Appeal Decision

Inquiry Held on 29 June – 2 July 2021

Site visit made on 7 July 2021

by Stephen Wilkinson BA (Hons) BPl DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal Ref: APP/U1430/W/20/3270665
Land off Spindlewood Drive, Bexhill on Sea.
Grid Reference: 571045, 107627

- 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 Ainslee c/o Exigo Project Solutions against the decision of Rother District Council.
- The application Ref RR/2017/1705/P, dated 20 July 2017, was refused by notice dated 16 March 2020.
- The development proposed is residential development for circa 160 dwellings with all matters reserved other than access.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 27th July 2021.

Decision

1. The appeal is allowed and outline planning permission is granted for residential development of circa 160 dwellings with all matters reserved other than access in accordance with the terms of the application, Ref RR/2017/1705/P, dated 20 July 2017, and the plans submitted with it, subject to the schedule of conditions included in this letter.

Application for costs

2. In advance of the Inquiry, I received an application for costs from Exigo Project Solutions against Rother District Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have considered the issue as to whether the appeal required a Screening Opinion under Regulation 5(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Secretary of State reviewed the appeal papers and issued a Screening Decision that an EIA is not required. I am satisfied with his decision in respect of this matter.

4. In advance of the Inquiry I received notification on 4thJune that the Council had withdrawn its second reason for refusal (R4R).

5. During the Inquiry there was a brief discussion on the information on which I should base my decision. For the avoidance of doubt my decision is based on everything which was submitted in evidence.

6. The application has been submitted in outline with all matters reserved apart from access. I am treating the suggested schematic layout included within submitted plan, 1743-SK-P-204 D, as for illustrative purposes only.

7. The main parties in the Statement of Common Ground agree that reference in the decision letter to Policy EN6(ix) was a drafting error and should have referred to EN6(iv).

8. During the presentation of the Council's evidence 'in chief', regarding the 'planning balance' various corrections were made to policy references.

9. At various points during this decision, I refer to SPINDAG, a local residents group who are opposed to the appeal scheme and have provided a body of evidence in support of its case.

10. The appeal was submitted with a completed Unilateral Undertaking which includes the provision of affordable housing, a detailed Sustainable Drainage System (SuDS) and its management arrangements, highway works, contributions to bus services and travel plan monitoring. I make further reference to this Undertaking in the decision.

11. In advance of the decision being issued I sought the views of parties on the revised National Planning Policy Framework 2021 (the Framework) which was issued after the Inquiry. Only SPINDAG provided comments which I have included in the decision below.

Policy

12. The Councils adopted Local Plan is in 2 parts, a Core Strategy 2014 and the Development and Site Allocations (DaSA) Local Plan 2019. Policy BEX9 of the DaSA allocates the appeal site for 160 dwellings subject to 13 criteria. These includes a requirement for access from Spindlewood Drive and Barnhorn Road; these are included in this appeal scheme.

13. Of note is the criteria which requires, that in accordance with DaSA Policy DEN 5, 'Sustainable Drainage', 2 forms of SuDS are incorporated and that an Appropriate Assessment under the Habitat Regulations can demonstrate that beyond scientific doubt these can be delivered on the site without harming the integrity of the Pevensey Levels Special Area of Conservation (SAC) and Ramsar. A schematic plan identifying key features of the allocation was included with the policy.

Main Issues

14. The appeal raises the following issues:

- Whether or not the proposed development would adversely affect the Pevensey Levels Special Area of Conservation, Ramsar and Site of Special Scientific Interest (SSSI) with regards to surface water drainage, and

- Whether or not the surface water drainage scheme would have an adverse effect on the landscape character of the surrounding area.

Reasons

Surface water drainage

15. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage[1] where the potential for likely significant effects is considered.

16. As a project progresses from inception through to implementation a series of decisions are required to be considered against the Habitats Regulations, (the Regulations) and where necessary an Appropriate Assessment (AA) has to be taken for each decision. Three AAs have been completed as this project has progressed. The first was part of the original submission to the Examination in Public of the Local Plan DaSA, the second by the Examining Inspector and the third by the Council in advance of the determination of the application.

17. Each of these concluded that the required mitigation could be properly secured and that the proposals would not have an adverse effect on the identified SAC and Ramsar either alone or in combination with other projects. The responsibility of completing a further AA now falls to me as part of this appeal.

18. The Habitats Regulations[2] (the Regulations) require that if likely significant effects on a European site cannot be excluded, permission may only be granted after having ascertained that it will not affect the integrity of the site either alone or in combination with other plans or projects. In completing an AA there should be no gaps in the considerations which inform the decision. If adverse effects on the integrity of the protected site cannot be excluded on the basis of objective scientific evidence then it must be assumed that they will occur. However, this is an outline application and my assessment should be proportionate to the amount of evidence before me.

19. The appeal site lies within 100m of, and within the hydrological catchment of the Pevensey Levels (the Levels), designated as a Special Area of Conservation (SAC), Ramsar, and a Site of Special Scientific Interest (SSSI). The Levels comprise almost 3,600ha of low lying grazing meadows wetland, interspersed by a complex system of ditches which contain a wide variety of form and species composition and support important communities of wetland flora and fauna. The Levels are identified as a Ramsar site for the outstanding assemblage of wetland plants and invertebrates. The site supports around 68% of the vascular plant species in Great Britain which can be described as aquatic.

20. Whilst the Levels are an important habitat for wetland plants and invertebrates including British Red Data Book species, Lapwing and butterflies, its qualifying feature identified in the SAC includes habitat for the Lesser Whirlpool Ramshorn Snail (*Anisus vorticulus)* (the snail). The JNCC[3] describes this species as a small, aquatic snail with a flattened spiral shell no more than 5mm in diameter.

21. Critical to the ecology of the Levels is the management of a sufficient supply of unpolluted freshwater. It is the quantity and quality of the run-off from the proposed development and its potential effects on the ecology and in particular on the qualifying features of the Levels which is at the heart of this main issue.

22. The proposed scheme includes a sustainable drainage system (SuDS). Put broadly, by gravity flow, rainwater run-off from hard surfaces across the

[1] People Over Wind and Peter Sweetman v Collite Teoranta ECJ (2018) C-323/17
[2] Conservation of Habitats and Species Regulations 2017
[3] Joint Nature Conservation Committee

scheme is taken by a series of swales to a main swale running through the site, which flows, via a wetland forebay to a drainage basin which in turn would discharge via a controlled flow to the Cole Stream, a natural water course serving the Levels, which runs along the eastern edge of the appeal site. There are a series of filter strips throughout the system to aid pollution control.

23. The Council's assertion that the appellant has not considered a worst case scenario primarily rests on several variables including rainfall methodology, the extent of impermeable area and long term storage. Its case also refers to other factors such as discharge volume, groundwater levels, tidal climate change, hydraulic calculations and drainage planning[4].

24. Each of these areas are linked and rely on detailed calculations. For this reason, I have made an overall assessment of these variables before concluding whether any adverse impacts would arise for the qualifying features of the SAC, Ramsar and SSSI.

25. Underpinning the appellant's case is that an appropriate drainage system could be engineered to ensure that the level of run-off could be managed to ensure that discharge to the Cole Stream would not have an adverse impact on the ecology of the Levels.

26. Assessment of the 'worst case' is beyond the requirements of HR, although both parties accept that this is a rational approach given the potential impacts on the Levels.

Rainfall methodology

27. It is accepted by both main parties that the reference included in the Council's reason for refusal to 'rainfall assumptions' actually refers to rainfall methodologies.

28. There are 2 commonly accepted rainfall methodologies[5] the FSR and FEH. The FEH13 is a refinement of FEH99. None of these is preferred by statute. They are required to inform a consistent and reasonable estimate for the determination of water storage decisions[6]. Despite the relatively small size of the appeal site, I am satisfied that the appellant's modelling is appropriate for assessing the worst case scenario.

29. Initially, the appellant proposed the FSR method because it generates higher rainfall than FEH13. However, in response to consultation, the FEH13 was selected on the basis of the need for a fixed discharge rate; this in turn requires higher storage volumes which would determine the size of the drainage basin. For example, in December 2018 the largest volumes of storage required was estimated, by the appellant to be around 2,955.8m^3 and 3229.6m^3 respectively for the FSR and FEH methodologies respectively[7]. These account for the discharge volume suggested by the Council.

30. Further refinements, since the Council's refusal, by the appellant, involved sensitivity testing[8] against different return periods[9] for variable discharge rates

[4] Ms Lean in Closings
[5] Flood Studies Report 1975 updated and Flood Estimation Handbook 99 and FEH13 update
[6] CIRIA SuDS Manaul 2015
[7] Document C25.2 and C.26
[8] Table 5.1 PoE Mr Maiden Brooks

(including the 100year+ 40% as specified by the Environment Agency) for a fixed impermeable area. For this return period, these studies suggest a storage volume requirement of 1,623m^3 for the FEH and 1,513m^3 for the FSR methodology although the appellant's report of August 2020 report identifies a capacity of 1,965m^3[3, 10].

31. Other sensitivity testing was carried out against fixed discharge rates limited to Qbar rates above 1:2 year event which demonstrates that FEH represents the worst case scenario when applied to the drainage strategy[11]. Crucially in this case, the capacity of the proposed drainage basin, even when located at surface level would be sufficient to allow for the return period of 100year+40%.

32. Further testing was completed in respect of the comparison between the impermeable area of between 2.6-3.2ha with the worst case (FEH) methodology and a Qbar discharge rate for the 100year+ 40%. Even for this extreme event this demonstrates that the basin would have sufficient capacity.

33. The Council's objection to the proposed scheme, that it hasn't been tested against a consistent set of parameters, is overstated given the extent of sensitivity testing included in the appellant's evidence. The Council's witness agreed that the storage capacity required for the worst case scenario could be engineered and delivered on the site. For these reasons, I consider that the appropriate methodology has been tested to demonstrate the worst case scenario.

34. Whilst I acknowledge the concerns of SPINDAG on this point[12], I am satisfied that the extent of modelling of both methodologies during the 4 years in which the scheme has emerged through negotiations between the appellant, the Council and statutory consultees, demonstrates that the implications of each of these methodologies has been fully considered.

Impermeable area

35. The proposed development would result in an increase in the rate of rainfall run-off compared to the rate if it was retained as greenfield. The Council agree with the appellant's methodology for assessing the extent of the impermeable area which results from the extent of the urban areas within the scheme[13], although there is disagreement on the allowance for urban creep[14].

36. The difference has emerged from the appellant's re-calculation of the extent of the urban area, which has changed as successive iterations of modelling have been developed. The appellant now assesses the urban area within the appeal scheme to be around 2.6ha. It would seem that the change which occurred since the Council's refusal was to account for the re-designed road and reflects detailed topographical studies and groundwater surveys.

[9] An estimate of the likelihood of a particular event occurring. A 100 year storm refers to the storm that occurs on average once every hundred years. In other words its annual probability of exceedance is 1% chance in any one year.
[10] Appdx 11 Technical Note para 3.8
[11] Table 5.2 PoE Mr Maiden Brooks
[12] Statement of Mr Lawton, SPINDAG
[13] Rebuttal PoE Mr Cafferkey para 2.4
[14] Changes to the areas of hard surface which occur during the life of a development i.e. new patios or forecourt parking in place of garden areas. These could alter the amount of surface water draining from the site

37. Of critical importance in respect of this matter, is not the exact area of impermeable land but whether within sufficient tolerances the run-off could be adequately accommodated within the swales, forebay, main wetland and drainage pond. Whilst this matter is inextricably linked to the discharge rate from the drainage basin to the Cole Stream, which I address later, I am satisfied that the appellant's sensitivity analysis[15] has modelled the extent of impermeable area ranging from 2.6-3.2 ha with a worst case scenario demonstrated by the application of the FEH rainfall method. The size of basin is within appropriate tolerances.

38. The comparable figures demonstrate that even with an impermeable area extending to 3.2ha, with FEH methodology and with discharge set at Qbar[16] there would be sufficient capacity to avoid overtopping. This again provides assurance that the worst case scenario has been sufficiently addressed.

39. The appellant has identified that the existing methodology and extent of run-off does not account for other means of water management which would intercept rainwater before it reaches the drainage basin. These could include measures such as green roofs and permeable paving. It will only be at Reserved Matters Stage that these measures can be fully addressed.

Impact of groundwater levels on drainage design

40. The site slopes from around 19m AOD[17] in its north west corner down to around 4m AOD by the Cole Stream. Groundwater monitoring indicates the highest groundwater level is in the south eastern corner of the site at around 0.62m bgl[18]. To ensure that the land is of sufficient height to allow gravity flow through swales from this area and to ensure that the drainage basin would have sufficient 'freeboard', the proposal involves raising the height of the swales and drainage basin by between 0.5-1.6[19]m. This would ensure that the proposed drainage basin would be sufficiently clear of groundwater.

41. The appellant has allowed for a potential increase in the capacity of the basin by lowering it into the ground. To protect ground water the scheme could include a geosynthetic waterproof membrane and sacrificial membrane. I do not consider that, if such an approach is used, the depth of the proposed lining would significantly impact on the natural flow of groundwater beyond the limits of the drainage basin, if this was indeed required.

42. The shallow profile of the pond would not to my mind require some counter weight as ballast for stability as suggested by SPINDAG[20] and there would be sufficient tolerances between the bottom of the basin and the level of groundwater level to accommodate this.

43. Consequently, I am satisfied that the proposed basin could be located on site with an adequate capacity which would not result in interference with groundwater.

Climate change, tidal levels and other factors

[15] PoE Mr Maiden-Brookes Table 5.3
[16] Qbar – a peak rate of flow from a catchment for the median annual flood (a return period of approximately 1:2.3 years). In comparison with other discharge rates this is considered to be a slow rate.
[17] Above Ordnance Datum
[18] Below ground level
[19] Appx 11 Technical Note para 3.9
[20] Statement of Mr Lawson

44. The Council has raised other matters in respect of climate change and the hydraulic calculations but made it clear that these matters were not being advanced as critical issues in themselves.

45. In respect of tidal levels, the Council acknowledge that the appellant's modelling of a 1:200 year tidal breach locking the outfall from the wetland, is considered reasonable[21]. The Environment Agency has not objected to the appellant's conclusions in respect of this matter.

46. Regarding hydraulic calculations, I am satisfied that despite the discrepancy included in the appellant's earlier evidence on this point[22] the proposed height of the invert level of the outfall from the attenuation pond would be at 4.8m, allowing for an adequate discharge structure and outfall to the Cole Stream.

Discharge rate

47. The Council's case is predicated on several points relating to the shortcomings in the proposed SuDS resulting from a regulated discharge rate from the drainage pond to the Cole Stream and concerns over the limitation of filtration which in turn could adversely impact on water quality and the ecology of the Levels.

48. As part of the application for planning permission, the proposal included a discharge at the Qbar rate, but following the LLFA's comments this was revisited to include a variable rate. This latter could allow a rate of run-off close to and not exceeding the natural 'greenfield' rate which is a requirement of Policy DEN5.

49. Whilst the Council acknowledge[23] this matter could be appropriately dealt with at reserved matters stage, the critical issue for the purposes of the AA is to assess the potential impact of the rate of discharge on the ecology of the Levels.

50. Of the 6 pathways identified by the appellant[24] in how surface water and /or groundwater pollution could impact on the Levels, the Council takes exception with two which are interlinked. These include the impact of an increase in impervious surfaces that prevents rainfall percolating into the soil and how this could ultimately alter the wetland hydrology, and secondly, on how an increase or decrease in water flow into wetlands may alter species composition and decrease pollutant removal efficiency with potential effects on the food web.

51. In respect of the first, the shallow depth of the proposed swales is unlikely to result in an impermeable barrier located to a depth which would significantly affect run-off rates across the wider site. Given the size of the impermeable areas, the effects of this for the natural rate of percolation, and the peak greenfield run-off rate (GRR[25]), across the whole site, would be negligible.

52. The appellant acknowledge that the SuDS will smooth out the water flow into the Cole Stream and would introduce a lower flow rate over a longer period of time resulting in a reduction in the dynamism of the wetland system, which can

[21] Rebuttal Proof of Mr Cafferkey para 5.1
[22] Rebuttal of Mr Maiden-Brooks at para 3.17
[23] Closings paragraph 33
[24] PoE Mr A Baxter
[25] Greenfield Runoff Rate – the peak rate of run-off for a specific return period due to rainfall landing on a given area before development

be affected by heavy rainfall. This could potentially impact on the qualifying feature of the SAC, the Lesser Whirlpool Ramshorn Snail, which requires winter flooding, amongst other factors, to disperse populations across the Levels enabling colonisation to avoid interbreeding and species survival.

53. The Council advises that through the application of the precautionary principle the appellant's failure to consider the impacts of a decrease in the rate of water entering the Cole Stream on the snail is an omission or lacuna, and for this reason, this local significant effect cannot be screened out.

54. Research quoted by the appellant identifies that the snail is a robust species which can tolerate a variety of conditions and has the ability to reproduce and establish large populations within a year[26].

55. Whilst there is limited research on the life of the snail it is clear that other vectors can support population dispersal. Furthermore, the fact that statutory agencies including the Environment Agency and Natural England have not objected to the scheme with either Qbar or variable rate of discharge from the drainage basin to the Cole Stream is instructive in this regard.

56. It is understood that for the Clavering Walk[27] appeal, the variable discharge rate was set at 65% of the GRR; this was accepted by the statutory bodies.

57. Furthermore, the proposed SuDS includes 3 levels of pollution treatment designed to ensure that discharge from the drainage basin would be unpolluted water.

58. The Council state that the risk of a catastrophic failure of the SuDS has not been fully addressed and that this was a gap which had to be addressed in line with the Regulations. However, I consider that the degree of safeguards built into the appellant's SuDS design has sought to 'design out' this possibility. The fact that the Council has not refused the application with reference to Policy DEN5 reflects that they did not consider this to be a possibility.

59. Finally, the Council acknowledged that whilst many of these factors would individually have limited impacts[28] it is their combination which is critical. Having considered each factor, I do not consider this to be the case and the appellants sensitivity analysis demonstrates that collectively the Council's criticisms are unfounded.

In combination with other projects

60. I am required, by the Regulations, to consider the locally significant effects in combination with other plans or projects. Although there are several site allocations included in the DaSA which would drain into the Levels, their locally significant effects were screened out during Examination of the Local Plan. No applications have as yet been received for these sites.

61. Recent appeal decisions allowing development at unallocated sites at Ashridge Court[29] and Claverings Walk both conclude that alone and in combination with other projects they would not result in locally significant effects on the qualifying features of the Levels. For this reason, and given the safeguards

[26] Gloer and Groh
[27] APP/U1430/W/19/3234340
[28] Mr Cafferkey in Chief
[29] APP/U/1430/W/17/3191063

applied to this appeal scheme, I am satisfied that there would be no in combination adverse impacts on the qualifying features of the SAC and Ramsar.

Concluding comments on this main issue

62. I am aware that the application of the Habitats Regulations during the life of the site allocation through to the inception of the outline appeal scheme requires a series of separate decisions. The fact that a succeeding stage in this process, for example the submission of reserved matters would follow, still requires me, as competent authority, to be satisfied beyond all reasonable scientific doubt as to the effects of the scheme on the Levels. This should be achieved through the application of the 'precautionary principle' to unequivocally demonstrate why the protected habitat and species would not be adversely affected.

63. The proposed scheme is submitted in outline with only details of means of access to be considered at this stage. Whilst this has required some generalised assumptions on the amount of developed area, the converse is true of the wealth of detail on the surface water drainage strategy. A proportionate approach is required to this matter.

64. The appellant's proposed scheme demonstrates that a solution can be engineered within a range of different parameters. The list of conditions included in this decision reflects the extent of detail which is still required to be considered and would provide further safeguards for the protection of the Levels before the site would benefit from a full planning permission.

65. There are sufficient safeguards built into the appeal scheme which can overcome the concerns of the Council and SPINDAG[30]. The drainage solution can be engineered to ensure that the worst case scenario can be managed. The position of the surface water swale limits the extent of excavation, which could compromise the groundwater levels and the extent of run-off. Furthermore, the appellant's suggestion of the inclusion within the scheme, of a geosynthetic membrane and a sacrificial lining could provide protection for groundwater if a slightly deeper swale was engineered.

66. I am satisfied that the additional measures referred to by the appellant, which have not been factored into this scheme, could provide additional forms of interception, reducing the rate of run-off and allowing for further enhancements to water quality before it enters the swales, forebay and drainage pond; albeit these need to be secured as part of the reserved matters. I am further satisfied that sufficient modelling and assessment has been completed to ensure that tidal effects would not impact on the drainage strategy.

67. Although the requirements of the Habitats Regulations sit above local policy considerations, the Council has referred to specific policies in its first R4R relevant to this matter. Policies EN5(ii), (viii) and (ix) require the protection of internationally, national and locally protected sites of importance for biodiversity and for new development to avoid adverse impacts on these areas. Policy EN6 seeks partnership working to deliver effective flood risk management.

[30] Statement of Mr Lawson

68. On the basis of the submitted surface water drainage strategy, I conclude that the proposed scheme, either alone or in combination, would not adversely impact on the qualifying features of the Pevensey Levels SAC, Ramsar and SSSI. The appeal scheme would not conflict with Policies EN5, EN6 and SRM2 of the Core Strategy 2014. Furthermore, the inclusion of a SuDS is supported by Policies DEN5 and BEX9 of the DaSA 2019.

Landscape impacts

69. Landscape is a reserved matter. In respect of this main issue, the difference between the parties is only relevant insofar as it relates to the ground levelling required for the drainage basin and the development platform at the south western edge of the site. These works are required to enable gravity flow drainage through the swale from both the proposed road and development platform lying on the site's southern edge to create the drainage basin with sufficient capacity to accommodate the anticipated run-off from the development.

70. The character of the site's topography means that although it lies within the National Character Area profile 122 High Weald, and at Regional level within the Pevensey Levels LCA 25[31] as set out in the East Sussex LCA 2008, the site reflects few of the characteristics which define these areas.

71. The submitted plans and cross sections are illustrative and provide only general guidance as to how the final scheme could appear. The submitted scheme indicates ground raising of around 0.5m to a maximum height of around 1.7m. on the south east edge of the site. This is below the height estimated by SPINDAG[32].

72. The site comprises grazing pasture set within 5 small fields with boundaries defined by thick tree belts including a tree belt along the site's eastern edge by the Cole Stream.

73. Due to the topography of surrounding areas, the treed boundary along the Cole Stream and existing field pattern only parts of the site are visible from the rear of properties in Barnhorn Road, Mulberry Close and Spindlewood Drive. The wooded edge along the Cole Stream allows only intermittent views from Old Harrier Close and Hazelwood Close. The site can be seen from those caravans within the neighbouring site which are located close to its common boundary. The presence of this development compromises the site's rural character and confirms the Council's Landscape Assessment of the site as having a 'strong urban fringe character' with a low sensitivity to change.

74. Two public footpaths would act as receptor points allowing views both into and across the site. These run in broadly north-south and east-west directions at the southern end of the site.

75. The field within which the drainage basin would sit lies between 4-7m AOD. At its maximum the ground raising required to achieve the appropriate height to contain the water including a 'freeboard'[33] would be around 1.6[34]m on the southern edge of the pond; its highest point due to the fall in the topography to

[31] Landscape Character Area
[32] Statement of Mr Lawson
[33] A term used to describe the difference in height between the design water level and the top of a structure, provided as a precautionary safety measure.
[34] Appx 11 Technical Note -para 3.9

the Cole Stream. With a gradient of 1:3, the bank to the pond could, through appropriate landscaping, appear as a natural feature.

76. The drainage basin would be seen clearly from both footpaths but only on immediate arrival in the southern field where it will be located. Long distance views would not be readily afforded due to the well treed field boundaries. For the same reason, the creation of the southern development platform would not be discernible from either footpath given the extensive tree belts along the field boundaries.

77. The Council's R4R refer to Policies EN1(iii), (v) and (vii). These focus on the protection and enhancement of nationally designated and locally distinctive landscapes and features and ENV(v) identifies the importance of open landscape between clearly defined settlements and retention of tranquil and remote areas.

78. The reference to the site allocation within Policy BEX9 of the DaSA, effectively includes the site within the settlement boundary. The site is not remote given the surrounding housing and whilst it lies within the NCA 122 and LCA 25, the site's self containment means that the ground raising would not adversely impact on these designated areas. The existing thick tree belts along the Cole Stream would protect views of the proposed development from the south eastern side of the site and the submission of reserved matters for Landscaping would allow an opportunity for a scheme to achieve the same for the site's shared boundaries with Spindlewood Drive, Mulberry Close and Barnhorn Road.

79. Whilst the application of Policy EN1(viii) is understood, the indicative scheme could retain the field pattern and boundary hedging could be retained broadly as existing. The form of development suggested in plan 1743-SK-P-204 D is similar to the schematic plan which accompanies Policy BEX9 and views would be largely contained within the site.

80. For the above reasons, I conclude that the form and extent of changes proposed to the site arising from the proposed attenuation pond, road and development platforms would not conflict with Policy EN1. Furthermore, there is nothing in the submitted scheme to suggest a conflict with Policy BEX9 of the DaSA.

Interested parties

81. SPINDAG made representations on several matters during the Inquiry which I address below.

Domestic pets

82. Objections to the proposed development on the potential recreation impacts on the Levels are not fully evidenced. Whilst occupants of the proposed scheme are likely to have direct access to the Levels via the existing footpath network, the actual increase in visitor numbers is unlikely to be so great as to undermine its qualifying features. It is instructive to note that Natural England[35]do not consider that recreational activities would have any adverse impacts. For this reason, I consider that the recreational impacts would not be so great as to adversely impact on the qualifying features of the SAC and Ramsar.

[35] ID.6

83. On a related point additional concerns were expressed regarding flea treatment for dogs, which use a toxic insecticide. SPINDAG allege that this insecticide could enter the ecology of the Levels through surface water runoff after dog washing and cite a recent research paper[36] which identifies the potential for such adverse impacts. This is just one recent research paper and it is unclear the extent of peer review. This matter has been raised directly with Natural England who do not consider that this is a matter of concern given the numbers of dogs which could live on the proposed development.

84. Whilst the proposed development would likely increase the local population of cats there is no evidence to suggest whether their 'wanderings' would extend for over 100m into the Levels to prey on dormice, which are a qualifying feature of the Ramsar.

85. SPINDAG also refer to potential harm to the Fen Raft spider, a Red Data Book species and a qualifying feature of the Ramsar. However, it is unclear how an increase in footfall from proposed development could adversely impact on the local colony.

86. Although there is always potential for some conflict between visitors to the countryside and the welfare of cattle and sheep, there is no evidence to suggest that the new residents of the proposed scheme would not adhere to the Countryside Code in the same way that SPINDAG states its members do.

Cooden Moat Scheduled Monument (SM)

87. Cooden Moat SM, lies at the southern edge of the appeal site and is entirely covered by woodland which extends into the woodland belt along the Cole Stream. The SM is laced with footpaths and appears entirely unmanaged. This has the effect of limiting a full appreciation of its history.

88. The proposed new development platform within the appeal scheme, being set over 100m from the SM would have limited impact on its setting. The form of the drainage basin, designed as a natural form, would not adversely impact on the SM.

89. Whilst the appeal scheme would very likely result in an increase in the recreational use of the footpath network which runs through the SM, the resultant harm would be marginal, even allowing for the additional impacts which could arise from the additional residents from the Claverings Walk scheme. I understand that the appeal decision, includes a requirement for a Conservation Management Plan which would allow for some form of mitigation.

Surface Water Drainage

90. SPINDAG made a series of representations in respect of the efficacy of the SuDS. I acknowledge that implementation of SuDS requires care in design, implementation and management. It is for this reason that I have imposed planning conditions 17, 18 and 19 on this decision to ensure the most effective system would be used which has a lifetime commensurate with that of the development.

91. Whilst several speakers referred to the limitations of knowledge in respect of these matters, for example, whether micro plastics could be adequately

[36] Goulson and Perkins 2020

controlled, the proposed scheme can only reflect available technologies and respond to known risks. Likewise, whilst SPINDAG identified the continued decline of habitats and species these matters would have been considered as part of the Examination into the proposed policy.

92. Other concerns raised by interested parties relate to the distance of the proposed scheme from existing services and facilities and the likely pressures arising on schools caused by an increase in population from the development. The appeal scheme accords with the parameters of Policy BEX9 and, as part of the plan led system, these matters would have been considered at the Examination stage. Evidence was presented by the appellant that schools have plans to create additional school places.

93. The site lies within 10-15mins walk of the centre of Little Common which has a range of shop and services. The No.99 bus has regular services along Barnhorn Road to the centre. It is instructive to note that the Council withdrew its second reason for refusal, which related to this matter.

94. SPINDAG raised additional concerns in respect of the width of the proposed Barnhorn Road access and the impact of additional right turning movements on Barnhorn Road, the A259. However, the Highway Authority has not objected to the proposed scheme and this is a matter which would have been considered as part of the Examination of the Local Plan in advance of the site allocation being confirmed. The Highway Authority has not objected to the additional traffic movements on the capacity of the A259 which would arise from the appeal scheme. I am satisfied that the detailed drawings included in the appeal scheme for each road access can be adequately accommodated. Conditions which form part of this decision require further details of these access points.

95. Furthermore, whilst SPINDAG intimate that that the proposed development could become a rat run diverting traffic from Barnhorn Road through residential areas along Maple Walk, the detail of the proposed road has not been agreed.

96. Other comments relate to the proximity of the proposed development to existing residential properties. However, the proposed scheme is for around 160 dwellings and the detail of the layout has not yet been finalised. This will be a matter for an application for reserved matters which may be submitted pursuant to this decision.

Revised Framework 2021

97. SPINDAG refer to several parts of the Framework which I address below.

98. References to the importance of local community views in the planning process have to be balanced in respect of the appeal site with the Council's decision to allocate this site for housing. I understand that SPINDAG engaged fully in the plan making process in advance of the allocation being confirmed.

99. Whilst sites within the District may have the benefit of planning permission but are not being developed the critical test is whether the Council has a 5 year housing land supply. The Council acknowledges that this was 2.87 years supply as at April 2020[37]. There is a need for additional housing to meet the requirements of the Council.

[37] Revised SoCG June 2021

100. This is an outline application and the main parties agree that more detailed information has been provided for this scheme, at this stage than for the two other appeals referred to earlier in this decision. The conditions included in this decision are designed to provide further safeguards as more detail is submitted in response to the Reserved Matters.

101. The appellant owns the land within which the drainage basin will sit. They have sufficient control of the land to enable maintenance. The policy requirement included in the Framework can be addressed through the more detailed scheme. A series of conditions included in this decision will support this aim.

Planning Obligations

102. The appeal was accompanied by a completed Unilateral Undertaking, dated 9 July 2021. This includes a range of measures including the provision of affordable housing, green infrastructure, management companies for the housing and landscaping, a new bus stop, requirements for a travel and construction travel plan and various highway works to enable the delivery of the proposed vehicular access points and finally bus services.

103. The Undertaking was accompanied by a Community Infrastructure Levy compliance statement. This highlights how each obligation included in the Undertaking is supported by adopted policy.

104. Overall, I am satisfied that the obligations included in the undertaking are related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme in line with paragraphs 57 of the Framework 2021.

Heritage balance

105. The extent of harm on Cooden Moat SM arising directly from the appeal scheme would be less than substantial. Although I must give considerable importance and weight to even such limited harm, in the wider context of the appeal scheme this has to be set against the considerable public benefits which would arise from the delivery of housing, on what is an allocated site

Planning Balance

106. At the heart of this decision is whether the proposed surface water drainage strategy has been assessed against a worst case scenario as suggested by rainfall methodologies and other factors to prevent adverse impacts on the qualifying features of Pevensey Levels SAC, Ramsar and SSSI. I am satisfied that this matter has been fully tested by the appellant and no adverse impacts would result.

107. This is an outline scheme and the detail included at both application and appeal stages demonstrates that there would be no adverse impacts on the qualifying features of the Pevensey Levels SAC. I take comfort from the fact that each of the statutory undertakers, central to this issue, did not object to the application or the subsequent details included with the appeal.

108. Furthermore, the application of either a Qbar or variable rate of discharge from the drainage pond has been modelled. The application of a variable rate

would have a greater possibility of controlling discharge in line with conservation objectives, which seek winter flooding to distribute the snail across the Levels. The scheme includes appropriate levels of pollution treatment to minimise the risk of pollutants entering the Levels and adversely impacting on the qualifying features of both the SAC and Ramsar.

109. At this stage, given the level of detail included with the outline scheme, I am satisfied beyond all reasonable scientific doubt that based upon the currently available information the proposed surface water drainage strategy incorporating the SuDS would not adversely impact on the qualifying features of the SAC, Ramsar and SSSI. The range of conditions, I have imposed on this decision are designed to set the parameters for the surface water drainage strategy for Reserved Matters. They are proportionate to the level of detail required for the scheme at that stage. This approach adheres to Regulation 70(3) of the Habitats Regulations.

110. With regard to the landscape impacts of the ground levelling proposed for part of the southern development platform and the drainage basin, I am satisfied that the existing topography would allow the creation of the basin in a way, as suggested which would not detract from the contained field parcel within which it would sit. In respect of the development platform, the nature of the existing field pattern would be retained and for this reason it would not be harmful when considered from receptor points within the site or from beyond the site and particularly from the east due to the broad landscape boundary along the Cole Stream.

111. The Council does not have a policy compliant housing land supply. This has declined[38] since 2020 and currently stands at 2.87 years. In these circumstances Paragraph 11d (ii), and Footnote 8 of the Framework (2021) requires that the tilted balance is engaged, as the policies for determining this application are considered out of date.

112. The most important policies of the development plan, directly relevant to the issues raised in this appeal are EN1, EN5, EN6, SRM2, DEN5 and BEX9. The environment policies EN1, EN5 and EN6 identify closely with Chapter 14 of the Framework which requires that the risks involved with development proposals in locations which are vulnerable to flooding should be managed through suitable adaptation measures for its lifetime.

113. Policies SRM2 and DEN5 require the effective management of water resources through the promotion of SuDS to control the quantity and rate of run-off to improve water quality within the hydrological catchment of the Pevensey Levels. These policies accord closely with Paragraph 180 of the Framework. Finally, Policy BEX9 being an adopted housing allocation is consistent with the plan led approach advocated by the Framework.

114. Given the high degree of consistency between the Council's adopted policies and the Framework when read as a whole, I give substantial weight to the application of these policies to the appeal scheme.

115. Given the constraints imposed on new development by the international and national designations across the District, the appeal scheme would deliver a housing allocation. It would bring significant benefits, including the provision

[38] Reference to the Clavering Walk appeal decision 3234340

of market housing and a policy compliant amount of affordable housing. The appeal scheme would result in economic benefits in the form of construction jobs and through the increased spend by new residents in local services in Little Common. Social benefits would arise from the amount of affordable housing and environmental benefits in the form of a new housing in a location which enables access to shops and services by a choice of transport modes.

116. When the proposal is viewed both in relation to the Framework as a whole and the adopted Local Plan the result is the same. There is no policy argument against the appeal scheme. Material circumstances do not indicate that a decision should be taken other than in accordance with adopted policy.

Conditions

117. I have reviewed the list of conditions included in the Statement of Common Ground and had regard to the discussions during the Inquiry in respect of conditions on levels and the surface water drainage strategy.

118. I have imposed conditions in respect of the outstanding reserved matters, the times required for submission and implementation of the scheme in line with section 92 of the Town and Country Planning Act 1990, as amended. I have specified the approved plans for reasons of certainty.

119. Given the site's proximity to Cooden Moat SM, I have included a condition in respect of requirements for archaeological investigations and detailed foundation design. Although the entrance gates to Barnhorne Manor Farm have little architectural or historic significance I recognises that they have local interest and for this reason, I have imposed a condition requiring their dismantling, storage and consideration for re use in the detailed scheme in the future.

120. In the interests of highway safety, a condition is imposed requiring full details of the sight lines to the proposed access from Spindlewood Drive and its completion in advance of first occupation of dwellings on the site. For the same reasons, conditions are required of details of parking spaces and turning areas together with the completion of footways and roads.

121. To safeguard the living conditions of local residents during the construction programme, a condition is imposed requiring a construction traffic management plan and related to this, I have imposed a condition requiring the implementation of highway improvements to the Barnhorne Manor Farm access.

122. Related to the above, a condition is imposed requiring details of how the construction programme would not adversely impact on the immediate environment of the site and its environs, in particular the Pevensey Levels, through matters such as flood risk, contamination and invasive species. For the same reasons, conditions protecting the site's biodiversity, with a requirement for further ecological surveys is required in advance of construction occurring. I have imposed an additional condition for a landscape scheme designed to can support ecological enhancements across the site. Another condition in respect of lighting seeks to protect biodiversity by controlling the extent of light spillage.

123. I have imposed a condition requiring the protection of the existing trees during construction given their importance to the immediate landscape of this

site and the protection they afford for the visual amenity of surrounding occupiers.

124. To address the concerns of both the Council and SPINDAG and to adequately reflect the extent of detail required for the outstanding Reserved Matters, I have included 4 conditions in respect of the proposed surface water drainage strategy for the site. These require a substantial amount of detail on the method of surface water drainage and its long term maintenance. Whilst condition 5 in respect of levels, is required primarily to identify how the proposed development platforms will impact on surrounding residential properties, it will inform an understanding of the drainage across the site.

125. A condition is required regarding the provision of cycle parking spaces to encourage the use of sustainable transport modes as an alternative to the car. Linked to the issue of sustainability, I have imposed a condition regarding the submissions of an Emissions Management Assessment.

126. A series of conditions are required for the full details of hard and soft landscaping, its protection and maintenance to protect the living conditions of future occupiers of the proposed scheme.

Stephen Wilkinson

INSPECTOR

Schedule of Conditions

1) Details of the, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the following approved plans and particulars: Drawing 1743-SK-P-204 D received 20/12/2018 with regard to access and site boundary only, T277_37A dwg Rev A (June 2018) and T277_38 dwg (Nov 2016) both as contained within the 'Designer's Response to Stage 1 Safety Audit dated 6/6/2018.

5) The reserved matters shall be accompanied by full details of existing and finished ground levels within the development, to include a site survey showing (a) the datum used to calibrate the site levels (b) levels along all site boundaries, and (c) levels across the site at regular intervals and (d) floor levels of existing buildings, on a landscape and visual assessment of the detailed scheme that together demonstrate how the completed development will sit within the wider built and open landscape.

6) No demolition/development shall take place until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions addressing:
   i) the programme and methodology of site investigation and recording;
   ii) the programme for post investigation assessment;
   iii) the provision to be made for analysis of the site investigation and recording;
   iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
   v) the provision to be made for archive deposition of the analysis and records of the site investigation;
   vi) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

7) Before any works hereby permitted are begun, details of the foundations, piling configurations, drainage and services, to include a detailed design and method statement, shall be submitted to and approved in writing by the Local Planning Authority, such details to show where necessary, the preservation of archaeological remains which are to remain in situ.

8) The reserved matters shall be accompanied by a fully detailed scheme for the careful dismantling of the existing boundary walls and gate posts to

Barnhorne Manor Farm access, between Nos. 173 and 177 Barnhorn Road, their storage and thereafter re-siting and reconstruction in accordance with the method statement to be approved in writing by the local planning authority. The walls and gate both shall thereafter be dismantled and stored prior to the commencement of any other developments including the approved improvements to this access and rebuilt prior to the first occupation of any dwelling only in accordance with the approved scheme and thereafter be permanently retained.

9) No other parts of the development hereby permitted shall commence until the highway improvements to the A259 Barnhorn Road junction with Barnhorne Manor Farm access as shown on Exigo drawing no. T277-37A.DWG Rev A attached to the Designer's response to Stage 1 Safety Audit dated 6.6.2018 (or such other works substantially to the same effect as may be approved in writing by the local planning authority) have first being completed and opened for use.

10) No development shall take place, including any works of demolition, until a Construction Method and Transport Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

i) All construction activities shall not be carried out other than between the hours of 08:00-18:00hrs on Mondays to Fridays and 08:00 and 13:00 hrs on Saturdays and not at any times on Sundays and Bank holidays

ii) The anticipated number, frequency and types of vehicles to be used during construction, including a restriction on HGV movements to and from the site during network peak hours periods of 08.00-0.900am and 17.00 – 18.00 on all days

iii) The method of access and egress and routing of vehicles during construction that will be from the Barnhorn Road access only

iv) The parking of vehicles of site operatives and visitors;

v) Loading and unloading of plant and materials;

vi) Storage of plant and materials used in constructing the development;

vii) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

viii) Wheel washing facilities;

ix) Measures to control the emission of dust and dirt during construction;

x) A scheme for recycling/disposing of waste resulting from demolition and construction works;

xi) Delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

11) No development shall commence until they Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing

by the local planning authority. The CEMP will include the following details:

i) Results of a full site investigation that has been carried out to identify any potential sources of contamination and proposals for appropriate safeguards to ensure that no contamination is transferred, to be implemented throughout the construction works.

ii) Details of the source of any inert infill material for land raising including evidence to demonstrate that it is free from contamination that could potentially enter the Pevensey Levels.

iii) Include but not be limited to the measures set out in paragraph 5.2.2 of the Aspect Ecology report 'information to inform an AA under the Habitats Regulations' October 2018, and in particular set out the measures necessary to prevent silt entering the SAC/Ramsar and avoid water quality impacts on the Pevensey Levels during the construction phase.

iv) Detailed measures to manage flood risk both on and off the site during the construction phase.

v) Risk assessment of potentially damaging construction activities

vi) In accordance with section 7.4.3 of the Aspect Ecology, Ecological Appraisal, a method statement to prevent the spread of Himalayan Balsam during any operations and measures to be taken to ensure that any soils brought to the site are free of the seeds, root or stem of any invasive plant listed under the Wildlife and Countryside Act 1981, as amended.

vii) Complaints and public consultation procedure.

Thereafter the construction of the development shall be carried out strictly in accordance with the approved CEMP unless otherwise agreed in writing by the local planning authority.

12) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan for biodiversity (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the following:

i) Risk assessment of potentially damaging construction activities

ii) Identification of biodiversity protection zones

iii) Practical measures (both physical measures and sensitive working practises) to avoid or reduce impacts during construction that may be provided as a set of method statements

iv) The location and timing of sensitive works to avoid harm to biodiversity features

v) The times during construction when specialist ecologists need to be present on site to oversee works

vi) Responsible persons and lines of communication

vii) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similar competent person, and

viii) Use of protective fences exclusion barriers and warning signs.

The approved CEMP: Biodiversity shall be adhered to and implemented throughout construction period in accordance with approved details.

13) No development shall take place until an Ecological Design Strategy (EDS) in general accordance with Part 7 of Aspect Ecology's Ecological Appraisal, dated October 2016, ref:ECO3510 ECOApp. Vf and addressing reptile capture and relocation, retention and protection of existing species and habitats during construction, and the creation restoration and enhancements of semi natural habitats has been submitted to and approved in writing by the local planning authority. The EDS shall include the following:

i) Purpose and conservation objectives for the proposed works

ii) Review of site potential and constraints

iii) Detailed design and or working methods to achieve stated objectives

iv) Extent and location /area of proposed works on appropriate scale maps and plans

v) Type and source of materials be used where appropriate, e.g. native species of local provenance

vi) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development

vii) Persons responsible for implementing the works

viii) Details of initial aftercare and long term maintenance

ix) Details for monitoring and remedial measures

x) Details for disposal of any waste arising from works

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

14) The measures contained within the CEMP: Biodiversity, EDS and Landscape Environmental Management Plan Required by conditions 11, 13 and 20 are to be informed by further ecological surveys commissioned to:

i) establish if there have been any changes in the presence and or abundance of protected species including Badgers, Great Crested Newts reptiles, dormouse and bat unless otherwise agreed in writing by the local planning authority, and

ii) identify any likely new ecological impacts that might arise from any changes in that regard.

15) No development shall commence until details for the protection of existing trees on the site and adjacent to it to be retained have been submitted to and approved in writing by the local planning authority. The details shall include indications of all existing trees and hedgerows on the land and adjacent to it including details of those to be retained together with a scheme for their protection which shall include locations for protective fencing ground protection and no dig surface construction methods.

The approved scheme shall be put in place before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all the equipment machinery and surplus materials have been removed from the site. Nothing shall be

stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered nor shall any excavation be made without the written consent of the local planning authority:

i) no fire shall be lit within 10 metres from the outside of the crown spread of any tree which is to be retained

ii) no equipment machinery or structure shall be attached to or supported by a retained tree

iii) no mixing of cement or use of other contaminating materials or substances shall take place within or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area.

No alterations or variations to the approved works or tree protection schemes shall be made without prior written consent of the local planning authority.

16) The Reserved Matters application shall be accompanied by a drainage strategy and implementation timetable detailing the proposed means of foul water disposal to the main sewer network, for approval in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme and none of the dwellings shall be occupied until the drainage works to serve the development have been provided. The scheme shall thereafter be retained as approved for the lifetime of the development unless otherwise agreed in writing by the local planning authority.

17) No development shall take place until details of surface water drainage have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details. The Reserved Matters application shall be accompanied by a detailed surface water drainage scheme design including the timings for its implementation and the scheme details shall:

i) unless otherwise agreed in writing by the local planning authority, include permeable paving, oil interceptors, swales, filter strip and wetland. The wetland shall include all of the features described in the SuDS layout plan drawing No. 1764-P3-10 in the Herrington Technical Addendum to the FRA/SWMS report Rev 1 dated 11 December 2018.

ii) Limit surface water run-off from the proposed development to **either**

a) the corresponding greenfield run-off rates or less for all rainfall events with an annual probability up to the 1 in 100 (plus 40%) annual probability of occurrence **or**

b) the greenfield runoff rate for rainfall events with an annual probability of occurring greater than 1 in 2 year and to the mean annual run-off rate (Qbar) for rainfall events with an annual probability of occurrence less than 1 in 2 years, including those with a 1 in 100 (plus 40%) annual probability of occurrence.

For **either** option, evidence of this (in the form of hydraulic calculations) must be submitted with the detailed drainage drawings and should take into account the proposed impermeable area, 10% urban creep, a minimum of 300mm free board in the wetland, and

connectivity of the different surface water drainage features proposed. This evidence should be agreed prior to approval in agreement with the local planning authority and all statutory consultees (to include East Sussex Lead Local Flood Authority, Natural England, the Environment Agency and Pevensey and Cuckmere Water Level Management Board).

iii) Provide for the operation of the SuDS to maintain the quality and quantity of the surface water run-off entering the Cole Stream and the Pevensey Levels, in agreement with the local planning authority and all statutory consultees (including East Sussex Lead Local Flood Authority, Natural England, the Environment Agency and Pevensey and Cuckmere Water Level Management Board).

iv) Show the details of the outfalls and how they connect to water courses including cross sections and invert levels. The detailed design should also include information on how surface water flows exceeding the capacity of the surface water drainage features will be managed safely and test the assumption that displacement of floodwater will be insignificant, proposing mitigation for any impacts on the SAC/Ramsar, if necessary.

v) Contain the results of investigations into the condition of the ordinary water courses which will take surface water runoff from the development and identify any improvements to those water courses required. Any required improvements to the condition of the watercourse shall be carried out prior to construction of the outfall

vi) Include a detailed assessment through 2D hydrodynamic modelling, of the impact of any proposed ground raising on surface water runoff rates and patterns and incorporate any measures necessary to ensure that there is no resulting overland surface water runoff to existing development or increased run-off downstream.

vii) Include a maintenance and management plan for the entire drainage system to ensure that the designed system as proposed, takes into account the design standards of those who will be responsible for maintenance. The management plan must:

a) Clearly state who will be responsible for managing all aspects of the surface water drainage system, including piped drains and SuDS, and provide evidence that the appropriate authority is satisfied with the submitted details, and

b) Provide evidence that these responsibility arrangements will remain in place throughout the lifetime of the development.

viii) Include interim measures during the construction period to avoid adverse impacts on the water environment delivered through the Construction Environmental Management Plan (CEMP)

18) No development shall take place until further groundwater level and flow monitoring is undertaken to evaluate where the groundwater levels and flows will impact on the overall design and safe working of the SuDS. Groundwater monitoring should be undertaken between autumn and spring as a minimum at the proposed locations of the wetland, filter strip, swales and any other SuDS. The results of the monitoring must be used to inform the SuDS design. If the groundwater is found to encroach into the proposed drainage features, measures to manage the impact of high

groundwater on hydraulic capacity and structural integrity must be incorporated into the design and any impacts of the displacement of groundwater on the Pevensey Levels identified and avoided. These measures are expected to include amongst other features a suitable impermeable liner and sacrificial liner to reduce the risk of leaks or accidental tearing during desilting.

19) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to the local planning authority and approved in writing by East Sussex Lead Local Flood Authority to demonstrate that the SuDS has been constructed as per the approved scheme referred to in Condition 17 above. Evidence including photographs should be provided within the verification report to show that the surface water drainage has been constructed in accordance with the final approved scheme.

20) Prior to the first occupation of the development a landscape and ecological management plan (LEMP) for all landscaped areas (except for private domestic gardens) shall be submitted to and approved in writing by the local planning authority. The content of the LEMP shall include the following:

i) description and evaluation of features to be managed
ii) ecological trends and constraints on site that might influence management
iii) aims and objectives of management
iv) appropriate management options for achieving aims and objectives
v) prescriptions for management actions together with the plan of management compartments
vi) preparation of a work schedule including an annual work plan capable of being rolled forward over a five year period.
vii) details of the body or organisation responsible for implementation of the plan
viii) ongoing monitoring and remedial measures
x) details of the legal and funding mechanisms by which the long term implementation of the plan will be secured by the developer with the management body or bodies responsible for its delivery, and
xi) how contingencies and/or remedial action will be identified agreed and implemented in the event where the results from monitoring showed that conservation aims and objectives of the LEMP are not being met, so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme

The LEMP shall thereafter be implemented in accordance with the approved details.

21) Prior to any occupation, a 'lighting design strategy' for biodiversity shall be submitted to and approved in writing by the local planning authority. The strategy shall:

a) Identify those areas/features on site that are particularly sensitive for bats and Badgers and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territories, for example, for foraging and

b) show how and where external lighting will be installed through the provision of appropriate lighting contour plans and technical specifications so that it can be clearly demonstrated that areas lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications on locations set out in the strategy and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

22) Prior to the first occupation of the residential development, hereby permitted, the highway access to Spindlewood Drive shall be provided and opened to traffic in accordance with drawing No. T277-38DWG (Nov 16), or other such scheme to the same effect as may be approved in writing by the local planning authority.

23) No part of the development shall be first occupied until visibility splays of 2.4m by 43m have been provided at the proposed site vehicular access onto Spindlewood Drive. Once provided the splays shall thereafter be maintained and kept free of all obstructions over a height of 600mm.

24) No part of the development shall be occupied until the car parking spaces and all turning areas have been constructed and provided in accordance with plans and details submitted to and approved in writing by the local planning authority as part of the Reserved Matters application. The areas shall thereafter be retained for those uses and shall not be used other than for the parking or turning of motor vehicles.

25) No part of the development shall be occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved in writing by the local planning authority as part of the reserved matters application. The area shall thereafter be retained for that use and shall not be used other than for the parking of cycles.

26) No part of the development shall be occupied until the roads, footways and parking areas serving the development have been constructed, surfaced, drained and lit in accordance with plans and details submitted to and approved in writing by the local planning authority as part of the reserved matters application.

27) The landscaping details to be submitted pursuant to Condition 1 shall include the following:

i) details of all hard landscaping

ii) details of all trees to be retained

iii) design layout and appearance of structural an amenity green space including verges

iv) planting plans including landscape ancient woodland buffer areas ecological mitigation areas and proposals to maximise the ecological and habitat value of the SUDS wetland

v) written specifications (including cultivation and other operations associated with plant and grass establishment)

vi) schedules of plants noting species plant sizes and propose numbers/densities where appropriate

vii) details of implementation

The development shall thereafter be carried out in accordance with the details as approved in writing by the local planning authority under and in accordance with an agreed implementation programme.

28) Prior to the occupation of the development a landscape management plan including management responsibilities and maintenance schedules for the communal hard and soft landscape/open space areas, including any street furniture and minor artefacts therein, shall be submitted to and approved in writing by the local planning authority.

The landscape management plan shall be carried out as approved.

29) If within a period of five years from the date of occupation, any retained tree, planted tree or any tree planted in replacement for it is removed uprooted destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective), it shall be replaced with another tree of such size and species as may be agreed with the local planning authority.

30) No development shall commence until an Emissions Mitigation Assessment prepared in accordance with the Air Quality and Emissions Mitigation Guidance for Sussex (2019) has been submitted to and approved in writing by the local planning authority. The emissions mitigation assessment must use the most up to date emission factors and mitigation shall include the promotion of cycling and walking, public transport, car clubs, low emission vehicles and associated infrastructure.

Documents presented during the Inquiry

Reference	Document title
ID.1	Agenda for landscape roundtable
ID.2	Ashridge Court appeal decision 3191063

ID.3	Ashridge Court RM decision
ID.4	CIL compliance schedule
ID.5	Errata table Mr Cafferkey's PoE
ID.6	Email from Perdeep Maan of Natural England 25 June 2021
ID.7	Opening from Appellant
ID.8	Opening from Council
ID.9	Calendar of events from the appellant 30 June 2021
ID.10	Detailed contour plan of appeal site
ID.11	Unilateral Undertaking dated 7 July 2021
ID.12	Soil categories
ID.13	Definitions of key terms re drainage
ID.14	Research paper Peter Gloer and Klaus Groh
ID.15	Research paper Terrier, Castella, Falkener, Killeen
ID. 16	Government web site references
ID.17	EU ref to precautionary principle
ID.18	Table on differences between drainage details in March 2020 and for the appeal
ID.19	Closings from Council
ID.20	Closings from Appellant
ID.21	Legal Authorities
ID.22	Itinery for Site visit

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Jacqueline Lean	of Counsel
She called:	
Mr Brian Cafferkey BEng (Hons), MSc, MICE, MCIWEM	Director of Ardent Consulting Engineers
Mr Derek Finnie BSc, MSc, PG Dip, CIEEM	Director of Derek Finnie Associates
Mr Terry Hardwick BSc, Msc MRTPI	Consultant Planner to Rother District Council
Mr Jeff Pyrah BSc, MA, MRTPI	Rother District Council

FOR THE APPELLANT:

Mr Hashi Mohamed	of Counsel
He called:	
Mr Simon Maiden-Brookes BSc, MSc MICE, MWEM, MCIWEM	Technical Director and Partner, Herrington Consulting
Mr Alistair Baxter BA MA MSc, ECol, CEnv MCIEEM	Senior Director ,Aspect Ecology

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INTERESTED PERSONS:

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Ms Alison Duffy BSc, MSc	SPINDAG
Mr Geoffrey Lawson CEng MICE	SPINDAG
Mr Graham Stone	SPINDAG