustainable development means in practice. There are three dimensions to sustainable development: environmental, economic and social.
18. In terms of the environment, the site comprises previously developed land in an accessible location. The site has been cleared of buildings and rubble, and vegetation is encroaching across the site. As a result, it is not an eyesore that detracts from the character and appearance of the area. Given the extent of vegetation encroaching across the site, the Green Infrastructure that is proposed on the site is a benefit of the scheme to which I attach only some weight. In addition, redevelopment of the site offers the potential to enhance biodiversity on the site. However, on the basis of the submitted Ecological Assessment the scope for enhancement is limited.
19. The appeal site is located next to the Droitwich Canal Conservation Area, the boundary to which tightly follows the line of the canal. Its heritage significance is historical. The appeal site in its current undeveloped open state does not contribute to the heritage significance of the Conservation Area and has a neutral effect on its setting. On this basis I am satisfied that the proposed development with the potential for housing to be set back within the site behind a landscaped edge would not harm the heritage significance of the Conservation Area and could improve its setting. Dependent upon the final design, the proposed development could also result in increased surveillance of the canal towpath, increasing the safety, or perception of safety, of those who use it. However, a major negative environmental factor is that whilst the proposal would to an extent increase the flood storage capacity of the site, the scheme does not comply with national policy on the location of development and the avoidance of flood risk.
20. Socially, up to 34 new dwellings would be provided of which 15% would be affordable. I recognise that there may well be a shortage of affordable housing in the District. The provision of up to 5 affordable dwellings as part of the appeal scheme would leave the community better off in this regard and is therefore a benefit of the scheme.
21. Economically, although the site was last in employment use it has been unsuccessfully marketed for several years and the Council is of the view that a sufficient supply of employment land exists in the area. Its redevelopment therefore would not cause economic harm. However, the absence of harm in this regard does not equate to a benefit. The proposal would increase employment during construction and fitting out, although by its nature this would be short lived. The scheme by increasing the local population would also boost local spending power slightly.
22. Until such time as the Sequential Test in relation to any development proposed on the site is passed, the scope for its redevelopment and the economic benefits that would result is restricted. However, as this is the intention of

national planning policy and the development plan, I attach little weight to this consideration in favour of the appeal.

23. The site is in an accessible location and the proposed development would result in some social, economic and environmental benefits which I have described above. However, the positive aspects of the proposal are, in my judgement, insufficient to outweigh the conflict with national policy contained within the Framework and the SWDP on the location of development and the avoidance of flood risk. I therefore conclude, based upon the overall balance of considerations, that the proposal would not be a sustainable development.

Conclusion

24. For these reasons that I have given, and having regard to all other matters raised, I conclude that the appeal should be dismissed.
25. As I noted as a procedural matter, at the request of the Council the appellant has submitted a properly completed section 106 agreement. The tests in paragraph 204 of the Framework and regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended) apply to planning obligations. In this case however, as the appeal is to be dismissed on its substantive merits, it is not necessary to assess the agreement against these requirements.

Ian Radcliffe

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Hawley

Harris Lamb Limited

FOR THE LOCAL PLANNING AUTHORITY:

Miss Matthews

Wychavon District Council

Mr Denton

Wychavon District Council

DOCUMENTS

- 1 Housing Land Supply (April 2016).
- 2 Statement of Common Ground.
- 3 Council correspondence regarding sports facility and cycling infrastructure provision.
- 4 South Worcestershire Playing Pitch Strategy.
- 5 South Worcestershire Sports Facility Overview – the Nortoft Report.
- 6 Section 106 agreement.
- 7 Droitwich Spa Conservation Area Appraisal and Management Plan.
- 8 South Worcestershire Development Plan.

PLANS

- A South Worcestershire Development Plan map of Droitwich Spa.

Appendix 6

Questions from the Independent Examiner (5 July 2017)

Salehurst and Robertsbridge Neighbourhood Development Plan 2016-2028

Questions from the Independent Examiner

Prepared by

JOHN SLATER BA(Hons), DMS, MRTPI

John Slater Planning Ltd

5th July 2017

Introduction

1. As you will be aware I have been appointed to carry out the examination of the Salehurst and Robertsbridge Neighbourhood Plan. I have carried out my initial review of the Plan and the accompanying documents and have started drafting my report. I also carried out a visit to the area on 28th June 2017.
2. My view is that I should be able to deal with the examination of this Plan by the consideration of the written material alone but I do reserve the right to call for a public hearing, if I consider that it will assist my examination. There are a number of questions that I have arisen as I have started writing my examination report upon which I would appreciate the comments from both the Qualifying Body (QB) and the Local Planning Authority (LPA).

The Economy

3. The Planning Practice Guidance states that it is important that the policies are supported by appropriate evidence. As a general observation, I find the extent of the justification of the policies, somewhat light - often no more than a sentence or text that is not directly relevant to the policy. For example, the supporting text to Policy EC1 seems to relate to employment rather than the role of retailing to support the role of Robertsbridge as a Rural Service Centre. Does the Qualifying Body want to offer any further evidence to support Policy EC1?
4. Do the QB have any views on the likely size of stores that could be allowed outside the retail core, bearing in mind the planning system cannot differentiate between types of retail operation who will occupy premises. Para 25 of the NPPF allows the sequential approach in terms of town centre uses, not to be applied to small scale rural development. Is the QB relying on that provision as well as para 28 and is there a view on a maximum floorspace of development to judge whether an out of centre retail proposal is *small scale*.
5. In terms of Policy EC3 what is the view of the LPA and the QB as to whether the Mill Site should still be treated as an employment site?

Education

6. Does Rother DC have a CIL Scheme in place and can CIL funds be used for the expansion of education facilities?

Environment

7. I am interested in how the Local Green Spaces in Policy EN2 and Schedule 1 were identified as being of special status, which is not appropriate to “most green areas or open space”. One of the criteria is that “the green area is demonstrably special to the local community”. Were the community involved in identifying the areas that were special to them or was the selection left to the Steering Group? I believe that more justification is needed to support the proposed designations, to demonstrate why the sites have been selected and not just what criteria they meet by reference to criteria a, b, c etc. but **how and why** the sites meet the criteria – why are they demonstrably special. I am particularly keen to understand how some of the land in private ownership meets the stringent criteria and whether the land owners were contacted prior to designation as suggested by the PPG and can I see the correspondence?

Does land need to be in public ownership?

A Local Green Space does not need to be in public ownership. However, the local planning authority (in the case of local plan making) or the qualifying body (in the case of neighbourhood plan making) should contact landowners at an early stage about proposals to designate any part of their land as Local Green Space. Landowners will have opportunities to make representations in respect of proposals in a draft plan.

Paragraph: 019 Reference ID: 37-019-20140306

Revision date: 06 03 2014

Housing

8. I am aware that parts of the Mill Site are within the Flood Zones 2 and 3. It would be helpful to assist my understanding, to know how much of the site is covered and I wonder whether the LPA could provide me with a larger scale map of the site with the flood zones superimposed.
9. Paragraph 100 and 101 of the NPPF refers to the need to conduct a Sequential Test, steering new development to areas with a lower vulnerability to flooding. I am aware that the neighbourhood plan looked at a range of sites and I must ask whether a Sequential Test was applied to site selection, vis a vis flood risk. Also, can I be satisfied that a safe access can be achieved to the Mill Site during flood events?
10. I understand that the Grove Farm site had been an allocation in the 2006 Local Plan. What are the changes in circumstances as to why is it no longer seen as suitable for housing?
11. I note that the LPA have concerns as to the level of residential development being proposed on the Mill Site, both in terms of whether there should be a requirement to include possible employment uses upon redevelopment and

because of potential impact on the heritage buildings on the site. If I were to suggest a lower figure, do the parties have a view as to what would be an appropriate figure and also how would the Plan make up the shortfall – should other sites be allocated? I would specifically ask the LPA to comment on whether the circumstances are such relating to the history of the site that paragraph 22 of the NPPF should kick in, in terms of a policy insisting on employment uses as part of a mixed-use allocation.

12. I would wish to know whether the Highway Authority been asked to comment specifically on the adequacy of the existing access to the Vicarage Site and whether there is there a realistic improvement possible in terms of the geometry of the access, which would be consistent with the site's Conservation Area status. If they have not been asked I would be interested in hearing their views.
13. I note the Rother Core Strategy was adopted in 2014 prior to the recent reintroduction of the Secretary of State advice regarding planning obligations and affordable housing thresholds following the West Berkshire and Reading case. Is the Plan area designated under Section 157 of the Housing Act which would then allow financial contributions to be sought for schemes of between 6 and 10 units in lieu of on-site provision? As you will be aware one of the basic conditions tests I am required to consider, is whether the plan's policies have regard to national policy and advice. Is there any particular evidence that the parties would want me to consider that would justify a departure from national policy on affordable housing and whether any viability evidence exists to justify why on site provision can be achieved for schemes of less than 11?

Infrastructure

14. How does the level of parking provision proposed by Policy IN1 differ from the requirement set out in the East Sussex Parking Demand Calculator and is there any evidence that car ownership is different in the plan area compared to the rest of the County or indeed the district?
15. Representations have said that the flooding policy, Policy IN8 is not in line with the approach set out in the NPPF. Is there a local justification or rationale for the approach taken, as the policy has received objections from both the Environment Agency and the County Council as well as the LPA?

Final Matters

16. It would be helpful if I could have responses to these questions within the next 21 days to allow me to conclude my examination report. It may be in some case a joint response to a question would be sensible, but in other cases an individual response may be required from the two parties.
17. I would also offer the opportunity to the QB to comment on any of the Regulation 16 consultation responses which it will now have seen and offer

any suggested changes that it may wish me to consider recommending in the light of representations made.

18. I would be grateful if this note and the subsequent responses could be placed on Rother District Council's and the Neighbourhood Plan's respective websites.

John Slater Planning Ltd

5th July 2017

Appendix 7

Farnham Appeal (PINS Ref. APP/R3650/W/15/3136799)

Appeal Decision

Inquiry held on 14-17 June 2016

Site visit made on 13 June and 16 June 2016

by Mrs A Wood Dip Arch MRTPI

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

Decision date: 10 August 2016

Appeal Ref: APP/R3650/W/15/3136799

Low Lane, Badshot Lea, Farnham, Surrey GU9 9NA

- 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 Central Land Holdings Limited against the decision of Waverley Borough Council.
 - The application Ref: WA/2014/0125, dated 23 October 2013, was refused by notice dated 26 June 2015.
 - The development proposed is described as: "*Residential development with associated access and landscaping.*"
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by the appellant against Waverley Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The development description in the banner heading is taken from the application form. Although differing from the lengthier description set out in the appeal form, it correctly identifies what is proposed. The proposal is in outline form with all matters of detail reserved for subsequent consideration. The parties agreed that the proposal is intended to provide up to 30 new dwellings on the site.
4. I undertook an unaccompanied visit to the site and its surroundings on 13 June, taking in the viewpoints referred to in Miss Toyne's Landscape and Visual Assessment proof of evidence. A further inspection on 16 June enabled me to re-visit the viewpoints in the light of the evidence given at the inquiry. I was unable to access the site, but the parties were satisfied that the substantive areas for consideration of the scheme and its impacts had been viewed and that it was unnecessary for an accompanied inspection to take place.

Main Issues

5. Of the seven reasons for refusal set out in the Council's decision notice, the issues relating to affordable housing, odour, Thames Basin Heath Special
-

Protection Area (SPA) and infrastructure were resolved through the provisions of the completed s106 planning obligation. The remaining reasons for refusal form the subject of the first three main issues identified below.

6. The main issues are:

- The landscape and visual impacts of the proposed development, and its effect on the setting of the settlement.
- The extent to which the proposed development would contribute to coalescence of Farnham and Aldershot.
- The flooding implications of the proposal, and in particular whether sequentially preferable sites are available.
- Whether any adverse impacts of allowing the proposed development would significantly and demonstrably outweigh the benefits such that the proposal would not represent sustainable development.

Reasons

7. The development plan comprises the saved policies of Waverley Borough Local Plan 2002 (LP) and Policy NRM6 of the revoked South East Plan. The parties agree that the Council is unable to demonstrate a five-year supply of housing land. While disagreeing on the extent of shortfall in the supply, there is consensus that the position renders relevant development plan policies for the supply of housing out of date. In the light of which, I accept that LP Policies C2 (Countryside Beyond the Green Belt), C4 (Farnham/Aldershot Strategic Gap), D1 (Environmental Implications of Development) and D4 (Design and Layout) are out of date for the purposes of paragraph 14 of the National Planning Policy Framework (NPPF). The weight accorded to each policy is explained below.

Issue 1: Landscape and Visual Impacts

8. The appeal site lies outside the defined settlement where LP Policy C2 applies strict control on buildings in the countryside away from existing settlements, with the purpose of protecting the countryside for its own sake. This resonates to a point with the NPPF principle of recognising the intrinsic character and beauty of the countryside. However, in the circumstances of a Local Plan developed to meet the development needs only up to 2006, the Council's inability to meet current needs, and an emerging strategy recognising that greenfield sites are to be released (and have been granted approval by the Council), Policy C2 can be ascribed little weight.
9. Policy D1 covers broad planning issues relating to the environment, which includes avoiding harm to the visual character and distinctiveness of a locality. The policy is therefore consistent with the NPPF's core planning principles relating, for instance, to the countryside, high quality design, and the roles and character played by different areas. Policy D4 relevance to this appeal might be limited, given the outline nature of the proposal, but its aims reflect the importance the Government attaches to the design of the built environment, as well as the NPPF's policy of addressing integration of new development into the natural environment (amongst others). For the reasons given, Policies D1 and D4 are therefore accorded significant weight.

10. In looking at the effect that the development would have on the landscape character and appearance of the area, I note that the appeal site forms part of an area of countryside to the east of the built-up settlement of Badshot Lea. The buildings on the western side of Low Lane and to the south of St Georges Road mark the current developed eastern edges of the settlement. The recent outline approval granted by the Council for up to 71 dwellings on land to the west of St Georges Road would extend Badshot Lea southwards.
11. The Waverley Borough Council Landscape Study – Part 1: Farnham and Cranleigh (dated August 2014) was developed to evaluate the capacity of the landscapes around identified towns and villages to accept change. The appeal site forms part of segment FN11C, much of which covers an area to the south of the current defined settlement of Badshot Lea. The evaluation summary accords segment FN11C 'some' landscape quality, 'limited' contribution to settlement setting and 'low' landscape value and sensitivity. In its analysis of capacity it goes on to conclude that there *"...could also be capacity in the two fields to the east of Low Lane, with their low intervisibility and adjacent existing residential development."* The countryside around Badshot Lea is similarly described in the Council's Green Belt review in less than glowing terms, as *"characterised by progressive and sporadic urbanisation" and "typical urban fringe landscape with diverse land uses set within a weak landscape structure."* The officer's report to committee also refers to the appeal site as an area of transition between the urban area and the countryside.
12. My own visits to the site and its surroundings confirmed that the character of the countryside to the east of Badshot Lea is influenced by its proximity to the urban settlements and transport infrastructure. That is typical of the Thames Basin Lowlands National Character Area in which the appeal site is located. Similarly, the land between Badshot Lea and Aldershot to the north and east displays the characteristics of the Blackwater River Floodplain Character Area of flatness, low lying with *"tranquillity and remoteness significantly limited by urban influence and transport routes."*
13. On the other hand, and despite the fenced eastern boundary and change in levels, in its current undeveloped state the appeal site appears as much a part of the openness of the countryside to the east of Badshot Lea as the Tice's Meadow nature reserve on the site of former quarry workings. The flat, river plain, open pasture landscape comprising the nature conservation area and the open character extends as far as the western edge of the appeal site, and ends at the points along which the countryside meets Low Lane and St Georges Road. The site is no more transitional than any piece of countryside abutting a settlement.
14. The addition of up to 30 new dwellings, along with the internal road network associated with the development, is bound to alter the nature of the land on which it is to be sited. Although of unexceptional landscape quality, its rural character would be materially changed. Extending the built environment to the east of Low Lane would add to the urbanising effects referred to in the character descriptions, and further erode the tranquil quality of the countryside.
15. The appearance of the site, undeveloped rough grassland, would be transformed by the proposed scheme. That is inevitable with any development on a greenfield site, and the appellant does not seek to claim otherwise. From

the north along Low Lane and from Badshot Lea Road, views of the new houses would be obscured by the densely wooded land to the north of the pumping station (viewpoints 8 and 9, Figure LT5 of Miss Toyne's illustrative material). Similarly, from much of the length of the wooded Blackwater River corridor to the north, alongside the built up edge of Aldershot, views of the new development would be filtered by trees and a vegetated belt (viewpoints 7 and 10). The residential scheme of 71 dwellings recently permitted to the south of Badshot Lea would also block out much of the new development in approaches from the south (viewpoints 4 and 5).

16. However, from a number of exposed points along the river corridor, notably from Horton's Mound (viewpoint 6), the new houses would be seen extending the built environment of Badshot Lea into an area of countryside where development is sporadic and non-intrusive. Equally, open views over the site and across the nature reserve along Low Lane (viewpoints 1 and 2), and from parts of St Georges Road, would be disrupted by the new housing development, with erosion of part of the countryside contributing to the setting of Badshot Lea. The site provides a soft edge to the settlement which is apparent in the approach from the sharp left hand bend on St Georges Road and forms as much a part of the landscaped setting of Badshot Lea as the wooded land to the north to which it is closely aligned.
17. Low Lane and St Georges Road form well-defined boundaries containing the settlement and separating it from the countryside. These strong defining markers would be breached by the incursion eastwards and the 'urban edge' pressures extended likewise. Harm would be caused to the appearance of an area of countryside already recognised as suffering from urban intrusions, albeit limited to public views from the north, north/east and from closer quarters on local roads.
18. The harm identified would be compounded by a layout relating poorly to the fabric of the settlement, given the parallel and extensive road system illustrated in the indicative layout plan. The Design and Access Statement (DAS) meanwhile does little to explain development of the scheme design, and shows a lack of ambition or imagination in terms of site layout and design of individual buildings. Should the proposal proceed to detailed design in the form envisaged, it would not meet the broad design principles of Policies D1 and D4, nor comply with the NPPF's desire to achieve high quality design and aspire to developments that function well, adding to the overall quality of an area.
19. That said, as design, scale, layout, landscaping and access are reserved matters, the criticisms I have of the illustrative layout and designs envisaged in the DAS need not weigh against the scheme at this point. Despite the constraints of the two sewer pipes running along the western side of the appeal site, the appellant is confident that a layout better integrated with the existing settlement could be achieved. Even so, a proposal meeting the design expectations of policy would cause harm to the character and appearance of the area by virtue of the development's incursion into the countryside. In that respect, it would not comply with the element of LP Policy D1 that looks to resist developments harmful to visual character and distinctiveness of the locality. The conflict with policy, harm to the countryside and to the setting of Badshot Lea are carried forward into the planning balance in the final issue.

Issue 2 – Coalescence of Farnham and Aldershot

20. LP Policy C4 seeks to protect the Strategic Gap between Farnham and Aldershot, by resisting inappropriate development in accordance with Policy C2, and promotes enhancement of the landscape. The policy is within a time-expired LP that addresses the Borough's needs to 2006. The policy clearly has a restraining function and is out of date (for reasons explained earlier), but its strategic function of maintaining the separation and definition of settlements remains relevant. For that reason, I agree with the main parties that the policy carries moderate weight.
21. Aldershot lies to the north, approximately 0.3km from the appeal site. The Local Landscape Designation Review of August 2014 forms part of the evidence base for the emerging LP. The document records that the Gap was introduced as a 'green wedge' in the 1990 LP to halt coalescence between the settlements, in response to pressure from mineral working and the Runfold diversion. The principle of separating Aldershot and Farnham was rolled over into subsequent plan policies. The analysis explains that the northern area of the Gap complies with the Gap aspirations. The area around Badshot Lea is not so successful, for reasons of its mixed character and urban feel. Visibility to the developed edges and development within it are also cited as factors that render the area "*less strong as a landscape Gap.*"
22. My own inspections confirmed that the properties on the eastern edge of Badshot Lea are visible from the Aldershot side of the Gap as indeed is the village hall which lies within its boundary. Nevertheless, the block of woodland to the north of the site, the appeal site itself and the open pasture land of the nature conservation area all contribute to the sense of separation as one moves between the two settlements.
23. The appeal site lies some distance south of the narrowest part of the Gap. Adding development eastwards and beyond the unbroken boundary of Low Lane would encroach on the Gap, albeit to a limited extent given the size of the development proposed. Although the scheme would be visually contained by the area of woodland to the north, extending built development by some 70m beyond the existing settlement boundary would amount to an unwelcome encroachment. The modest scale of the housing project and its containment by the woodland would limit the sense of loss of separation. Nevertheless, some harm would be caused to the separating function of the Gap, resulting in conflict with LP Policy C4.

Issue 3: Flooding

24. The Flood Risk Assessment (FRA) and addendum reports accompanying the application as well as the Strategic FRA (SFRA) confirm that the site is located within Flood Zone 2. This is shown on the Environment Agency's Flood Map. The appellant's witness (Mr Nelmes) explained that the Flood Zone 2 status resulted from historical flooding records and was derived from recorded events (most notably in 1968 and 1990) as opposed to a 1 in 1000 year modelling, which is not available. It was also claimed that substantial changes in catchment topography, resulting from the sand and gravel workings nearby, has reduced the theoretical and historic risk of flooding to the site beyond the 100 year modelled design event, by delivering more volume within the floodplain.

25. The Council accepted the FRA (plus addendum) findings of low risk of flooding from the River Blackwater; low risk from pluvial and other sources of flooding, but a medium risk from the existing watercourses around the perimeter of the site and from surface water flooding from the south eastern part of the site. Nevertheless, the appellant accepts that, in the absence of detailed modelling of the 1 in 1000 year event, the site should be regarded as falling within Flood Zone 2 for the purpose of this appeal. Without substantiating evidence to the contrary, it must follow that the site comprises land having between a 1 in 100 and 1 in 1000 annual probability of flooding from the River Blackwater.
26. With the aim of steering new development to areas with the lowest probability of flooding (in this case Flood Zone 1), the NPPF calls for a Sequential Test to be undertaken. The appellant agreed the scope of the test with the Council and the method of discounting sites followed an approach used by the Council when considering the planning application for the 71 dwellings to the west of St Georges Road.
27. I agree that the Sequential Test should apply to sites within and outside Farnham, as the town is one of a handful of large settlements to which growth is to be directed to meet the housing needs of the Borough. The potential sites available for development are listed in the Strategic Housing Land Availability Assessment 2014 (SHLAA). The sites falling within Flood Zone 3 were correctly excluded from consideration. I also agree that sites granted permission (by the Council or on appeal) should not be regarded as contenders to which the test is to be applied, and those refused permission by the Council can be discounted for reasons of likely unavailability as part of the Council's five-year supply.
28. However, the process of discounting alternative sites on the basis of size and for reasons that have nothing to do with flooding is, in my view, flawed. Let me explain. The Council's objective is to address the housing needs of the Borough. The requirement to demonstrate a five-year supply forms an important part of that objective. That five-year requirement could be achieved on a single site or by the more likely scenario of a combination of a range of sites of varying capacity. Either of these options, including an aggregate of smaller sites, would deliver the number of units (up to 30) promoted in the appeal.
29. The objective is to deliver housing numbers. Whether the supply is forthcoming from sites capable of accommodating large numbers, from a number of smaller sites or a combination of both is neither here nor there. The Sequential Test in this case should consider the comparative flooding risks of reasonably available candidate sites capable of accommodating the numbers expected from the appeal site. There is no policy or indeed rational basis for considering sites on a 'like for like' basis only, or for excluding those that fall outside an arbitrary size cut off limit of up to 50 units.
30. The Planning Practice Guidance (PPG) does not assist in this regard when stating that "*a pragmatic approach on the availability of alternatives should be taken.*" EA standing advice directs applicants to "*...look for sites that could be suitable for your development*", which could be interpreted as a site capable of accommodating a development of the size intended or even a number of sites of lesser capacity. Neither the PPG nor the NPPF refers to suitability of sites in connection with the Sequential Test.

31. The reference to 'reasonably available sites', in Paragraph 19 of the PPG, I take to imply sites that are available to contribute to the area's five-year supply. Thus, applications refused permission or those unlikely to be available (for reasons of continuing alternative uses, for instance) to contribute to the area's five-year supply could not be regarded as reasonably available alternatives.
32. The appellant's sequential exercise excludes sites by making value judgements on a range of non-flooding related issues. For instance, sites are discounted for possible impacts on heritage assets, for contamination reasons, loss of employment or even excluded for reasons of location in the strategic gap. Admittedly, this was based on the Council's approach on the scheme permitted to the west of St Georges Road. The methodology however goes well beyond the principle of looking at the comparative flooding status of reasonably available alternative sites.
33. Instead, the sifting exercise extends to assessing the relative merits and therefore suitability of each site in terms of site and/or policy constraints. This is carried out without detailed knowledge of whether the issues could be overcome and in the absence of an up to date policy basis for countryside or gap protection. The discounting of sites in this way for the purposes of the Sequential Test is a self-serving, circular exercise which would inevitably render the majority of sites incapable of consideration. A similar Sequential Test process applied to an alternative site on the list could, for instance, lead to exclusion of the appeal site for its location within the Strategic Gap. The approach is without support in Government policy or guidance and undermines the overarching objective of steering developments to locations at lower probability of flooding.
34. At the inquiry, the appellant's planning witness continued to defend the approach adopted for the Sequential Test and reported that similar methods were used on other projects. For the reasons explained above, the appellant's conclusion that there is no other site of lower flood risk available is based on a false premise. From the information available, it appears to me that at least four sites across the Farnham area (SHLAA site nos: 29, 381, 438 and 546) are located within Flood Zone 1; all with the capacity to accommodate numbers of dwellings exceeding the 30 units (maximum) proposed on the appeal site.
35. In other words, the evidence shows that 30 new dwellings could be accommodated on reasonably available sites with a lower probability of flooding than the appeal site. In these circumstances, the NPPF says development should not be permitted. The proposal fails on that basis, even though the appellant's FRA has demonstrated to the Council's satisfaction that the flood risk from all sources has been adequately assessed and can be appropriately mitigated for.
36. The development can be made flood resilient and resistant, and is unlikely to increase flood risk elsewhere. Residents' experience of flooding relates to the watercourses alongside the site, to which surface water from the highways is discharged. This is an existing problem likely to be partly caused by poor maintenance of the watercourses. However, with measures in place as identified in the FRA, I am satisfied that the proposed development can be made safe for its lifetime and that the development would not add to flooding risks elsewhere. The lack of technical objections to the scheme, however, does

not override the primacy of steering developments to areas of lower probability of flooding, in this case to sites located within Flood Zone 1.

Other Matters

37. The s106 would address the pressures that the new housing development would bring to bear on local infrastructure. It promises contributions towards environmental improvements in Farnham town centre, secondary education, recycling/refuse, transport and highways improvements. The Council confirms that the amounts forthcoming are commensurate with the size and nature of the development proposed.
38. Located as it would be within 5 km of the Thames Basin Heaths SPA, the proposal is required to put measures in place to avoid or mitigate any potential adverse effects (Policy NRM6 of the revoked South East Plan). A financial contribution, offered in the planning obligation, towards improvements of the Suitable Alternative Natural Green Space at Farnham Park, and for site access management and monitoring, would be in line with the Council's SPA avoidance strategy.
39. The County Highway Authority is satisfied with the appellant's Transport Statement conclusions that the proposal would not have a material impact on the capacity of the local highway network. Based on the indicative site layout plan, the Council accepts that the development can be accommodated without impacting adversely on the safety of pedestrians or drivers. Local residents, however, articulated genuine concerns about the likely increase in vehicular movements at vulnerable points between the bend on St Georges Road and the junction of St Georges Road with Low Lane, pointing to incidents of accidents or near accidents in the vicinity of the site.
40. My own inspection of the area confirmed that there might be some merit in the anxieties expressed by local people. Low Lane is narrow and its capacity is further compromised by vehicles being parked along part of its length. Local residents also park vehicles on the section of St Georges Road traversing past the southern part of the appeal site. This has the effect of causing congestion during peak times but also has the effect of slowing down passing traffic. I am hopeful that there is scope to provide suitable access arrangements for the proposed development and which could be secured at detailed design stage. Furthermore, highways improvements financed through contributions in the planning obligation could help to mitigate the highways related impacts of the proposal. Accessibility to local services and the opportunities for access via alternative modes of transport add to the acceptability of the proposed scheme in terms of its transport and highways implications. Thus, rendering it compliant with the LP Policies M2 and M14.

Issue 4 – The Planning Balance

41. In the light of the FRA findings (agreed by the Council's consultants) that the site is at low residual risk from fluvial flooding, it is argued that the proposal is not subject to the tilted balance of footnote 9, paragraph 14 of the NPPF. In other words, specific policies in the NPPF which indicate that development should be restricted do not apply in this case, as the site is not in a location at risk of flooding. Permission, therefore, is to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The

approach is questionable, given the agreed Flood Zone 2 status of the site. Even if it were correct, this proposal raises a range of issues for and against it. A planning balance needs to be struck in any event, weighing the harm on one side against the benefits to enable a conclusion to be reached on whether this is sustainable development.

42. Turning first to the scheme's benefits. The major plank of the appellant's case in this respect is the delivery of new dwellings, of which 40% would comprise affordable homes. While agreeing on the Council's inability to demonstrate a five-year supply of deliverable housing sites, there is disagreement on the extent of the deficit. At worst the position is 3.61 years (appellant) while the Council's evidence points to a supply of 4.63 years at best. The worst case scenario is based on a 10% uplift to the annual requirement figure of 519¹, a 20% buffer and a supply figure of 3,066 as opposed to the Council's estimated supply of 3,329 – difference of 263.
43. The evidence prepared for the inquiry included a range of permutations applying varying buffers, uplifts and supply figures. The material submitted shows that the Council has failed to meet its housing targets for the last seven years. The lack of delivery can be attributed to the recession and added effects of the SPA. However, even in the last three years the shortfall has accumulated to 830 dwellings. There must be some merit in the appellant's argument that lack of an up to date plan for over 10 years and the absence of a spatial strategy or release of land to address the area's development needs has contributed to the backlog. In these circumstances, I am inclined to agree with my colleague that this is a *"borderline case of a 20% buffer being warranted."*² On the other hand, I am unable to endorse the 10% market uplift recommended in a report prepared for the purpose of this appeal and which appears to justify the higher rate of uplift on the basis of recommendations by Inspectors at local plan examinations for other authorities. The report has not been tested at examination and was prepared for the specific purpose of this appeal; its findings cannot be accorded the weight ascribed to the SHMA.
44. In terms of supply, I agree that development proposals refused permission should not be included; there is no certainty of delivery from such sites, even in the event of an appeal. Speculation on how objections to refused permissions can be addressed does not raise the certainty of delivery. There are also doubts about the extent to which large sites could yield the numbers expected within five years. Sites currently being used for other purposes cannot be wholly relied upon to deliver new dwellings within the next five years. The 10% non-implementation rate applied by the appellant is not fully explained. Nevertheless, I accept that the Council's supply figure is somewhat optimistic.
45. Overall, and applying a degree of caution to the disputed figures, it is likely that the current five-year land position falls somewhere close to the four-year mark. This scale of shortfall is a significant material consideration to be accorded substantial weight. Consequently, the contribution that the proposed development would make to the housing needs of the Borough amounts to a significant social benefit.

¹ Taken from the West Surrey Strategic Housing Market Assessment (SHMA) and includes 5% market signal uplift
² Appeal ref: APP/R3650/W/15/3008821

46. Delivery of new affordable homes is a high Government priority. The extensive evidence provided on behalf of the appellant shows the importance of delivering new affordable homes; it is clearly a nationwide problem but one that is acutely felt in Surrey and indeed Waverley. Set against a background of unmet need, almost 166 households on the Housing Register and an annual affordable housing need of over 350 annually, the 12 (maximum) affordable homes forthcoming from the appeal development also weighs heavily in its favour. Economic benefits of building new homes, and additional retail expenditure that the residents would provide, add to the case for the proposal, albeit minimally.
47. The failure to meet the Sequential Test, with added environmental harm to the countryside and setting of Badshot Lea as well as erosion of the Strategic Gap, weigh substantially against the proposed scheme. The conflict with national policy on flooding, with LP Policies C4 and D1 and the potential for conflict with LP Policy D4 as a consequence of the harm identified also tells materially against it. These are substantive matters of national and local concern. Because of the minimal weight attached to LP Policy C2, the conflict with it is a neutral point in the balance.
48. In the final balance, I find that the proposed development would conform to the social and economic dimensions of sustainable development. The provision of new market and affordable homes are significant benefits in the circumstances of a shortfall and unmet need position in the Borough. However, due to the modest scale of the development proposed, and the limited extent to which it would contribute to the supply of housing and affordable housing needs of the Borough, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits described. In coming to this conclusion, it follows that the proposed development would not amount to sustainable development and fails against policies in the NPPF as a whole. Similarly, it falls against the policies of the development plan to which I have accorded significant or moderate weight, in spite of their out of date status.
49. I have taken account of all other matters raised for and against the proposed scheme, including the officer's support for it. For the reasons explained, I disagree with the conclusions expressed in the report to committee. No other matter raised is sufficient to alter the balance of my considerations or decision to dismiss the appeal.

Ava Wood

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green of counsel	Instructed by Waverley Borough Council
He called	
Mr Brian Woods BA(TP)	Managing Director, WSP Planning and
MRTPI	Architecture

FOR THE APPELLANT:

Mr Christopher Young of counsel	Instructed by Mr Steven Kosky
He called	
Mr James Stacey	Director, Tetlow King Planning Limited
BA(Hons) DipTP MRTPI	
Miss Lisa Toyne	Landscape Planning Director, Barton Willmore
BA(Hons) DipLA DipTP	LLP
CMLI	
Mr Timothy J Goodwin	Director, Ecology Solutions
BSc(Hons) MSc,	
MIEnvSc, MCIEEM,	
MIALE	
Mr Stuart Nelmes	Accounts Director, BWB Consulting Limited
BSc(Hons) MRes	
MCIWEM CEnv	
Mr Steven Kosky	Planning Director, Barton Willmore LLP
BA(Hons) DipTP MRTPI	

INTERESTED PERSONS:

Mrs Freeman	Local Resident
Mrs Flude	Local Resident
Cllr Carole Cockburn	Borough and Ward Councillor

Documents Submitted at the Inquiry

No	Title	Date	Submitted by
1	Letter of notification of the inquiry and those notified	14/6	WBC
2A	Planning Obligation	14/6	APP/WBC
2B	Final Planning Obligation	21/6	
3	Opening on behalf of appellant	14/6	APP
4	Opening on behalf of WBC	14/6	WBC
5	Note from Cllr Storey	14/6	Mayor of Waverley and Cllr Weybourne and Badshot Lea
6	Appeal Decision 3130438 (Horsham Road, Cranleigh)	15/6	WBC
7	5 year housing supply scenarios	15/6	APP
8	Disputed 5 year supply sites schedule	15/6	APP
9	Mrs J Flude's statement	15/6	Mrs Flude
10	Surrey County Council Highways CIL	15/6	WBC

	Note		
11	Update of Figure 10 to Mr Stacey's proof	15/6	APP
12	Committee report application WA/2016/0268	15/6	WBC
13	Mr and Mrs Freeman's statement	16/6	Mr/Mrs Freeman
14	Affordable housing completions	16/6	WBC
15	Affordable housing in pipeline	16/6	WBC
16	Judgement – [2015] EWHC 3459 (Admin)	16/6	APP
17	Appeal Decision 2211721 Willaston, Cheshire (Richborough)	16/6	APP
18	SHLAA sites	16/6	APP
19	Rushmoor flooding report	16/6	Mrs Flude
20	Note re affordable housing	16/6	APP
21	Secretary of State policy saving letter	16/6	APP
22	Letter from RPS to WBC dated 1 June 2015 re: local area surface water model	16/6	APP
23	EA Standing advice	16/6	WBC
24	Additional commentary by WBC on SHLAA discounted sites (with maps)	16/6	WBC
25	Judgement – [2016] EWHC 624 (Watermead)	16/6	WBC
26	Appellant's response to ID 24	17/6	APP
27	Letter from Royal Haskoning re: highways	17/6	
28	Correspondence re: pumping station	17/6	WBC
29	Additional suggested conditions	17/6	WBC/APP
30	Mr Green's closing	17/6	WBC
31	Mr Young's closing	17/6	APP
32	Costs application on behalf of the appellant	17/6	APP
33	WBC response to the costs application		WBC

Appendix 8

St Austell Appeal (PINS Ref. APP/D0840/W/16/3158466)

Appeal Decision

Site visit made on 14 February 2017

by Colin Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 16 March 2017

Appeal Ref: APP/D0840/W/16/3158466

Pentewan Valley Nurseries, B3273 from Treveskern to junction south of Tregiskey Farm, Pentewan, St Austell PL26 6DL

- 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 Mr & Mrs N and L Hoar against the decision of Cornwall Council.
 - The application Ref PA15/09719, dated 16 October 2015, was refused by notice dated 7 June 2016.
 - The development proposed is erection of five dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs N and L Hoar against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Restormel Borough Council Local Plan 2001 no longer forms part of the statutory development plan for the area. I have determined this appeal in accordance with the policies of the Cornwall Local Plan, which was formally adopted by the Council during the course of the appeal process.
4. The application was made in outline with all matters, except access, reserved for future determination. I have considered the appeal on that basis.

Main Issue

5. Whether the site provides a suitable location for the proposed development, having particular regard to the risk of flooding.

Reasons

6. The appeal site is a former nursery and garden centre which contains a number of disused greenhouses and other structures. Whilst some of the information within the appeal evidence suggests that the site is within Flood Zone 3, both parties agree that the site is partially within Flood Zone 2 with the remainder being within Flood Zone 1. I have determined the appeal on this basis.
 7. The Environment Agency flood maps do not take account of the flooding defences along the St Austell River. According to the appellant's Flood Risk Assessment (the FRA) the crest level of the defences nearest the appeal site is
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- 0.45 metres above the 1:1000 year flooding event. Provided that the defences remain in place, the likelihood of the site flooding therefore appears to be low. However, although the defences are currently in Grade 3 (fair) condition, the proposed dwellings would be in place for the long-term and I am mindful that the condition of the defences could change over time. As such, there always remains some risk that the defences could fail. The FRA recognises that in the event of the defences being breached, the parts of the appeal site falling within Flood Zone 2 would be prone to flooding.
8. The appellant points out that irrigation within the nursery required an average of 60,000 litres of water a month, with 94,000 litres required at peak times. As such, the appeal proposal would lead to a substantial reduction in surface water compared to the former nursery use. It would also help to increase the permeability of the site through the reduction of hardstanding areas. Nonetheless, the FRA makes it clear that the main risk of flooding in the area is derived from the potential of the river to burst its banks rather than runoff or the saturation of groundwater. There is little before me to show that the risk of the river flooding would be lowered to any discernible extent as a result of the site being used for housing as opposed to a nursery.
 9. In areas that are known to be at risk from flooding, the National Planning Policy Framework (the Framework) indicates that a 'sequential test' should be applied to proposals for development. The Planning Practice Guidance (the PPG) advises that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. It is suggested that this may be identified from other Local Plan policies, such as the need for affordable housing within a town centre, or a specific area identified for regeneration.
 10. In this particular case, the Council has conducted a sequential test based on the St Austell and Mevagissey Community Network Area (the CNA). This is the geographic area which is used to establish strategic housing targets within the Cornwall Local Plan (the Local Plan). Considering that the proposal is for open market housing development, this seems a reasonable approach given the advice contained within the PPG.
 11. I understand that the CNA is a relatively sizeable area which incorporates the town of St Austell as well as large parts of the surrounding rural hinterland. For this reason, the appellants argue that it would be more appropriate to base the sequential test on a smaller search area, focused around the needs of local parishes. With this in mind, I have been referred to a survey of residents conducted by Pentewan Valley Parish Council in 2010 as part of a parish planning process. Although the survey found that the housing needs of local residents were being met, it was nonetheless anticipated that this would be likely to change in the future. Indeed, it was reported that 10% of respondents would be looking for a new home in the next 5 years.
 12. Whilst I recognise that evidence of more localised housing needs may help to provide justification for a smaller search area, the parish survey information is now relatively dated and does not represent a particularly comprehensive assessment of local needs at present. Similarly, although rural housing may play some part in supporting community vitality, relatively little evidence has been put forward in this appeal to demonstrate that a smaller search area can be justified on these grounds alone.

13. The appellants have drawn my attention to a planning application for housing at Polcoverack Lane¹ where the officer report accepts that the search area for the sequential test should be confined to the local parish. I do not have the full details of the evidence that was submitted to justify that approach, but note the Appeal Decision at Devoran Boatyard². In that particular case, the Inspector found it appropriate to base the search area on the CNA due to a lack of robust evidence of a specific housing need within Devoran or an indication that development was needed to sustain the community. I consider the circumstances of the current appeal to be similar in that respect.
14. The appellants refer to a number of other planning applications where housing has been approved within flood zones despite the availability of sites at lower risk of flooding. In the case of residential development at Wadebridge³ and Tuckingmill⁴ (subsequently allowed at appeal) the schemes were justified on the basis of their town centre location. Given that the former development plans aimed to focus growth in town centre locations, it was reasonable to reduce the search areas to help meet this objective.
15. Whilst Policy 3 of the recently adopted Local Plan allows some limited infill development on the edge of rural settlements, it is clear that the bulk of new housing is to be located in the main towns. In addition, the Council has provided evidence to show that there is a five-year supply of deliverable housing sites in the area. Information within the appeal documents suggests that this was not necessarily the case when the applications in Wadebridge and Tuckingmill were assessed. As such, the circumstances of those cases do not lend much weight to the argument that a smaller search area should be applied in the current appeal. It is not in a location that is specifically prioritised for housing development within the Local Plan and evidence has been provided to show that housing needs are presently being met.
16. The Level 1 Strategic Flood Risk Assessment indicates that it should be possible to deliver growth outside flood zones, but development that is specifically required for regeneration may be necessary within Flood Zones 2 and 3. With this in mind, the appellants draw my attention to Par Docks, a previously developed site earmarked for 300 dwellings within the Local Plan. While parts of the docks are located outside Flood Zone 1, this land is discounted from the sequential test in order to enable a more thorough regeneration of the site in line with the strategic objectives of the Local Plan. It is suggested that a similar approach should be adopted in the current appeal as it would enable the development of a previously developed site.
17. However, whilst the plan encourages the re-use of previously developed land, it also aims to steer growth away from areas at risk of flooding. I am not aware of any policies that explicitly permit development of unallocated brownfield land in Flood Zones 2 and 3. The appeal proposal is a much smaller scheme than Par Docks and the benefits of redeveloping the site are clearly of less strategic importance. Although the appeal proposal would lead to the removal of redundant greenhouses and generally tidy the site, there is limited evidence before me to show that the wider benefits would necessarily justify the sequential test being applied to a more localised area.

¹ Council Ref: PA15/10635

² Appeal Decision: APP/D0840/W/16/3143424

³ Council Ref: PA13/09213

⁴ Council Ref: PA15/02688

18. Having established that it is reasonable to use the CNA as the search area for the sequential test, I now consider how the test was applied by the Council. Appendix A of the Committee Report lists three sites in the CNA which had permission for residential development (7 dwellings in total) and a further site with potential for around 9 dwellings at Hewas Water⁵ which was only subject to pre-application advice at that time. The minutes of the Planning Committee acknowledge that it was premature to report the site at Hewas Water. However, even discounting Hewas Water, Appendix A indicated that there were enough extant planning permissions within the CNA to accommodate five dwellings in Flood Zone 1 (albeit split between different sites).
19. The appellants argue that the Council should have identified sites of a similar size to the appeal proposal instead of relying on combinations of smaller sites to show that five dwellings could be accommodated elsewhere. However, the main justification for providing five open market dwellings in the CNA is to deliver the Local Plan housing target. This objective can be equally well achieved whether five dwellings are built on a single site or multiple smaller sites. Hence, the Council took a reasonable approach in this respect. Whilst I am referred to a Judgement⁶ where it was decided that such an approach was not appropriate in a Scottish retail development, the circumstances of that case are clearly different from that of the current appeal. Certain forms of retail development may require sites of a minimum size for operational reasons, whereas this argument is less easily applicable to housing proposals.
20. It is also argued that the sequential test should have focused on identifying previously developed land in order to find sites more equivalent in nature to the appeal proposal. I note that none of the sites listed in Appendix A of the Committee Report are previously developed, apart from the Hewas Water site which was not available at that time. The Framework indicates that the sequential test should aim to identify reasonably available sites appropriate for the proposed development. In this case the 'proposed development' is housing which can be equally well accommodated on either previously developed or greenfield sites. Whilst I accept that the Local Plan promotes the reuse of previously developed land, it also recognises that not all sites are necessarily suitable for development by virtue of their location. Overall, the Council has taken a reasonable approach by including greenfield land within its list of available sites.
21. The alternative sites identified by the Council had planning permission at the time the Committee Report was written. While I am not aware of any guidance that prevents the inclusion of sites with planning permission, my attention is drawn to the appeal at Devoran Boatyard⁷ where the Inspector found that sites which already have planning permission should not have been treated as being 'reasonably available' for the purposes of the sequential test. Although I do not have access to all the information that was before the Inspector in that appeal, it is clear from the decision that the Council were unable to demonstrate a five year supply of housing sites at that time and housing needs were not being met. Consequently, sites in addition to those which already had planning permission were needed in order to address housing needs.

⁵ Subsequently gained planning permission. Council Ref: PA16/04849

⁶ Tesco Stores Limited v Dundee City Council (Scotland) [2012] UKSC 13.

⁷ Appeal Decision: APP/D0840/W/16/3143424

22. In the current appeal, the Council says that it can demonstrate a five year supply of deliverable housing sites. Furthermore, a new Local Plan has been adopted which establishes clear housing targets for particular areas. According to the Local Plan Housing Implementation Strategy there is a residual target of 300 dwellings within the CNA for the period up to 2030. From this target, 208 dwellings had already been completed and 63 had planning permission as of April 2015. This would include the sites identified within Appendix A of the Committee Report. Assuming that the existing planning permissions are implemented during the plan period, a further 29 dwellings will need to be built on new sites before 2030 in order to meet the Local Plan residual housing target for the CNA (only 2 per year on average).
23. This seems a likely prospect considering that the latest Strategic Housing Land Availability Assessment identifies 9 potential windfall sites within the CNA capable of accommodating a total of 227 dwellings, even when a 30% discount is applied. In addition, it is forecast that 120 windfalls will come forward on smaller sites (based on rates of completion over the last 10 years). Hence, there is a good chance that the 29 dwellings necessary to meet the CNA residual housing target will be exceeded before 2030. There is little indication that the Council would be reliant on development outside Flood Zone 1 in order to meet this target. I appreciate that the appellant's sequential test analysis raises questions about the viability and lead-in times of some of the specific sites identified by the Council (such as the site at Ledrah Gardens). However, the total number of potential windfalls is relatively large and it would only require a small proportion of these to be developed in order to meet the residual housing target for the area.
24. In light of this evidence, I consider that the circumstances of this appeal are somewhat different from that of the Devoran Boatyard case. It has been reasonably demonstrated that the combination of sites that already have planning permission (including those in Appendix A of the Committee Report) and those which are anticipated to come forward through windfall are sufficient to address the residual CNA housing target without necessarily having to develop on land which is at risk of flooding.
25. This leads me to conclude that the proposal would not meet the provisions of the sequential test. With reference to paragraph 102 of the Framework, it would therefore be possible, consistent with wider sustainability objectives, for the development to be located in zones with a lower probability of flooding. Although the appellants argue that the Council's application of the sequential test is not 'consistent with wider sustainability objectives' as required by the Framework, the evidence before me indicates that local housing needs can be adequately addressed by sites situated within Flood Zone 1. Furthermore, it has not been clearly shown that the proposal would have wider benefits, even though it would make use of a previously developed site. The overall indications are that equally sustainable forms of housing development could be situated in areas of lower flood risk.
26. Although the boundaries of the appeal site include land in Flood Zone 2, the appellant suggests that the proposed dwellings could be confined to the parts of the site in Flood Zone 1. However, the parts of the site within Flood Zone 1 are situated away from the road frontage. In the event of flooding, it would not be possible for future occupiers to achieve safe access and egress without having to enter adjoining land.

27. I saw during the site visit that there is a gate to the rear of the site providing access to the neighbouring Sun Valley Holiday Park. This could potentially be used to achieve safe access and egress in a flood event and note that the landowner has given written permission for future occupiers to enter their site if flooding occurred. However, whilst I recognise that some initial steps have been taken to secure the agreement of the landowner, it is only an informal arrangement at this particular stage. The proposed housing would be in place for the long term and ownership of neighbouring land may change. Permission to enter the site could be withdrawn or physical barriers erected. If I were to impose a condition to ensure that the proposed dwellings would be confined only to parts of the site within Flood Zone 1, it would not be certain that the housing could be made safe for the lifetime of the development (as required by the exception test set out in paragraph 102 of the Framework). As such, it is reasonable to apply the sequential test even though parts of the site are in Flood Zone 1.
28. Notwithstanding the above, I note that the Environment Agency state that the proposal would comply with the second part of the exception test, subject to conditions being imposed. With regard to the first part of the exception test, the appellants argue that the housing would be accessible and offers wider sustainability benefits in terms of re-using a redundant site. However, I have not considered these matters any further because the Framework is clear that the provisions of the exceptions test only apply if the sequential test is passed. While I have been referred to an application for a dwelling at Polcoverack Lane⁸ that did not pass the sequential test but was nonetheless approved on the basis that the exception test could be passed, this decision was made against professional advice and does not establish a convincing precedent. Although it is argued that the proposal would comply with Policy 3 of the Local Plan, this does not help to overcome non-compliance the sequential test.
29. I therefore conclude that the site would not provide a suitable location for the proposed development. There would be conflict with Policy 26 of the Local Plan, which indicates that development should be sited to avoid flood risk. There would also be conflict with the objective of the Framework to steer new development to areas with the lowest probability of flooding.
30. For the above reasons, and having regard to all other matters raised, including the comments of the local Councillor, the appeal should be dismissed.

Colin Cresswell

INSPECTOR

⁸ Council Ref: PA15/10635