

Appeal by Gladman Developments Ltd

Land off Fryatts Way, Bexhill

Against the non-determination of a planning application submitted to Rother District Council with the description of development:

“Outline planning application for up to 210 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children’s play area, surface water flood mitigation, vehicular access point and associated ancillary works. All matters to be reserved with the exception of the main site access.”

Appeal Reference: APP/U1430/W/22/3304805

Proof of Evidence

by

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1 PREAMBLE

1.1 Qualifications

1.1.1 I am Christien Lee, BSc (Hons) MCD MRTPI.

1.1.2 I am a Chartered Town Planner. I hold an upper second class BSc (Hons) in Geography from the University of Bristol and a MCD with Distinction in Town and Regional Planning, from the University of Liverpool.

1.1.3 I have been employed by Gladman Developments Ltd (GDL) since March 2014 and I am currently a Planning Director leading one of the strategic Project Teams. My role primarily consists of the promotion of strategic residential sites for development. This includes site appraisals, planning policy scrutiny, statistical analysis of housing demand and land supply, authoring reports, managing the submission of planning applications and negotiation of S106 agreements and attending inquiries, hearings and local plan examinations.

1.1.4 To be clear, I have no legal qualifications and where references are made to court judgments, my evidence does not represent legal submissions but sets out my professional understanding of the implications of such judgments in so far as they clarify the correct interpretation of policy. Given the nature of my role, I have had the benefit of advice from a number of solicitors and barristers in reaching this professional understanding.

1.1.5 The scope of my evidence is set out in Section 1.3 below, responding to the planning policy position of the council and the sustainability of the site and settlement.

1.2 Statement of Truth

1.2.1 The evidence that I shall provide for this appeal (reference APP/U1430/W/22/3304805) has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true professional opinions. In providing expert evidence to the Inquiry, I am fully aware that my duty is to the inquiry and to provide my honestly held professional view, irrespective of by whom I am employed.

1.3 Scope of my Evidence

1.3.1 My evidence relates to matters of planning policy and I also undertake the overall planning balance for the appeal proposals.

1.3.2 I do not produce a separate 'Summary Proof' but for ease of reference my 'Summary and Conclusions' are produced at Section 11 of this proof of evidence.

1.3.3 A separate proof of evidence and related reports are also produced with regard to the following specific matters:

- Landscape (Mr Tim Jackson, FPCR)
- Highways and accessibility (Mr Luke Regan, Tetra Tech)

1.3.4 In arriving at my overall conclusions, I have relied upon the professional view of these witnesses, as expressed in their own proofs of evidence/statements submitted to this inquiry.

1.4 Structure

1.4.1 My evidence is set out as follows:

- Section 2 sets out the background to the appeal
- Section 3 identifies the key issues for the appeal
- Section 4 outlines the appeal site and suitability for development
- Section 5 provides an introduction to the development plan
- Section 6 provides an appraisal of the appeal proposals against the relevant planning policies of the adopted development plan
- Section 7 provides a summary of other material considerations
- Section 8 provides a summary of the benefits and harm of the scheme
- Section 9 sets out the planning balance
- Section 10 outlines the summary and conclusions

2 THE APPLICATION

2.1 Outline

2.1.1 This proof of evidence is prepared in respect of an outline planning application for up to 210 residential dwellings on land off Fryatts Way, Bexhill¹. Permission is sought for:

“Outline planning application for up to 210 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children’s play area, surface water flood mitigation, vehicular access point and associated ancillary works. All matters to be reserved with the exception of the main site access.”

2.1.2 The appeal site consists of 11.29 hectares of land which is currently in agricultural use. The site lies adjacent to the existing residential development in Bexhill, outside of but adjacent to the development boundary of the town.

2.1.3 The site description and location are an agreed matter in the Planning Statement of Common Ground (SoCG).

2.1.4 The planning application was supported by a suite of reports which informed the preparation of the proposals. The supporting reports, together with the related updated reports, demonstrate that subject to the imposition of appropriate planning conditions, there are no technical impediments that should prevent the successful implementation of the development.

2.1.5 Full details of the supporting reports are contained within the application documents in Folder 1 [CD1.1-1.21 and CD2.1-CD2.08].

2.1.6 The plans for which approval is sought are as follows:

- Location Plan (9309-L-01G) [CD1.02]
- Site Access Design (P001-01) [CD1.18, Appendix D]

2.1.7 The appellant undertook a public consultation exercise in relation to the planning application. Comments received were duly considered in the formulation of the proposals. Full details of the engagement exercises carried out are contained within the Statement of Community

¹ LPA ref. RR/2021/1656/P

Involvement [CD1.20] The only third-party response to the appeal received by the Inspectorate was from National Highways, who have since registered as a Rule 6 party for the appeal. This demonstrates the lack of public objection to the proposals.

2.2 Planning Application

2.2.1 Prior to the submission of the planning application, a pre-application meeting was held with officers from Rother District Council ('RDC' or 'the Council') on 23rd April 2020, in order to understand the Council's initial views on the development proposals.

2.2.2 The planning application for the proposed development was validated by Rother District Council ('RDC' or 'the Council') on 1st July 2021.²

2.2.3 In this context, the original statutory 13-week period for determining the appellant's application expired on 30th September 2021, after which point the appellant and the Council sought to agree further extensions of time for determination ('EoT'). The most recently agreed EoT expired on 30th May 2022. Despite several extensions of time, the Council failed to determine the application.

2.2.4 Throughout the application process, the appellant used all reasonable endeavours to work with the Council to address concerns raised by statutory consultees, as summarised in the table below. However, no further comments have been received from consultees in respect of impacts on designated sites, landscape or locational sustainability.

Consultee	Consultee Response CD Ref.	Gladman Response CD Ref.
National Highways	CD3.05, CD3.09, CD3.10, CD3.11	CD2.03, CD2.06
ESCC Highways	CD3.06	CD2.04, CD2.08
ESCC Landscape	CD.07	CD.2.05
Natural England	CD3.08	CD2.01, CD2.02

2.2.5 The Council's putative reasons for reason are set out in its Statement of Case. In summary, these concern:

1. The impact of the proposals on the character and appearance of the area;

² Application reference RR/2021/1656/P.

2. The locational sustainability of the site in respect of access to local services and facilities via sustainable transport modes;
3. Insufficient information regarding the impact of the proposed development on the strategic road network; and
4. The lack of a planning obligation to mitigate the impacts of the development.

2.3 Planning History

- 2.3.1 The Council sets out the relevant planning history for the site in its Statement of Case. The appellant does not consider the previous planning applications to be relevant to the determination of this appeal due to the passage of time and changes in both national and local policy.

2.4 Environmental Impact Assessment

- 2.4.1 As the application proposals are for urban development on a site of more than 5 hectares and greater than 150 dwellings, the proposals fall under Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017.
- 2.4.2 The Secretary of State issued a Screening Direction on 22nd September 2022 [CD5.01] confirming that the proposed development is not Environmental Impact Assessment development.

3 KEY ISSUES

3.1.1 This section of my proof outlines the key issues in respect of the determination of this planning appeal having regard to the development plan, national planning policy and other material considerations including technical and site-specific issues.

3.1.2 Section 38(6) of the Planning and Compulsory Purchase Act (2004) refers to the development plan and states that:

“If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

3.1.3 As such, the relevant test in respect of this appeal is thus:

- 1) Do the appeal proposals accord with the statutory development plan taken as a whole?
- 2) Do other material considerations indicate that a decision should be taken other than in accordance with the plan?

3.1.4 The National Planning Policy Framework ('the Framework') is an important material consideration in the determination of planning applications and appeals. The presumption in favour of the development plan is confirmed in the Framework. The Framework acknowledges the importance of the plan-led approach, with paragraph 12 noting that the presumption at paragraph 11 does not remove the statutory presumption that the development plan is the starting point for decision making. That said, the Framework makes clear that development plans should be up to date and in accordance with the Framework, which is a material consideration in the decision-making process.

3.1.5 As such, in preparing this proof, I first consider whether the appeal proposals conform with the development plan for Rother District. I then consider:

- The degree to which the most important policies for the determination of the application are up to date and consistent with the Framework;
- Whether the presumption or often-termed “tilted balance” at paragraph 11 (d) is engaged;
- If engaged, whether the application of policies in the Framework provide a clear reason for refusing the development (see footnote 7 to paragraph 11d);

- The weight to be attached to any claimed adverse impacts (which cannot be addressed by conditions and/or the s106 obligation);
- The weight to be attached to the benefits of the development;
- If there are any other material considerations that need to be weighed in the decision-making process; and
- Whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

3.1.6 The key issues for this appeal, as outlined by the Inspector at the Case Management Conference Summary Note³, are as follows:

1. Whether the appeal site is an appropriate location for the proposed development, with reference to the spatial strategy in the development plan;
2. Whether the appeal site is an appropriate location for the proposed development, with reference to the accessibility of services and facilities;
3. The effect of the proposed development on the character and appearance of the area;
4. The effect of the proposed development on the safety and operational efficiency of the strategic road network, with reference to the A259;
5. The effect on the living conditions of the occupants of 11 and 15 Fryatts Way, with reference to noise and disturbance.
6. The effect of the proposal on the Pevensey Levels SAC and Ramsar site;
7. Whether the proposed development would make adequate provision for affordable housing, public open space, drainage infrastructure, off site highway works, a modal shift in/improvement to pedestrian connectivity, employment and skills and s106 monitoring.
8. If there is a conflict with the development plan, whether other considerations indicate the proposal should be determined otherwise than in accordance with the development plan.

3.1.7 The Inspector's key issues are addressed throughout this and the appellant's accompanying proofs of evidence and statements.

³ Issued by the Planning Inspectorate on 13th October 2022.

4 THE APPEAL SITE AND SUITABILITY FOR DEVELOPMENT

4.1 Introduction

4.1.1 In this section of my evidence, I assess the suitability of Bexhill as a location for development and demonstrate why the appeal site itself is a suitable housing site.

4.1.2 In coming to my conclusions, in this and following sections, I rely upon the evidence submitted in proofs of evidence by Mr Jackson and Mr Regan, as well as the Statement of Common Ground in respect of planning⁴, and consultee responses [CD3], as well as the documentation submitted to support the planning application [CD1 and CD2].

4.2 Suitability of Bexhill as a Location for Development

Spatial Strategy

4.2.1 Bexhill is by far the largest settlement in Rother and is where almost half of the population of the district lives.⁵ The town had a population of 42,369 at the time of the 2011 census. As such, Bexhill is the main focus for development in the district.

4.2.2 Rother is a highly constrained district; 82% of it falls within the High Weald Area of Outstanding Natural Beauty (AONB), while a further 7% is designated as of national or international importance for nature conservation value.⁶ As commented on in the RLPCS, the degree of growth that can be accommodated in Battle and Rye (the second and third largest settlements in the district by population size) is limited by several high-level environmental constraints. Battle is constrained by its setting in the High Weald AONB, its historic form and traffic congestion, while Rye is constrained by its topography, historic form and being surrounded by international conservation designations, the AONB and flood risk.

4.2.3 Consequently, policy OSS1 of the RLPCS plans to focus new development at Bexhill. Figure 8 of the RLPCS confirms that approximately 3,100 of the 5,700 dwellings planned for the district from 2011-2028 should be accommodated in Bexhill.

⁴ Statements of Common Ground in respect of highways with both the LHA and National Highways are currently subject to further discussion between the parties and will be agreed as soon as possible.

⁵ Core Strategy paragraph 8.1.

⁶ Core Strategy paragraph 3.5 (p.12).

- 4.2.4 Development limits were defined through development boundaries in the DaSA LP based upon the RLPCS housing requirement, which is now considerably out of date. The development boundary for Bexhill is tightly drawn around the built-up area of Bexhill.
- 4.2.5 As suggested in the DaSA LP, further growth of the town to the east is undesirable as it would reduce the countryside gap between Bexhill and Hastings and the Combe Valley Countryside Park is being established in this area.
- 4.2.6 As the principal settlement in the district, Bexhill has a wide range of essential and non-essential services and facilities, including schools, post offices, convenience shops, restaurants, bars, pubs, medical centres, a leisure centre and outdoor play areas. These facilities can be reached via sustainable transport modes from the appeal site, as set out by Mr Regan.

Walking

- 4.2.7 Mr Regan highlights in his evidence that there are c.100 services and facilities accessible within a 2km walk of the appeal site, including convenience stores, employment, primary schools and secondary schools.
- 4.2.8 Bexhill town centre shopping area is located just outside the site's 2km walking catchment. However, considering that the town centre offers a wide range of amenities and facilities, a future resident may choose to walk to the town centre.
- 4.2.9 In addition to the town centre, Little Common district centre provides a focal point for community life in the locality and houses several shops, a café, restaurants, barbers shops and clinics.
- 4.2.10 Additionally, a Lidl supermarket is located just outside the 2km walking catchment for the site.
- 4.2.11 Within a 1km walk of the site, there are numerous bus stops that can be reached, including stops located on Broadoak Lane, Turkey Road, Gunters Lane and West Down Road. The services available at these bus stops are described in more in the Transport Assessment [C1.18] and the proof of evidence of Mr Luke Regan.

Cycling

- 4.2.12 The site is well located for future residents to choose to cycle to and from a range of destinations including employment, retail and leisure destinations. Plan 4 within the Transport Assessment [CD1.18] was produced to show the accessible locations within a 5km cycle catchment. That includes the entire Bexhill area, including all of the employment, educational offers, residential, retail and services located therein.

4.2.13 Moreover, the site is also within easy cycling distance of Bexhill Railway Station, which has regular train services to various settlements, including London, Hastings, Eastbourne and Brighton while Collington Railway Station is 2.3km from the site and also provides services to several destinations, including London. Moreover, as explained in CD1.18, the roads in the cycling catchment offer a safe route for cyclists.

Rail

4.2.14 As detailed in Mr Regan's evidence, Collington Rail Station offers comprehensive regional rail connections to destinations including London Victoria, Ashford International and Eastbourne and is accessible via a short multi-stage journey, including solely by cycle. Services operate regularly between 6am and 11pm on weekdays and regularly at weekends (see CD1.18 for further detail).

4.2.15 Collington Rail Station offers secure cycle parking and a taxi rank, which facilitates multi-modal journeys. Moreover, it is probable that some residents would be willing to walk to the station, whilst connections would also be available via the Demand Responsive Transport service in future, as the East Sussex Bus Service Improvement Plan is implemented.⁷

4.2.16 Bexhill also has two other train stations, namely Cooden Beach and Bexhill.

4.2.17 The proof of evidence of Mr Luke Regan and the Highways and Accessibility SoCG⁸, respectively, deal with the matter of accessibility in further detail.

4.2.18 The locational sustainability of the proposed development, in the context of the level of housing need in the district and the national imperative to encourage sustainable travel/reduce reliance on the private car, is an important material consideration in favour of the appeal proposals. As will be detailed later in my proof of evidence, a residential travel plan will be secured as part of the S106 which will include measurable targets and measures to encourage additional use of sustainable transport modes.

4.2.19 Overall, I am content that Bexhill is a highly sustainable location for the scale of the development proposed. No issues have been raised by the main parties to this appeal in respect of impact on the ongoing sustainability of those facilities; indeed, in many cases the additional housing proposed will likely generate additional patronage for those facilities.

⁷ See CD8.03.

⁸ Currently under negotiation and to be submitted prior to the opening of the inquiry

4.3 Suitability of the Site for Development

- 4.3.1 The site is a suitable option for development and the following factors have been considered and demonstrate this suitability.

Affordable Housing, Conditions, CIL and Section 106 Obligations

Affordable Housing

- 4.3.2 The Rother Core Strategy includes several strategic objectives, including “to provide housing in a way that supports local priorities and provides choice, including affordable housing”.⁹
- 4.3.3 RLPCS policy LHN1 states that developments should support mixed and balanced communities through providing housing for a range of differing household types. The strategy for Bexhill is for a greater focus on larger, family housing and affordable homes to meet the needs and aspirations of younger adults, with more provision of shared ownership dwellings.¹⁰
- 4.3.4 RLPCS policy LHN2 and DaSA LP policy DHG1 expect housing developments in Bexhill to provide 30% on-site affordable housing on schemes of 15 or more dwellings. The appeal scheme will comply with this policy in delivering 30% affordable housing (up to 63 affordable dwellings), which will provide people with a local connection the opportunity to access an affordable property to call their own. The appellant’s Affordable Housing Needs Statement (**Appendix 1**) examines the acute affordable housing need within the district and within Bexhill itself – a need that is not being addressed. In light of this, I regard the provision of affordable housing as a very significant benefit of the proposals.

Conditions

- 4.3.5 It is my evidence that subject to appropriate conditions the site is a sustainable location for housing development. It is anticipated that the appellant and LPA will agree to a set of conditions and submit these to the inquiry.

⁹ Core Strategy Table 1, p.25.

¹⁰ RCS paragraph 8.28.

Community Infrastructure Levy

- 4.3.6 According to the 2016 RDC CIL Charging Schedule, the site falls within Bexhill CIL Zone 3b. With 2022 indexation applied, the amount of CIL payable would be £205.24 per square metre (applicable to the market housing only).¹¹

Section 106 Obligations

- 4.3.7 As stated above, provision for affordable housing is secured through the Section 106 obligation. In addition to affordable housing, the S106 obligation also makes provision for:

- 5% of plots to be for custom/self-build units;
- Public open space and its management; and
- The management of a locally equipped children's play area.

- 4.3.8 In addition, the planning obligation makes provision for:

- A financial contribution of £80,000 towards an electric vehicle car club scheme;
- A financial contribution of £300,000 towards a Demand Responsive Transport service to serve the development; and
- A financial contribution towards footway and cycleway improvements along ESCC LCWIP routes 296.2 and 296.3.

- 4.3.9 Putative reason for refusal 4 relates to a lack of signed Section 106 agreement but it is considered that that this reason will fall away through the planning obligation to be submitted to the inquiry.

- 4.3.10 I discuss the relevance of these contributions as necessary in the sections below.

Access, Highways and Public Transport

- 4.3.11 The proposed access strategy for the appeal site will provide a priority-controlled access point onto Fryatts Way. It has been confirmed that the required visibility splays can be achieved and that the site access junction will operate comfortably within capacity in both the morning and evening peak periods with the proposed development traffic, as demonstrated by the

¹¹ <https://www.rother.gov.uk/planning-and-building-control/community-infrastructure-levy-cil/>. [Last accessed 28/09/22]

Transport Assessment [CD1.18]. The site will be able to be safely accessed by refuse vehicles and delivery vehicles.

4.3.12 The site has good accessibility to all services in Bexhill by sustainable transport modes, as set out in detail in the Transport Assessment [CD1.18] and the proof of evidence of Mr Regan.

4.3.13 The matters which remain in dispute between the parties are addressed in Mr Regan's proof.

Arboriculture

4.3.14 There are no adverse impacts to weigh in the planning balance on arboricultural grounds subject to the imposition of appropriate planning conditions.

Ecology and Biodiversity

4.3.15 The proposed development will not have an adverse impact in ecological terms. Indeed, biodiversity enhancements will be achieved through general enhancements within the site, as outlined in the Ecological Appraisal [CD1.09, p.44-47]. The appeal proposals will protect, diversify, and improve the biodiversity of the site through implementing new hedgerow, tree planting, wildflower planting and delivery of new garden spaces. These improvements will help achieve biologically diverse formal and informal green spaces. Such standard measures will be secured by appropriate planning conditions.

4.3.16 Further to the submission of the planning application subject to this appeal, a number of further surveys were undertaken as recommended within the Ecological Appraisal. A site walkover survey has also been undertaken prior to the submission of proofs of evidence to confirm that the site condition has not changed in the meantime. An Ecological Appraisal Addendum Report (Nov 2022) presenting this additional information is appended to my evidence at **Appendix 6**.

4.3.17 During the Case Management Conference on 10th October 2022, the Inspector advised that he would be consulting Natural England on the appeal proposals and through the Case Management Conference Summary Note, the Inspector has identified 'the effect of the proposal on the Pevensey Levels SAC and Ramsar site' as a main issue for the appeal. At **Appendix 4** to this proof of evidence, the appellant has demonstrated in an updated Shadow Habitats Regulations Assessment (Rev C) that, with consideration of the proposed measures intended to avoid or reduce effects, the proposed development will not have any adverse effect on the integrity of the Pevensey Levels SAC / Ramsar site, either alone or in combination

with other plans or projects. The appeal inspector, in their role as decision-maker, becomes the competent authority for the purposes of Habitats Regulations Assessment in this case.

Flood Risk and Drainage

- 4.3.18 As outlined in the Flood Risk Assessment [CD1.14], the developable area of the site falls within Flood Zone 1 and the appeal site would be operated with minimal risk from flooding, would not increase flood risk elsewhere and is in accordance with the requirements of national policy and guidance. The Lead Local Flood Authority [CD3.04] and Environment Agency [CD3.03] have no objection to the proposals put forward for dealing with surface water drainage, subject to conditions. Thus, I consider that the proposed development accords with policies EN7 and DEN5, would not create or exacerbate flooding downstream and is in a suitable location in respect of flood risk.

Heritage

- 4.3.19 As detailed in the Archaeological Desk-Based Assessment [CD1.12], no non-designated or designated heritage assets are recorded within or adjacent to the site. Designated heritage assets within 1km comprise Grade II listed buildings, including four dwellings and the remains of a windmill. I consider that the proposed development will have no adverse impacts on any known designated heritage assets, as agreed between the parties in the Statement of Common Ground.

Landscape and Visual Impact

- 4.3.20 The effect of the proposed development on the character and appearance is dealt with in the proof of Mr Tim Jackson and I rely on his conclusions in respect of this matter.
- 4.3.21 In summary, the appellant considers that:
- The appeal site occupies a well-defined and contained position within the western part of Bexhill, falling within the Bexhill 'Urban Area' as defined by the East Sussex Landscape Character Assessment and adjacent to existing residential development;
 - The appeal site is not covered by any landscape designation and does not form part of a 'valued landscape' for the purposes of Framework paragraph 174;
 - The site is capable of assimilating new residential development whilst mitigating and minimising any harm to any acceptable level;

- The appeal proposals recognise and respond to the character and features of the site and its surroundings through the provision of a significant amount of green infrastructure, offering medium and longer term benefits;
- It is inevitable that greenfield sites will need to be developed to meet development needs, particularly in a district as constrained as Rother; and
- The proposals will result in limited and localised adverse landscape and visual effects.

4.3.22 The landscape and visual impact of the proposals is a matter to be considered in the planning balance.

Open Spaces

4.3.23 The proposal would create a high-quality sustainable development with strong green infrastructure in the on-site open space. The Development Framework Plan [CD1.03] indicates approximately 4.39ha of the site will be given to green infrastructure and public open space. There is currently no public access to the site and therefore the opportunity to provide extensive open spaces on-site including a locally equipped area for play (LEAP), in addition to informal parkland with recreational footpath and structural planting, represents a positive planning benefit.

Residential Amenity

4.3.24 A scheme can be suitably accommodated on the site without impacting any neighbouring property including overshadowing and other residential amenity issues. The protection of residential amenity can be controlled through the reserved matters application stage.

4.4 Conclusion on Suitability of the Site and Bexhill for New Development

4.4.1 The site is an appropriate and sustainable location for new development, including affordable housing for real people in real need.

5 THE DEVELOPMENT PLAN

5.1 Introduction

5.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

5.1.2 The statutory development plan, as relevant to this appeal, comprises:

- Rother Local Plan Core Strategy (RLPCS/CS, 2014); and
- Rother Development and Site Allocations Local Plan (DaSA LP, 2019).

5.1.3 A number of Local Plan policies of the Rother Local Plan 2006 were 'saved' by direction of the Secretary of State in June 2009. At a Council Cabinet meeting on the 2nd of July 2016, a list of saved Local Plan policies were considered to be consistent with the Framework and acceptable to use until superseded by emerging Local Plan documents. However, the appellant considers that there are no relevant saved policies of the Rother Local Plan (2006) applicable to the appeal proposals, so this plan is not considered further.

5.1.4 The Core Strategy was adopted in 2014 to guide development in the district over 2011-2028 and was prepared and examined under the provisions of the 2012 version of the Framework.

5.1.5 The Rother Local Plan Core Strategy 'Vision and Strategic Objectives' contain a strong commitment to the housing and employment needs of the existing and growing population and communities. In respect of Bexhill, aspirations are set out for the town to become one of the most attractive places to live on the south coast, attractive to families, the young and elderly alike, within an integrated approach to securing a more prosperous future for the Bexhill and Hastings area. In this respect, the proposed development meets the vision of the plan and could contribute to the development of safe, vibrant and inclusive communities.

5.1.6 In the next chapter I shall assess the appeal proposals against those policies of the development plan which are relevant.

6 POLICIES OF RELEVANCE

6.1 Introduction

6.1.1 In this Section, I consider the degree of conformity of the appeal proposals with the relevant policies of the development plan and the weight to be attributed to these policies in decision making.

6.1.2 Paragraph 11 of the Framework sets out two ways in which the tilted balance may be triggered. The first is a procedural trigger, when the Council cannot demonstrate a 5YHLS or when it fails the HDT. Both are the position here, and the tilted balance applies unless either limb (i) or limb (ii) of paragraph 11(d) applies. The second is a trigger which applies if the most important policies for determining the appeal are substantively out of date and requires the decision taker to consider the basket of policies as a whole (see the **Wavendon** case below). The Appellant does not need to rely on the substantive trigger given the 5YHLS position, but it is nonetheless important to consider whether the policies are substantively up to or out of date, since that will affect the weight that can be given to those policies and any conflict with them in the planning balance.

6.1.3 I assess the appeal proposals against all policies cited in the Council's reasons for refusal ('RfR'), along with other policies which are considered to be important for the determination of the application; the Planning SoCG between RDC and the appellant sets out all other relevant policies and unless specifically stated it is considered that there is agreement that the proposals comply with all policies not elaborated in this chapter.

6.1.4 It is clear that in addressing development plan policies, the following questions should be asked:

1. Is the policy one of the most important for determining the planning application (or appeal)?
2. Is the policy out-of-date having regard to both paragraph 219 of the Framework but also wider issues, such as the extent to which the plan in which it features addresses present development needs such as up-to-date housing requirements, whether it has been superseded by more recent policy, or if things have changed "on the ground"?
3. Does the proposal conflict with the policy?

4. What level of harm results from conflict with the policy?

5. What weight should be afforded to the policy and any conflict with it?

6.1.5 The decision of Mr Justice Dove in the *Wavendon* case (CD11.02) is clear that the decision taker must look at the basket of policies which are most important and decide if, collectively, they are out-of-date before deciding whether the tilted balance at paragraph 11 d) (ii) applies. As outlined above, in this case it is not fundamental to engage in the question of which are the most important policies and whether the basket is out of date, as the appeal proposal benefits from the procedural trigger of the tilted balance as a result of the Council's inability to demonstrate a five-year housing land supply and failure of the HDT. However, in forming a conclusion on compliance with the development plan taken as a whole, I will assess the policies which I consider are the most important for the determination of the appeal, and the questions above.

6.1.6 Clearly, were a local planning authority to have an up-to-date development plan, the above process would not be necessary. However, this is not the case in Rother, and therefore in order to establish whether the tilted balance applies, it seems to me that this is the process to which the decision-taker must apply themselves.

6.2 Policy Analysis

6.2.1 The Council's putative reasons for refusal, set out in its Statement of Case, allege conflict with the following policies of the RLPCS:

- OSS2 – Use of Development Boundaries
- OSS3 – Location of Development
- OSS4 – General Development Considerations
- SRM1 – Towards a Low Carbon Future
- EN1 – Landscape Stewardship
- EN3 – Design Quality
- EN5 – Biodiversity and Green Space
- RA3 – Development in the Countryside
- TR2 – Integrated Transport

- TR3 – Access and New Development
- IM2 – Implementation and Infrastructure

6.2.2 The RfR allege conflict with the following policies of the DaSA LP:

- DEN1 – Maintaining Landscape Character
- DEN4 – Biodiversity and Green Space
- DIM2 – Development Boundaries

6.2.3 I assess the appeal proposals against each of the policies cited in RfR1, 2, and 3 below. I also consider the following policies which I consider are also relevant to the determination of the current appeal.

- CS Policy OSS1- Overall Spatial Development Strategy
- CS Policy LHN2 & DaSA LP Policy DHG1- Affordable Housing
- CS Policy BX3 – Development Strategy
- DaSA LP Policy RA2 - General Strategy for the Countryside
- DaSA LP Policy DHG6– Self-build and Custom Housebuilding

6.2.4 The following policies are considered relevant to other issues raised by the Inspector in his main issues, albeit which do not feature in the putative Reasons for Refusal:

- CS Policy SRM2 – Water Supply and Wastewater Management
- CS Policy EN7 – Flood Risk and Environment
- DaSA LP Policy DEN5 – Sustainable Drainage
- DaSA LP Policy DEN7 – Environmental Pollution

6.2.5 It is considered that putative RfR 4 can be satisfactorily addressed prior to the inquiry through the provision of a planning obligation (either in the format of a bilateral agreement or unilateral undertaking) securing obligations towards the respective infrastructure requirements. As such, it is expected that by the time of the inquiry it will be common ground

between the parties that the appeal scheme does not conflict with Policy IM2. As such, this policy is not considered further.

6.2.6 The Council also allege conflict with Policy OSS5: General Development Considerations which the appellant considers does not form part of the adopted Core Strategy. Rather, it is the appellant's understanding that "Policy OSS2: Bexhill to Hastings Link Road and development" was removed following the publication of the Inspector's main modifications in August 2013¹² and Policy OSS5 from the submission version was renumbered Policy OSS4 in the adopted Core Strategy. Hence, it is the appellant's understanding that in actuality the Council allege conflict with Policy OSS4.

6.2.7 I note that in their Statement of Case, the Local Highway Authority make reference to policies of the South East Plan. This plan was revoked in 2013, so I have not given any further consideration to its policies. Reference is also made to a number of the '2005 non-statutory plan', along with policies 'SP07' and 'WCS7' of the 'Core Strategy'. It is my understanding that this is a reference to policies within Wealden District Council's Core Strategy and non-statutory plan, so I assume that this has been included in error. In respect of transport issues, I have instead referred specifically to those policies cited in the Council's reasons for refusal.

6.2.8 The below policy analysis is ordered by RfR, followed by other issues.

Reason for Refusal 1

Development Strategy Policies OSS1 and BX3

6.2.9 **Policy OSS1- Overall Development Strategy** provides the overall spatial development strategy for Rother and states, inter alia, that the strategy is to plan for at least 5,700 dwellings (net) in the district over the period 2011-2028. It seeks to focus new development at Bexhill, with the supporting text confirming that some 3,100 of these dwellings will be delivered at Bexhill (emphasis added). In the countryside however, it seeks to restrict development to that which is necessary in a countryside location. **Policy BX3 – Bexhill Development Strategy** further clarifies that new residential development will contribute to the overall strategy for Bexhill through an overall level of housing growth of 3,100 dwellings between 2011 and 2028 and that new housing development will be focused on a strategic site to the north-east of the town, together with further sites to the north and west of the town.

¹² <https://www.rother.gov.uk/wp-content/uploads/2020/06/Rother-Core-Strategy-Inspectors-Report-Appendix-1-July-14.pdf> (p10)

- 6.2.10 The appeal site accords with the overall spatial strategy in that it seeks to place sustainable development at the principal settlement in the district. The supporting policy text at paragraph 7.47 in the RCSLP further emphasises that 5,700 dwellings is the minimum amount in line with the strategy, in order to enable a higher level of housing growth when individual sites are assessed. It can only be reasonably considered that the appeal site is a sustainable location for new housing development within the plan area given its location adjacent to existing residential development on the urban edge of Bexhill.
- 6.2.11 I accept that as the appeal site lies in the countryside, there is a degree of conflict with the policy. However, as the policy's spatial strategy seeks to focus new development at Bexhill, I consider that the appeal proposals comply with the spatial strategy of the plan as a whole and this strictly limits the harm caused by this breach. In any event, there are important material considerations in play which mean that the weight to be attached to the development strategy for the purposes of considering the appeal proposal is limited. In particular, I note:
- Firstly, the 3,100 dwelling Bexhill requirement is intrinsically linked to the overall Policy OSS1 housing requirement of 5,700 dwellings which equates to 335 dwellings per annum (dpa) for the period 2011-2028. This policy requirement is out of date and no longer reflects local housing needs, as required by the Framework. The local housing need requirement is significantly higher i.e. 737 dpa. This figure is accepted by RDC and it is the requirement against which it calculates its 5 year land supply assessment. On the basis that the Local Plan policy requirement is too low, and does not reflect local housing needs, it is inevitable that the settlement specific requirements are also too low. Higher levels of housing delivery are required in order to meet current need. There is no doubt that current Local Plan requirements will need to be exceeded by a significant degree, in order to meet significantly increased local housing needs. Evidently, the policies do not reflect an understanding of today's housing needs and to apply them directly would only serve to restrict sustainable development in a context where there are real people in real need of dwellings.
 - RDC is unable to demonstrate the minimum 5-year supply of deliverable housing and fails the Housing Delivery Test, as required by the Framework. This also renders policies OSS1 and BX3 out of date.
- 6.2.12 In conclusion, my view is that the appeal proposals are in accordance with the spatial development strategy set out within policies OSS1 and BX3. However, I accept that as the appeal proposals are not for development which is necessary to be in a countryside location,

there remains a degree of conflict with OSS1. Nevertheless, the housing requirements of OSS1 and BX3 are plainly out of date and therefore, the housing requirements set out in the policies are no longer effective in supporting the delivery of housing needs for Rother or Bexhill. This strictly limits the weight to be attributed to the limited harm resulting from any breach of the policy.

Development Boundary and Countryside Development Policies OSS2, DIM2 & RA3

- 6.2.13 The Council's first putative RfR states that, "The site is located beyond the defined settlement boundary for Bexhill and so falls within the countryside for planning purposes, where new development is carefully controlled to protect its intrinsic character and beauty." **Policy OSS2 – Use of Development Boundaries** from the RCSLP sets out the use of development boundaries to "differentiate between areas where most forms of new development would be acceptable and where they would not." Whilst the site does not fall within the development boundary defined in the Core Strategy, it is common ground between the main parties that the site is situated immediately adjacent to both the development boundary and residential development within it.
- 6.2.14 **Policy DIM2 – Development Boundaries** from the DaSA LP precludes development outside development boundaries unless it accords with specific Local Plan policies or necessitates a countryside location. The policy stipulates that, "in the countryside (that is, outside of defined settlement development boundaries), development shall be normally limited to that which accords with specific Local Plan policies or that for which a countryside location is demonstrated to be necessary."
- 6.2.15 It is notable that the supporting text at paragraph 12.47 of the RCSLP states, "the term 'countryside' is used here for those areas *outside of villages* and includes not only farmland and woodland but also scattered development outside the main confines of villages. [emphasis added]" While this conflicts with the definition of the countryside set out in policy DIM2, for the purposes of the applying the policies in this appeal, I accept that the appeal site lies within the countryside as it falls outside of the defined development boundary for Bexhill.
- 6.2.16 Policies OSS2 and DIM2 effectively constrain housing development to the confines of development limits drawn up to accommodate the housing (and other development) requirements of the RCSLP and DaSA LP, as effected in this plan through policy OSS1, which I have already concluded is out-of-date. The limits were thus defined to accommodate a housing requirement that fails to deliver the up-to-date local housing need. The policies are not in compliance with the Framework (§60) objective to 'boost significantly' the supply of

housing. In constraining housing development to boundaries drawn up to accommodate an out of date requirement they are the complete antithesis of this.

- 6.2.17 It is clear that development boundaries are having to 'flex' significantly to meet development requirements, given that there is no up-to-date plan-led framework for development in Rother, and sustainable development is having to be permitted contrary to policy OSS2 and DIM2 to help the Council meet its local housing need¹³. This supports my view that the limits are simply not effective planning policy tools to direct current and future housing growth. The boundaries cannot be seen as inviolable in this context, particularly when RDC is unable to demonstrate a 5 year supply of housing and additional land urgently needs to be released to help meet needs. Indeed, the achievement of a 5 year supply against current needs would be impossible if the existing policy boundaries were applied with full rigour.
- 6.2.18 **Policy RA3 – Development in the Countryside** from the RCSLP, provides the framework for determining development proposals in the countryside. Together, policies DIM2, RA2 and RA3 outline how development in areas defined as countryside will be strictly limited to appropriate uses. In doing so, they seek to apply indiscriminate protection to the whole of the 'countryside'. There is nothing in the NPPF which strictly prohibits development outside of settlement boundaries to certain types. The policies are inconsistent with the Framework in that they do not allow for the balancing of harm against the benefits of a proposal.
- 6.2.19 Furthermore, while accepting that the appeal proposals conflict with policies OSS2, DIM2 and RA3, and notwithstanding the reduced weight afforded to those policies in light of the above factors, in determining the weight to be afforded to the conflict with the policies it is appropriate to consider the level of harm that would be caused in spatial terms by allowing development in conflict with them. Firstly, it is noted above that while the appeal site is situated outside of the development boundaries, it is directly adjacent to it. Secondly, for the reasons explained earlier in this chapter, Bexhill is considered to be the most sustainable settlement in the whole district to accommodate growth, so development adjacent to it is not akin to development in an isolated location in terms of the level of resultant harm caused. On the contrary, development in such a location is positively encouraged by the spatial strategy of the plan. Furthermore, as explained in chapter 4 of my proof, I consider that the appeal site is located in a sustainable location with good access to services and facilities via sustainable travel modes. Finally, while it may technically be classed as countryside as it sits outside of a

¹³ For example- Land off Clavering Walk, Cooden, Bexhill (99 dwellings)- APP/U1430/W/19/3234340 (CD10.04); Land south of Barhorn Road and West of Ashridge Court Care Centre, Barnhorn Road, Little Common- APP/U1430/W/17/3191063 (CD10.05)

policy boundary, the appeal site does not perform the functions of 'open countryside'. It is a greenfield adjacent to and influenced by the boundary of an existing town, and this is a further factor which reduces the weight to be afforded to the acknowledged conflict with these policies.

6.2.20 In summary therefore, I give **very limited weight** to the acknowledged conflict to policies OSS1, OSS2, DIM2 and RA3 due to their inconsistency with the NPPF and their purpose to restrict development even in sustainable locations.

6.2.21 This position is supported by the decision of Inspector Mahoney in the Clavering Walk appeal (CD10.04). This decision refers to policies OSS1 and OSS2 being out-of-date as a result of the lack of a five year housing land supply (and I note that at the time of that decision, the position was less acute than it is now, at 3.73 years), and in light of this she affords conflict with the policies only limited weight. I endorse this position (and for the avoidance of doubt I consider that it also applies to conflict with the relevant policies of the DaSA LP).

Policy OSS3 – Location of Development

6.2.22 Policy OSS3 provides criteria that proposals should be assessed against to determine the suitability of a particular location for development. The policy provides a list of criteria that proposals should be considered in the context of, in addition to being in accordance with the relevant policies of the Core Strategy.

6.2.23 Part (i) is the spatial strategy for the particular settlement or area, and its distinct character. The supporting text confirms that the overall spatial strategy has been determined by looking closely at local circumstances across the district. It explains that the degree of growth at Battle and Rye is moderated due to the high environmental factors that bear upon them, such as the setting of the AONB (section 7.40). Such AONB and other landscape designations in total account for approximately 90% of the Rother district. In contrast, the appeal site is situated immediately adjacent to residential development on the edge of the principal settlement, Bexhill, and is not affected by any AONB or other, landscape designation. Bexhill itself is constrained by areas of flood risk, Combe Haven SSSI and Ancient Woodland. Yet, the site is located within a well-established residential area with other non-agricultural land uses adjacent such as the golf course. Therefore, I would suggest that the site is located suitably in the context of both Bexhill's and Rother's wider spatial strategy.

6.2.24 Part (ii) requires consideration of the capacity and access to existing infrastructure and services. Subject to the provision of contributions towards infrastructure, the Council does not allege any harm resulting from a lack of capacity in local services and facilities to serve the

- proposed development. In terms of access to those services, this matter is considered further below in respect of putative RfR2, and for the reasons which I will explore further there, I consider the site is accessible and thus there is no conflict with this element of the policy.
- 6.2.25 Part (iii) takes into account local need for affordable housing. As explored elsewhere within this statement and in Appendix 1, affordable housing need in Bexhill is acute and very real. Provision of up to 63 new affordable dwellings in this location is a very significant benefit of the proposals.
- 6.2.26 Part (iv) is the needs and priorities identified in approved Local Action Plans. The last Local Action Plan for Bexhill was produced in 2010 and the webpage is no longer available. It is therefore not considered relevant to the appeal proposals.
- 6.2.27 Part (v) requires consideration of the low carbon and renewable energy potentials of the site. The site is capable of meeting prevailing energy efficiency standards.
- 6.2.28 Part (vi) considers the character and qualities of the landscape. Through its careful design, the appeal site appropriately responds to the local landscape context and development of the site would not cause significant or demonstrate harm in landscape and visual terms. This matter is addressed further in Mr Jackson's proof.
- 6.2.29 Part (vii) considers making effective use of land within the main built-up confines of towns and villages, especially previously developed land, consistent with maintaining their character. Whilst the appeal site is not situated on previously developed land, it is considered that the site, with a density of 30dph, makes effective use of land without constituting over-development on a site adjacent to the current development boundary and adjoining well-established residential development.
- 6.2.30 Part (viii) regards any constraints relating to land stability, contamination, air quality, agricultural land quality and coastal erosion, and the ability to satisfactorily address these. The planning application was supported by a range of technical documents which demonstrate how the proposals respond to various constraints. There are no land stability, contamination, air quality, agricultural land quality nor coastal erosion constraints that would inhibit the development coming forward nor that cannot be resolved through the implementation of appropriate planning conditions.
- 6.2.31 Part (ix) provokes consideration of the deliverability of development, including consideration of land ownership patterns and the viability of development. The site falls within one land

ownership and section 7.9 'Delivery of Housing within Five Years' of this proof further sets out how the development will be delivered.

6.2.32 Part (x) establishes the need for and access to employment opportunities. Bexhill town centre provides a range of employment opportunities which are accessible within an acceptable distance from the site.

6.2.33 Whilst the appeal site does not accord with all relevant policies of the Core Strategy, and as such there is some limited technical conflict with OSS3 as a result, it is evident that the proposals accord with all relevant principles set out within Policy OSS3 and the site comprises a suitable location for residential development. In the absence of a five year housing land supply, the Council should be looking to sustainable sites such as the appeal site which meet the key objectives of the policies to deliver much needed housing.

Policy OSS4 – General Development Considerations

6.2.34 Policy OSS4 provides general development criteria for proposals to meet.

6.2.35 Part (i) seeks to meet the needs of future occupiers including through provision of amenities and the provision of access for disabled users. It is considered the appeal proposals comply with this criterion to the extent that it applies at outline stage.

6.2.36 Part (ii) seeks to ensure that all developments do not unreasonably harm the amenities of adjoining properties. The appellant considers that any potential impact on residential amenity can be controlled, through reserved matters applications but it has been demonstrated through the DFP that the site can be laid out in a way which respects this criterion.

6.2.37 Part (iii) requires that all development respects and does not detract from the character and appearance of the locality. In respect of character and appearance, I seek to rely upon Mr Jackson's proof and in planning policy terms, this matter is more substantively dealt with under policies EN1 from the RCLSP and DEN1 from the DaSA LP. Planning conditions are proposed to secure landscaping details in compliance with parts (ii) and (iii) of Policy OSS4.

6.2.38 Part (iv) requires consideration of the compatibility with adjacent land and the previous use of the site. A full description of the site and its adjacent uses is set out within the Planning Statement of Common Ground, but residential development would not be incongruous with adjacent land uses.

6.2.39 Part (v) exclusively applies to residential development and requires development to be of a density appropriate to its context, having regard to the key design principles. As set out within

the Design and Access Statement [CD 1.07], the development proposals achieve on average a density of 30 dwellings per hectare, which signifies an efficient use of the site, whilst providing a balanced approach to the provision of green infrastructure and taking into account the influences and opportunities within and around the site.

- 6.2.40 Overall, in compliance with this policy, the proposals have carefully considered the amenity of nearby adjacent residential uses, incorporate areas of open space and is of a relatively low density which reflects the neighbouring uses and patterns. Hence, the appellant considers that the appeal proposal meets the criteria set out within Policy OSS4 and complies with the policy.

Policy EN1 – Landscape Stewardship (RCSLP) and Policy DEN1 – Maintaining Landscape Character (DaSA LP)

- 6.2.41 Policy EN1 in the Core Strategy sets out ways in which the historic, built and natural environment in the district will be managed by ensuring the protection, and wherever possible enhancement, of the district's nationally designated and locally distinctive landscapes and landscape features. Policy DEN1 from the DaSA LP requires the siting, layout and design of development to maintain and reinforce the natural and built landscape character of the area in which it is located, based on a clear understanding of the distinctive local landscape characteristics. The matters addressed within policies EN1 and DEN1 are discussed further in the evidence of Mr Jackson.
- 6.2.42 A full LVIA was submitted to RDC as part of the planning application, which provided a full analysis of the development's impacts on landscape character and visual receptors in the area, taking into account previous studies undertaken by the Council, and proposed mitigation which has informed the proposals.
- 6.2.43 The site is not covered by any statutory or non – statutory designations for landscape character or quality. Within Rother district, this is a key point given that 82% of the district is designated as "Area of Outstanding Natural Beauty" (AONB), while a further 7% of the district not in the AONB is either nationally or internationally designated for its nature conservation value, in addition to several locally designated Conservation Areas. It is agreed between the main parties that the site does not form part of a valued landscape as referred to in the Framework.
- 6.2.44 Drawing upon Mr Jackson's proof, with regard to visual and character impacts, the appeal site is not visually prominent in the landscape or from the surrounding countryside. Moreover, the Council's Statement of Case alleges harm to part (v) of Policy EN1, "open landscape between clearly defined settlements, including the visual character of settlements, settlement

edges and their rural fringe,” with reference to the first putative RfR which states that the proposed development would close the gap between the settlements of Bexhill and Little Common. Yet, Bexhill and Little Common are already fully connected with no ‘gap’ or ‘break’ in the existing settlement areas. There is no defined or designated ‘settlement gap’ or ‘area of separation’ covering the site, or this area of land and no study has been sourced that identifies this area of land as one of importance in terms of settlement separation. Clearly, this Council’s alleged harm is unjustifiable on several levels.

- 6.2.45 I accept that development of the appeal site will result in the loss of what is currently a greenfield site and I accept that this is a harm in the planning balance. However, in order for the Council to deliver its required housing numbers, it is necessary to release greenfield sites for development. Overall, I consider the appeal site appropriately responds to the local landscape context and thus, is in accordance with these policies and will not cause significant or demonstrable harm in landscape and visual terms.

Policy EN3 – Design Quality

- 6.2.46 Policy EN3 refers to ways in which new development is required to reach high-quality standards of design. The Development Framework Plan [CD1.03] and Illustrative Masterplan [CD1.07] indicate one way in which the site could be suitably designed to achieve 210 dwellings. The appeal proposals are above policy-compliant in terms of types and amounts of public open space, and indeed, the substantive green framework proposed will enable a high-quality design to come forward at reserved matters stage. In the appellant’s view, the illustrative DFP does show that an appropriate design and layout can be achieved, especially given the split between built form and green infrastructure proposed in it (39% of the site will comprise open space and green infrastructure). Nevertheless, should the Council disagree, an alternative layout can of course come forward at the reserved matters stage within the parameters of any outline permission for up to 210 units.
- 6.2.47 The Design and Access Statement [CD 1.07] demonstrates how the development proposals have been designed in line with national and local design principles and guidance. It also sets out how the design responds to inter alia local character, context and place-making objectives. Full design details will be set out at reserved matters application stage.
- 6.2.48 Overall, the appeal site accords with the requirements of Policy EN3 to the extent that it applies to an outline application.

Policy EN5 – Biodiversity and Green Space and Policy DEN4 – Biodiversity and Green Space (DaSA LP)

- 6.2.49 Policy EN5 seeks to protect and enhance biodiversity, geodiversity and green spaces. The Council's SoC draws upon part (i) and part (vii) which comprise objectives to maintain and develop a district-wide network of green infrastructure where possible linking areas of natural green space and increased accessibility to the countryside from urban areas, especially in the Hastings and Bexhill fringes, respectively. The policy also requires developers to integrate biodiversity into development schemes by avoiding adverse impacts from development on biodiversity or habitat. Where any loss is necessary, appropriate mitigation should be provided and, in any event, developers are expected to consider and promote opportunities for the creation and/or restoration of habitats appropriate to local context.
- 6.2.50 In accordance with Core Strategy Policy EN5, Policy DEN4 from the DaSA LP states that development proposals should support the conservation of biodiversity, multi-functional green spaces and meet a range of other criteria.
- 6.2.51 The Development Framework Plan submitted with the planning application illustrates that approximately 39% of the proposed development comprises green infrastructure and open space. The Green Infrastructure Masterplan (Dated May 2022) provided in the Landscape Response Note [CD2.05] further exhibits that the proposals are set within a substantial green infrastructure network and how the proposals have been carefully designed to provide amenity green space.
- 6.2.52 It is common ground between the parties that, "the appeal proposal has the potential to protect, diversify, and improve the biodiversity of the site through implementing new hedgerow, tree planting, wildflower planting and delivery of new garden spaces. These measures will help achieve biologically diverse formal and informal green spaces." Overall, the appeal proposals are in accordance with the requirements of policies EN5 and DEN4.

Reason for Refusal 2 & 3**Policy SRM1 – Towards a Low Carbon Future, Policy TR2 – Integrated Transport and Policy TR3 – Access and New Development**

- 6.2.53 Policy SRM1 provides the strategy to mitigate and adapt to the impacts of climate change, listing a number of mechanisms to achieve this objective. In particular, criterion (vi) refers to supporting more sustainable travel patterns in accordance with policy TR2.

- 6.2.54 Policy TR2 seeks to secure improvements in the provision and use of sustainable transport, setting criteria to achieve such improvements. Policy TR3 requires applicants to assess the transport impacts of their proposals and provide mitigation where necessary and to ensure adequate, safe access arrangements. The policy identifies that new development should minimise the need to travel and support good access to employment, services and community facilities. Development will be permitted where mitigation against transport impacts which may arise from the development or cumulatively with other proposals is provided, with three criteria specified.
- 6.2.55 Criteria (i) stipulates that new developments should in their design and layout prioritise the needs of pedestrians, cyclists and minimise the distance to local public transport nodes. Criteria (ii) states that applicants should work with relevant agencies to contribute towards local infrastructure needed to facilitate highway capacity and safety and/or public transport accessibility and capacity. Criteria (iii) refers to the provision of EV charging infrastructure.
- 6.2.56 Taking into account Mr Regan's conclusions on locational sustainability, I consider that the appeal proposals comply with policy SRM1 and TR2 in respect of promotion of sustainable transport modes and TR3 in respect of all three criteria. Mr Regan points out that a wide range of services and facilities are accessible from the site via safe walking and cycling routes. In terms of public transport, Mr Regan points out that the railway station is accessible from the appeal site via a short cycle, with its services to larger centres for employment and leisure purposes. A contribution is also provided in the planning obligation towards the provision of a demand responsive bus service in line with East Sussex County Council's Bus Improvement Plan. In respect of EV charging infrastructure, a planning condition will secure the provision of EV charging infrastructure to all new dwellings, and the planning obligation requires the developer to set up an EV Car club on site which further promotes sustainable transport.
- 6.2.57 I consider the issue of locational sustainability in further detail at section 8 of my evidence.

Other issues

Policy SRM2 - Water Supply and Wastewater Management

- 6.2.58 Policy SRM2 sets out a series of measures to support the effective management of water resources. Criteria (iii) is particularly pertinent to the appeal proposals and reads, "The promotion of sustainable drainage systems to control the quantity and rate of run-off as well as to improve water quality wherever practicable, and specifically for all development that creates impermeable surfaces within the hydrological catchment of the Pevensey Levels."

- 6.2.59 The main parties concur that, with consideration of the proposed measures intended to avoid or reduce effects, the proposed development will not have any adverse effect on the integrity of the Pevensey Levels SAC / Ramsar site, either alone or in combination with other plans or projects. It is noted that in their role as decision-maker, the appeal inspector becomes the competent authority for the purposes of Habitats Regulations Assessment in this case.

Policy EN7 – Flood Risk and Environment and Policy DEN5 – Sustainable Drainage (DaSA LP)

- 6.2.60 Policy EN7 requires flood risk to be taken into account at all stages in the planning process and development proposals are required to meet a range of criteria in this respect. The site falls within Flood Zone 1 (low probability of flooding). Policy DEN5 states that drainage should be considered as an integral part of the development design process, with sustainable drainage systems utilised unless demonstrated to be inappropriate.
- 6.2.61 The Lead Local Flood Authority [CD3.04] and Environment Agency [CD3.03] have no objection to the proposals put forward for dealing with surface water drainage, subject to conditions.
- 6.2.62 It is common ground that the proposed development could accord with policies EN7 and DEN5, subject to further detail to be provided at the reserved matters stage.

Policy DEN7 – Environmental Pollution

- 6.2.63 Policy DEN7 explains that development will only be permitted where it can be demonstrated that there will be no significant adverse impacts on health, local amenities, biodiversity or environmental character as a result of lighting, noise, odour, land contamination, hazardous and non-hazardous substances and/ or airborne particulates associated with development.
- 6.2.64 The Council's Senior Environmental Health Officer raised no objection to the proposal in terms of environmental health, subject to the imposition of appropriate planning conditions [CD3.02]. I consider the issue of noise in more detail at chapter 8. In light of my conclusions there, I am content that the appeal proposals comply with policy DEN7.

Policy LHN2 – Affordable Housing and Policy DHG1 – Affordable Housing (DaSA LP)

- 6.2.65 Policies LHN2 and DHG1 set an affordable housing requirement of 30% for developments of net 15 dwellings or more in Bexhill.
- 6.2.66 The appeal proposals will provide for the on-site delivery of 30% affordable housing, equating to up to 63 new affordable dwellings, in accordance with Policies LHN2 and DHG1's

requirements. This will be secured through mechanisms contained within the bilateral agreement between the appellant, RDC and ESCC.

- 6.2.67 As set out within the Affordable Housing Needs Statement in Appendix 1 of this proof, there is very significant need for affordable housing in both Bexhill and Rother District and therefore, such provision should be viewed as a very positive and real benefit of the development proposals.

Policy DHG6 – Self-build and Custom Housebuilding

- 6.2.68 Policy DHG6 sets a requirement for development sites of 20 dwellings or more to make provision for 5-10% of the total number of dwellings to be made available as serviced plots for self and custom housebuilders. In line with this policy, 5% of plots will be made available for this purpose and will be secured through the planning obligation.

6.3 Conclusions on the Development Plan

Most Important Policies

- 6.3.1 I consider that the following policies form the 'basket' of most important policies which the Inspector will need to focus upon in determining this appeal:

- OSS1 - Overall Spatial Development Strategy
- OSS2 – Use of Development Boundaries
- OSS4 – General Development Considerations
- DIM2- Development Boundaries
- RA3- Development in the Countryside
- SRM1- Towards a Low Carbon Future
- EN1- Landscape Stewardship
- TR2- Integrated Transport
- TR3- Access and New Development

- 6.3.2 Clearly, OSS2, DIM2 and RA3 function together in providing the framework for determining whether the principle of residential development on the appeal site is acceptable. OSS1 is also of fundamental importance to the consideration of the principle of development in this case as it sets the overall housing requirement upon which the development boundaries in OSS2

and RA3 are based (and which I consider to be out of date). I have also included in my basket the most important policies in respect of the other fundamental issues in this appeal (landscape impact and locational sustainability/highways). I have excluded policies relating to issues which it is expected will be matters of common ground between the main parties in this appeal by the time of the inquiry, although I appreciate that the Inspector will still need to engage with them in respect of his main issues.

6.3.3 In the table below, I assess each of the policies in my basket of most important policies with reference to the questions outlined at 6.1.4 above, in order to inform my assessment of whether the basket as a whole is out of date. I have assessed policies OSS1, OSS2, DIM2 and RA3 together in the same way that I have above, as they effectively function together.

Policy Analysis Summary Table

Policy	Is the policy out of date?	Does the scheme comply with the policy?	What level of harm results from the conflict?	Weight to be attached to the conflict in the planning balance
Policy OSS1 – Overall Strategy for Development	<p>Yes- The housing requirement element is out of date as it doesn't reflect the area's up to date local housing need.</p> <p>The spatial strategy element is out of date on the basis that the Council has allocated insufficient sites to meet its local housing need, and cannot demonstrate a 5 year housing land supply.</p>	<p>No- there is support in that the spatial strategy seeks to focus development at Bexhill, but I accept that as the site lies outside of the development boundary where development is restricted to that necessary for a countryside location, there is a minor degree of conflict with the policy.</p>	<p>Very limited harm for the reasons outlined at 6.2.19.</p>	<p>Very limited</p>

Policy	Is the policy out of date?	Does the scheme comply with the policy?	What level of harm results from the conflict?	Weight to be attached to the conflict in the planning balance
Policy OSS2- Use of Development Boundaries	Yes - the development boundary is drawn to accommodate the level of growth required to meet the housing requirement devised through the CS, which is out-of-date in that it does not meet the up to date local housing need as formulated through the standard method.	No - - the appeal proposals lie outside the development boundary (as set through the DaSA LP) where development is generally considered unacceptable in principle.		
Policy DIM2- Development Boundaries				
Policy RA3- Development in the Countryside				
Policy OSS4- General Development Considerations	No- broadly in conformity with NPPF	Yes	N/A	N/A
Policy EN1- Landscape Stewardship	No- broadly in conformity with NPPF	Yes	N/A	N/A
Policy SRM1- Towards a Low Carbon Future	No- broadly in conformity with NPPF	Yes	N/A	N/A
Policy TR2- Integrated Transport	No- broadly in conformity with NPPF	Yes	N/A	N/A

Policy	Is the policy out of date?	Does the scheme comply with the policy?	What level of harm results from the conflict?	Weight to be attached to the conflict in the planning balance
Policy TR3- Access and New Development	No- broadly in conformity with NPPF	Yes	N/A	N/A

Conclusions on the development plan as a whole

- 6.3.4 I have accepted that the appeal proposals conflict with policies OSS1, OSS2, DIM2 and RA3. As these are the key development plan policies for determining the principle of the development proposed, I accept therefore that the appeal proposals conflict with the plan read as a whole. However, for the reasons I have stated above in respect of the council's inability to demonstrate a five year housing land supply and the housing delivery test failure, I consider that these policies, and by association the basket of policies most important for the determination of the application, are out-of-date and conflict with them should be afforded no more than very limited weight in determining the appeal.
- 6.3.5 I will carry out the overall planning balance on this basis in section 9 of my evidence.
- 6.3.6 Having considered the development plan, I next consider other material considerations.

7 OTHER MATERIAL CONSIDERATIONS

7.1 Introduction

7.1.1 This chapter sets out other material considerations which I consider should be taken into account in the planning balance and ultimately the decision-making process.

7.2 National Planning Policy Framework

7.2.1 The latest version of the Framework was published on the 20th July 2021. Paragraph 2 of the Framework sets out that it is an important material consideration in the determination of planning applications. At **Appendix 2** of my evidence, I consider in detail the appeal scheme's conformity with the relevant sections of the Framework. I also make reference through this proof to those paragraphs of the Framework which are of direct relevance to the appeal.

7.2.2 In summary, the appeal proposals have been assessed against the various relevant chapters of the Framework, which confirms that they comprise sustainable development as a result of:

- i. Providing a deliverable housing development that will make a valuable contribution towards national and local objectives for economic growth;
- ii. Benefiting from a real choice of sustainable transport modes, promoted through a Travel Plan as well as providing enhancements to further promote travel by sustainable modes;
- iii. Making an important contribution towards meeting the five-year housing land requirement in the district;
- iv. Contributing to housing choice and the mix of housing in the area, making effective use of land and in particular making an important contribution to affordable housing needs;
- v. Being capable of delivering beautiful design;
- vi. Promoting healthy communities through integration with the existing settlement and the provision of open space;
- vii. Being located on land at low risk of flooding and ensuring that the development will not increase flood risk downstream;
- viii. Being resilient to the challenge of climate change; and

- ix. Conserving and enhancing the natural and historic environment.

7.3 Planning Practice Guidance

- 7.3.1 The planning practice guidance ('PPG') was first published on 6th March 2014. It expands and provides additional guidance on policies within the Framework. The most recent revisions to the PPG were published on 24th June 2021.
- 7.3.2 Where necessary, this proof of evidence makes reference to relevant sections of the PPG.

7.4 Emerging Local Plan 2019-2039

- 7.4.1 Paragraph 48 of the Framework advises that local planning authorities can give weight to relevant policies in emerging plans according to their stage of preparation, extent to which there are unresolved objections and the degree of consistency with the Framework.
- 7.4.2 At the time of writing, Rother District Council have begun early preparatory work on a new Local Plan that will cover the period 2019-2039. The Council undertook a 'call for sites' from October-December 2020, as part of which the appeal site was submitted for consideration. It then published a Local Plan Early Engagement Document and an Engagement Strategy in April 2021. Since this time, the Council has been working on the evidence base for a new Local Plan. It had been anticipated that Regulation 18 consultation would take place in spring 2022. However, the Council issued a statement in April 2022 confirming that this consultation has been delayed until January/February 2023 whilst the Council continues to work with neighbouring planning authorities and liaise with town and parish councils. An updated Local Development Scheme is expected to be published to reflect the new timeframe. As there are no emerging policies for the proposals to be assessed against, the emerging Local Plan attracts no material weight in the determination of this appeal.

7.5 Housing Delivery

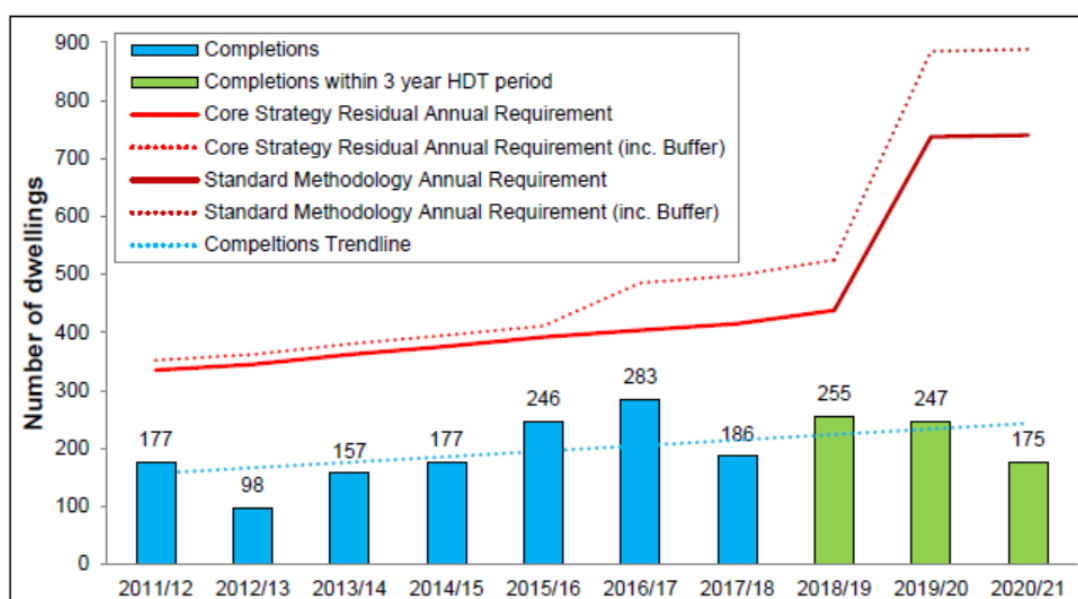
- 7.5.1 The 2021 Housing Delivery Test results confirmed that, against a requirement of 1,189 dwellings over the last three monitoring years (2018-21), just 677 net dwellings were delivered i.e., 57% of the required number of homes. Consequently, the Council is required to publish an action plan and a 20% buffer applies to its five-year housing requirement. Furthermore, as the measurement is below 75%, the presumption in favour of sustainable development applies.¹⁴

¹⁴ NPPF footnote 8.

- 7.5.2 The HDT results from the previous three years have followed a downward trend, with measurements of 70% and 65% in 2019 and 2020 respectively. It is also a trend that the Council concedes is likely to continue until a new Local Plan is adopted.¹⁵
- 7.5.3 The Council published its latest Housing Delivery Test Action Plan (HDTAP) in July 2022. The HDTAP details that between April 2011 and April 2021, 2,001 net additional dwellings were completed. This equates to an average of 200 dwellings per year. This amounts to 1,349 dwellings fewer than required by the Core Strategy, as demonstrated in the table below. This is a chronic shortage and represents 1349 households whose housing needs have not been met to date during the plan period.
- 7.5.4 As the Council acknowledges, the annualised housing requirement of 335 units has not been achieved in any year since the start of the plan period, let alone the local housing need figure (currently 737 dwellings per annum), which has been applicable as of 29th September 2019 due to the Core Strategy policies becoming five years old on that date. The Council's Housing Land Supply report (November 2021) [CD6.01, p.5] illustrates an average of just 200 housing completions per annum since 2011.

¹⁵ CD6.02, paragraph 2.34.

Year	Housing Completions	Housing Requirement (Core Strategy)	Housing Requirement (LHN)	Cumulative Completions	Cumulative Shortfall (vs CS requirement)	Cumulative Shortfall (vs Local Housing Need)
2011/12	177	335	N/A	177	158	N/A
2012/13	98	335	N/A	275	395	N/A
2013/14	157	335	N/A	432	573	N/A
2014/15	177	335	N/A	609	731	N/A
2015/16	246	335	N/A	855	820	N/A
2016/17	283	335	N/A	1,138	872	N/A
2017/18	186	335	N/A	1,324	1021	N/A
2018/19	255	335	N/A	1,579	1101	N/A
2019/20	247	335	N/A	1,826	1189	N/A
2020/21	175	335	740	2,001	1349	565
Total	2,001	3350	740	2,001	1349	565



7.5.5 The Council acknowledges that it is likely to continue to experience poor HDT results over the next three years [CD6.02, para. 3.31]. The fact remains that due to the delay in the Local Plan review process, there is a huge and chronic shortfall in supply and delivery of housing. This situation can only be remedied by a combination of granting planning permissions **now**, to address the backlog, and progressing the Local Plan expediently to fortify forward supply. I note the appeal scheme has not been refused on a prematurity basis and that the emerging plan is not at an advanced stage.

7.5.6 Whilst well-intentioned, none of the 'key actions' the Council identifies [CD6.02, Chapter 3] will assist it in addressing its substantial delivery problem in the short term:

- **Granting planning permissions on DaSA LP site allocations** is the only action the Council identify that has the *potential* to *begin* to remedy the delivery and supply problem in the short term. The appellant is actively promoting development on two DaSA allocations (BEX3a and BEX3b, respectively)¹⁶, which, if approved, will provide up to 380 dwellings in the north of Bexhill. However, despite having been subject to detailed assessment through the Local Plan examination process, ESCC Highways have objected to the BEX3b application on accessibility grounds.¹⁷ Such objections have the potential to prevent or seriously delay the delivery of housing on allocated sites.
- The Council has formed a **local housing company** (Rother DC Housing Company Ltd), which aims to complete 1,000 new homes by 2035 but fails to demonstrate that it owns an adequate number of sites with 'planning potential'. Furthermore, research has identified several barriers to the success of local housing companies, including inadequate funding, a lack of available land and deficiencies in the requisite skills and experience in housing development within LPAs [CD6.04].¹⁸ Again, it is unlikely that such a mechanism will make a significant contribution to remedying the deficit, particularly in the short term.
- The **Local Plan review** is already subject to significant delay and is unlikely to be adopted until late 2024 at the soonest.

¹⁶ Planning applications RR/2022/2364/P (validated 5th October 2022) and RR/2022/1584/P (validated 1st July 2022) respectively.

¹⁷ CD6.03. At the time of writing, ESCC Highways have not responded to the BEX3a application.

¹⁸ 'Local authority direct provision of housing' (University College London, December 2017).

- There is no evidence that a **landowners forum** has been set up and in any event will only meet annually at most with the rather ambiguous aim to “encourage communication and promote housing development”.¹⁹ The Council’s complaint is that landowners have “unrealistic expectations”²⁰ and are “land-banking to achieve their expectations on value”, mainly on medium-sized sites of around 50 dwellings.²¹ In addition to the question of whether an annual meeting would generate meaningful progress on this matter, even the ‘unlocking’ of several medium-sized sites is unlikely to make a significant contribution to housing delivery, particularly in the short term.
- An **Action Plan review** is a requirement of the national policy and is not in itself an action that will boost delivery and supply.

7.5.7 The importance of housing delivery is even greater in circumstances such as those in Rother, where minimum requirements are not being met, the shortfall is significant, and there is no realistic option for addressing the shortfall in the short to medium term apart from releasing additional land for development that is not specifically identified in the Local Plan.

7.6 Five-Year Housing Land Supply

7.6.1 Paragraph 73 of the Framework states, *inter alia*:

Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old²². The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- a) 5% to ensure choice and competition in the market for land**
- b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently**

¹⁹ CD6.02, paragraph 3.1.

²⁰ CD6.02, paragraph 2.21.

²¹ CD6.02, paragraph 2.20.

²² Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.

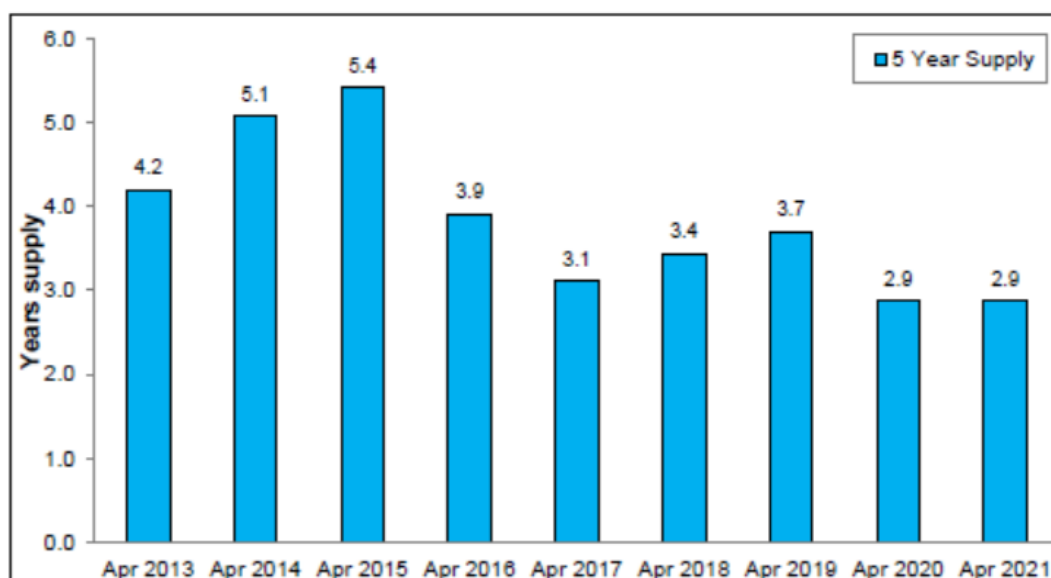
**adopted plan, to account for any fluctuations in the market during that year;
or**

- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply²³.**

7.6.2 Rother District Council acknowledges that it cannot currently demonstrate a five-year housing land supply. The Council's Housing Land Supply position statement published in November 2021 considers the supply for the period 2021-2026 to be equivalent to just 2.89 years.

7.6.3 Rother's strategic policies are more than five years old and the local housing need figure therefore must be used when calculating five-year supply. The five-year supply position for 2021-26 is assessed against a local housing need figure of 740 dwellings per annum, applicable at the 1st April 2021 base date. The local housing need figure applicable since 1st April 2022 is not significantly different, at 737 dwellings per annum; this is the figure against which the Council must assess its five-year supply for the period 2022-27. It is anticipated that the Council will publish an updated five-year supply position in November 2022.

7.6.4 Even on its own figures, RDC has been unable to demonstrate a five-year housing land supply since the 2015/16 monitoring year, as illustrated by Figure 5 (reproduced below) in its Housing Delivery Test Action Plan [CD6.02, p.12]. This represents a chronic and serious supply issue.



²³ This is measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.

- 7.6.5 Within its Statement of Case, the Council acknowledges that it cannot demonstrate a five-year housing land supply. It is agreed in the Planning Statement of Common Ground that the housing land supply is no more than 2.89 years. This represents a shortfall of at least 1,871 dwellings, which I consider to be a very significant shortfall. Indeed, the shortfall was described as “serious” in the August 2022 Fairlight appeal decision [CD10.02].²⁴
- 7.6.6 The Government’s requirement for local planning authorities to demonstrate a five-year housing land supply is a crucial element in its objective to boost significantly the supply of housing nationwide.
- 7.6.7 An important factor in the weight to be afforded to the supply of new housing in circumstances where there is no five-year housing land supply is the Council’s ability to make up the shortfall in the foreseeable future (see later chapter on Hallam Land judgment). Clearly, the lack of evidence to support the current (lack of) housing land supply demonstrates that the Council does not have a grasp on the situation and indeed, a short to medium term solution is not established.
- 7.6.8 The needs of real households, in real need, right now, are simply not being met. As such, significant weight should be afforded to any proposals which can deliver housing within the five-year period.

7.7 Affordability

- 7.7.1 The affordability of housing in Rother is a significant issue.
- 7.7.2 A useful marker of affordability is the ratio of average house prices to average earnings in a particular area. A ratio of 3.5 is considered to be the marker of an affordable housing market i.e. the ability to purchase is based on a mortgage 3.5 times’ gross income. With respect to the Rother District Council administrative area, the latest data shows that the median affordability ratio in 2021 was 13.82²⁵, meaning that an average (median) house price is 13.82 times an average salary in the district. This affordability ratio in Rother is considerably higher than the national, regional and county average.

²⁴ Appeal ref. 3283287, decision letter paragraph 53.

²⁵ Office for National Statistics. House price (existing dwellings) to workplace-based earnings ratio. Release date 23 March 2022. Table 5c: Ratio of median house price (existing dwellings) to median gross annual (where available) workplace-based earnings by local authority district, England and Wales, 1997 to 2018. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/datasets/housepriceexistingdwellingsstoworkplacebasedearningsratio>. [Last accessed 27/09/2022]

7.7.3 One reason house prices have been driven upwards is due to a lack of supply. There is a need to address this issue by offering a wider range of house types which are more affordable, thus encouraging young start-up families to the area. If the cost of housing remains high, younger families are unable to enter the housing market, or a higher percentage of their income is spent on mortgage or rental payments and household bills leaving little disposable income to spend locally. The appeal proposals will provide the opportunity for a range of family houses that reflects market demand and will also deliver a range of affordable housing for which there is a clear need in the district. The provision of 30% affordable housing should therefore be afforded very significant weight.

7.8 Affordable Housing

7.8.1 Separate from, but linked to, the issue of the general affordability of housing in Rother is the need for affordable housing in the area. Affordable housing allows those with the least means in society to access the housing market.

7.8.2 In terms of Rother specifically, there are various indicators of affordable housing need in the district. Along with the aforementioned measure of general affordability in the area, it is also notable that the Hastings and Rother Strategic Housing Market Assessment Update (2013) identified a need for 97 dwellings per annum in Rother District.

7.8.3 Table 1 and Figure 1, respectively, in the Affordable Housing Needs Statement (**Appendix 1**) illustrate a continued failure to meet identified affordable housing needs since 2011. As of 1st April 2022, there is a cumulative shortfall of 207 affordable dwellings, meaning there are at least 207 households whose affordable housing needs are not being met. This represents a very significant shortfall against identified needs, particularly when considered in the context of the ever-increasing affordability ratios, as well as the significant number of households on the Council's housing register waiting list.²⁶

7.8.4 It is also pertinent to note that the latest evidence on affordable housing needs for Rother is considerably higher at 295 affordable homes per annum, a 204% increase above the preceding assessed need. Against this need figure, there has already been a shortfall of 603 affordable dwellings provided in the short period since 2019.

7.8.5 It is also noted that as of April 2022, there were 1,917 households listed on the Rother housing register as in immediate need of affordable housing.

²⁶ See Appendix 1, Chapter 4.

- 7.8.6 In light of the above, and considering the evidence set out in the appended Affordable Housing Needs Statement (**Appendix 1**), in my view it is indisputable that the provision of 30% affordable housing as part of the appeal proposals (up to 63 dwellings, or c.65% of a single year's need in Rother) should be afforded very significant weight in the overall planning balance as a result of the identified need nationally, in Rother and in the local area of Bexhill.

7.9 Delivery of Housing within Five Years

- 7.9.1 The proposed development would make a significant contribution to the delivery of housing. The proposals would create up to an additional 210 dwellings, including up to 63 affordable dwellings. Should planning permission be granted, I believe the majority of the housing would be delivered within the five-year period, with all of the houses completed by the end of 2029 at the latest. This is an important factor given the national housing crisis currently being experienced and the general imperative to 'boost significantly' the supply of housing, as set out in the Framework; the urgent need to address a shortfall in RDC's five-year housing land supply position; and the need to address affordability issues.
- 7.9.2 The Gladman track record supports my view that the grant of planning permission for the appeal proposal will lead to the construction of the majority of the proposed development within the five-year period. In terms of the ownership position, Gladman is acting as site promoter, on behalf of the landowner. The nature of the legally binding, contractual agreement between Gladman and the landowner means that once permission is secured, Gladman works with the landowner to sell the site on the open market to a housebuilder. It is in the interests of both Gladman and the landowner to market the site expeditiously to receive a capital receipt. In addition, because the site is purchased by a housebuilder in a competitive process, they are equally motivated to secure a reserved matters approval and commence construction to begin making a return on their investment as soon as possible. In short, this is not a scenario where an outline permission is being sought to meet obligations within a lengthy option agreement, for valuation purposes or to 'land bank' the site. All those involved in the process are motivated to see an outline permission converted into occupied new homes as quickly as possible. As I stated earlier, I believe most of the housing would be delivered within the five-year period.
- 7.9.3 In terms of track record, Gladman, as a land promotion business, has secured planning permissions for housing for more than 34,000 dwellings. All of these have been outline permissions and many have been granted on appeal, where delivery within the five-year period has been a key factor in the decision of appeal inspectors and the Secretary of State.

The Gladman site delivery table (**Appendix 3**) illustrates this strong track record of delivery sites within the five-year period.

7.9.4 I note that the land team at Gladman has good market intelligence and sites are generally not taken forward and promoted through the planning process unless there is a very good prospect of it being attractive to the market. The land team also keeps in regular contact with housebuilders that are active in the local market or have aspirations to enter the market.

7.9.5 In order to provide further assurances that the site can be brought forward quickly and contribute to addressing RDC's five-year housing land supply position, GDL is prepared to accept conditions reducing the standard time periods for the submission of reserved matters applications and the commencement of development. Specifically, conditions requiring applications for approval of reserved matters to be made within 2 years and for development to take place within 1 year from the date of approval of the last of the reserved matters are suggested as being appropriate. Indeed, paragraph 77 of the Framework suggests that local planning authorities should consider imposing such conditions where this would expedite development.

7.10 Third Party Representations

7.10.1 I have considered the representations made by third parties in response to the planning application. I do not consider that they raise any substantive issues which have not been picked up already in my consideration of the Council's case.

7.10.2 However, I reserve the right to respond to any further issues raised by third parties at the Inquiry.

8 BENEFITS AND HARM

8.1 The Benefits of the Scheme

8.1.1 The appellant submits that the considerable benefits of the appeal proposals include:

Social

- Up to 147 market homes to meet a pressing local need in the context of a five-year housing land supply deficit and a national policy imperative to boost significantly the supply of housing.
- Up to 63 affordable dwellings, in a district where there is a considerable need for affordable homes and low affordability, in addition to up to 10 self and custom build plots.
- 4.39ha of formal and informal open space in areas previously inaccessible to the public (almost 40% of the gross site outline application area) including provision of a Local Equipped Area of Play (LEAP).
- A £300,000 contribution towards demand responsive transport to serve the appeal site and wider Bexhill area, and the provision of an EV car club serving the proposed development, both of which will provide enhancements to sustainable transport opportunities for existing as well as new residents of the area.

Environmental

- On site Sustainable Drainage System to provide a betterment in surface water runoff from the site, including a network of swales and an attenuation basin which will bring biodiversity benefits to the site.
- Biodiversity enhancements, for example, additional tree planting, reinforcement of existing hedgerows and boundary features to improve the connectivity of habitat.

Economic²⁷

²⁷ Figures correct as of June 2021 and extracted from the Economic Recovery Following Covid-19: The Vital Role of the Housing Sector within Rother District Council [CD1.05].

- Construction spend of approximately £28.38 million, supporting approximately 242 full time equivalent construction jobs over a 6 year build out, with an additional 264 FTE indirect jobs in associated industries.
- Up to 449 new residents, of whom 196 new residents could be expected to be economically active and in employment, and who will generate gross expenditure of £7.6m annually in local businesses.

8.1.2 Beyond the policy interpretation and evaluation of other material considerations, delivery of housing in reality is about meeting a very basic human need for the local people. People wish to be able to live in suitable accommodation which a person or family unit are able to afford and in a place that they want to live. In respect of both market and affordable housing, there is a clear demand for sites in Bexhill where sufficient housing of a suitable type is not available, this has a real negative social impact on society. Hence, providing the range of tenure on the appeal site will help solve this crisis and is a clear social benefit of this proposal.

8.1.3 Even where these benefits are offered to mitigate the impact of the appeal proposals, they will also be of benefit to existing residents of the local area and there is no guarantee they would be provided in the absence of the appeal proposals coming forward. The benefits are unique to this development and this locality.

8.2 Harm

The Council's Position

8.2.1 There are four main remaining areas of harm identified by the Council in the RfR and within the Inspector's Main Issues. These relate to:

- Conflict with development plan policy in relation to the principle of development (MI1 and MI8)
- The effect of the proposed development on the character and appearance of the area (MI3)
- The effect of the proposed development on the safety and operational efficiency of the strategic road network, with reference to the A259 (MI4)
- The contention that the site is an appropriate location for the proposed development, with reference to the accessibility of services and facilities (MI2).

Principle of development (MI1 & MI8)

- 8.2.2 I accept that there is a conflict with policies OSS1, OSS2, DIM2 and RA3 of the adopted development plan however for the reasons outlined earlier in this proof of evidence I consider that such conflict should attract **very limited weight** in the planning balance and should not be considered determinative.

The effect of the proposed development on the safety and operational efficiency of the strategic road network, with reference to the A259 (MI4)

- 8.2.3 I note that Mr Regan and his team are still in discussions with National Highways (NH) on this matter in order that the maximum amount of common ground can be agreed prior to the opening of the inquiry. However, in forming a view on this matter, I adopt the position of Mr Regan, which is that there would not be a significant, still less severe, impact on the relevant junctions of the A259 which NH have raised a concern about. As such, I have found that the appeal proposals conform with the relevant development plan policies concerning this matter, and I do not weigh any harm in respect of impact on the strategic road network in the overall planning balance.

Landscape Character and Appearance (MI3)

- 8.2.4 Drawing upon the conclusions of Mr Jackson, I accept that there will be some limited and localised adverse impacts in respect of landscape and visual effects. Indeed, such harm is inevitable when a green field is changed to built form. However, in light of the fact that Mr Jackson considers that any such harm will not be significant, that the appeal site sits within the least constrained part of Rother District in landscape terms, and that the proposed development will deliver other medium and longer term landscape and green infrastructure benefits, I afford **limited weight** to this harm.

Whether the site is an appropriate location for the proposed development, with reference to the accessibility of services and facilities (MI2)

- 8.2.5 It is important to consider this matter in the context of the relevant national policy tests, which state that development should ensure:

"appropriate opportunities to promote sustainable transport modes can be- or have been- taken up, given the type of development and its location" [NPPF 110]

*"significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and **offering a genuine choice of transport modes**" [NPPF 105- emphasis added]*

- 8.2.6 In reaching a conclusion on this matter, I rely upon the evidence of Mr Regan as to whether appropriate opportunities to promote sustainable transport modes have been taken up, given the type of development and its location, and whether residents of the proposed development will have access to a genuine choice of transport modes. I note that the Council's (and East Sussex County Council's) allegations of harm in this regard relate broadly to the location of the development site, its walking distance from services and facilities and the relative lack of bus services within the locality which they contend would lead to a reliance on the private car.
- 8.2.7 Firstly, I accept that many residents of the proposed development *will* utilise the private car for travel for work and leisure purposes. However, as stated above, this is not the test as to whether a site is considered to be sustainably located.
- 8.2.8 I note that Mr Regan considers that in terms of the most sustainable transport option, walking, there are a wide range of services and facilities within a 2km walk distance, which is considered by Manual for Streets to be the distance below which there is the most potential for replacing car journeys with walking. This includes over 100 local destinations, including convenience stores, public open spaces, employment, leisure destinations, and primary and secondary schools. Mr Regan identifies a number of safe walking routes to these facilities. Walking is therefore clearly an option that will be taken up by future residents of the appeal site.
- 8.2.9 Furthermore, I note that the whole of Bexhill, including the town centre, employment areas and rail stations, is comfortably within a 5km cycle catchment of the appeal site. Cycling is therefore a further option for residents of the proposed development to access services by sustainable means.
- 8.2.10 With regard to public transport, I note that Mr Regan accepts that the bus stops which are in close proximity to the appeal site are currently relatively poorly served in terms of the regularity of services, and that to access a more frequent service would require a walk of up to 1.8km. However, Mr Regan also notes that East Sussex County Council have recently published a Bus Service Improvement Plan which quite clearly identifies Digital Demand Responsive transport services as the best opportunity to improve bus provision across the whole town of Bexhill. Government funding has been secured towards implementing this service, which it is identified will replace some existing bus services, and the Appellant provides a further contribution of £300,000 towards its implementation in the planning obligation for

this appeal. As such, in my view it is clearly the case that the Appellant has taken up appropriate opportunities to promote bus provision both for the appeal site and the wider Bexhill area. I note the Council's concern that in the longer term the DRT service *may* not be viable, but this is frankly always the case with bus services. The viability of the service will undoubtedly be boosted by the additional patronage from residents of the appeal site, but such services can never be guaranteed in perpetuity. However I do consider that the appropriate opportunity has been taken up to promote a service which ESCC clearly sees as the future of bus provision in this area.

- 8.2.11 With respect to rail services, as noted above both Collington and Bexhill railway stations are located within a comfortable cycling distance of the appeal site, and provide an opportunity for longer trips for employment and leisure purposes to centres including London, Eastbourne and Hastings.
- 8.2.12 Furthermore, the Appellant has committed to a further sustainable transport solution within the planning obligation for this appeal. I note that current planning policy seeks to discourage use of the private car in favour of more sustainable transport options such as walking, cycling and public transport. However, in the context of the UK's commitments to ban the sale of all new petrol and diesel cars and vans by 2030²⁸, there is already a move towards 'greener' technology within private vehicles which will undoubtedly only accelerate in the years ahead. This means that travel by the private car will likely become more environmentally friendly, and sustainable, in the future. With this in mind, the Appellant has provided a contribution towards the implementation of an electric vehicle car club on the appeal site. This scheme would be operated by HiyaCar (or similar) and would provide funding for up to 7 new vehicles over an initial 3 year period, after which the scheme should become self-funding. I consider this to be another important opportunity for sustainable transport which the appellant in this case has taken up.
- 8.2.13 A Travel Plan will also be secured by condition, which will commit the developer to undertake measures to ensure a modal shift towards sustainable transport methods.
- 8.2.14 Finally, I note Mr Regan's points in respect of the increasing propensity to work from home and utilise online shopping, which will reduce the need to travel in any event.

²⁸ <https://www.gov.uk/government/consultations/consulting-on-ending-the-sale-of-new-petrol-diesel-and-hybrid-cars-and-vans/outcome/ending-the-sale-of-new-petrol-diesel-and-hybrid-cars-and-vans-government-response>

- 8.2.15 In light of the above, and taking into account the conclusions of Mr Regan, I am confident that the appeal proposals more than satisfy the requirement of the NPPF in respect of promoting opportunities for sustainable travel, and that future occupiers of the proposed development will have access to a real choice of sustainable transport modes. As such, I do not consider that there is any harm to weigh in the planning balance with regard to the accessibility of services and facilities.

Other main issues

- 8.2.16 Within its Statement of Case, the Council also identified the following issues which formed Main Issues:

The effect of the proposal Pevensey Levels SAC and Ramsar site (MI6)

- 8.2.17 As explained above, it is common ground between the main parties that with consideration of the proposed measures intended to avoid or reduce effects, the proposed development will not have any adverse effect on the integrity of the Pevensey Levels SAC / Ramsar site, either alone or in combination with other plans or projects. The appeal inspector, in their role as decision-maker, becomes the competent authority for the purposes of Habitats Regulations Assessment.

Living conditions of the occupants of 11 and 15 Fryatts Way, with reference to noise and disturbance (MI5)

- 8.2.18 In their Statement of Case, the Council raise a point, in the context of their case regarding the reliance of future occupiers on the private car, that the increase in traffic on Fryatts Way has the potential to adversely impact upon the amenity of neighbouring residents to the appeal site, principally at nos. 11 and 15 adjacent to the site access. It is noted that the Appellant submitted a Noise Screening Assessment with the planning application which set out the potential to introduce mitigation measures to ensure the amenity of the occupiers of these properties is not adversely impacted, without providing details of these mitigation measures. I note in this regard that the Council's environmental health officer was content that this was a proportionate response to the issue at outline stage and that further details could be secured by an appropriately worded planning condition. Nevertheless, as the Council have raised the issue, the appellant instructed Miller Goodall to produce a further Noise Assessment report specifically addressing the potential noise impacts on nos 11 and 15, and outlining the specific mitigation measures required. This report, which is appended to my evidence (**Appendix 5**), effectively discharges the condition recommended by the EHO.

8.2.19 The report recommends that, in order to achieve acceptable noise levels both internally and externally at the neighbouring properties, a 1.8m high solid acoustic fence should be erected along the boundary of the appeal site adjacent to the properties in question, and a 20mph speed limit should be implemented on the access road. Notwithstanding my primary position that such detail is not necessary at the outline stage, I am content that with the implementation of these measures there would not be an adverse impact on occupiers of the relevant properties as a result of noise. Furthermore, in relation to the wider concerns the Council have raised with regard to the amenity of these residents and potential for conflict with the visibility splays for the proposed site access point, I note that a c.1.8m high close boarded timber fence equal to or exceeding the extents proposed for mitigation already exists at both property boundaries. As such I am content that there would be no adverse impact on the amenity of those property occupiers in respect of overbearing or loss of light. Furthermore, the mitigation has been modelled taking into account the required visibility splays associated with the proposed site access point, so I am content that there would be no issue in respect of conflict between users. Therefore, I do not consider that any additional harm should be weighed in the overall planning balance in respect of impact upon the amenity of neighbouring property occupiers.

8.2.20 Prior to exchange, the appended report was sent to the Council in an effort to agree common ground with respect to this matter. However, the Council refused to engage, simply repeating its previously stated position as set out in its Statement of Case. In light of this, I must reserve the right to adduce further evidence if the Council seek to contest this matter further or raise additional points in their proofs of evidence.

Lack of Infrastructure Provision (MI7)

8.2.21 The Inspector's Main Issue 7 corresponds with the Council's fourth putative Reason for Refusal which relates to the, "Lack of infrastructure provision secured by the development (and by association conflict with various local plan policies) – all necessary infrastructure required to mitigate the impacts of the development, including impact highways mitigation and promoting a modal shift/ improvement to pedestrian connectivity." However, it is considered that all necessary infrastructure has been provided for through the planning obligation, which will be provided to the inspector in advance of the inquiry, thus resolving the Council's fourth putative RfR.

8.3 Sustainable Location

- 8.3.1 As discussed in chapter 4 of this proof, it is considered that the appeal site's location on the edge of the sustainable settlement of Bexhill, with good access to services and facilities and the train station, weighs in favour of the proposal. There is no evidence that allowing the appeal would result in any detrimental impacts upon services and facilities, subject to mitigation measures which will be secured by condition and/or obligation.

8.4 Sustainable Development

- 8.4.1 The proposals are sustainable when assessed against the social, economic and environmental dimensions of sustainability.

An Economic Role

- 8.4.2 The demonstrable beneficial economic impacts of the appeal proposal are included within the Economic Recovery Following Covid-19: The Vital Role of the Housing Sector within Rother District Council report [CD1.05]. Delivery of new homes now in locations such as Bexhill is one component which will enable the Council to promote and sustain a strong, responsive and competitive economy.

A Social Role

- 8.4.3 The appeal proposals will deliver well-designed new homes of the right type, in the right place and at the right time to meet market and affordable housing need and will assist RDC towards improving its current significant housing land supply deficit. Without a sufficient supply of new homes, RDC cannot meet the housing needs of present or future generations. The site is located close to key services and facilities in a sustainable location on the edge of Bexhill.

An Environmental Role

- 8.4.4 The proposals do not give rise to any material harm in terms of ecology, environmental health or flood risk and drainage, subject to the imposition of appropriately worded planning conditions. Whilst some harm is identified in respect of landscape and visual impacts, this is considered to be an inevitable consequence of releasing greenfield land on the edge of Bexhill in order to meet future needs. It is common ground that the appeal site does not form part of a valued landscape as understood by paragraph 174 of the Framework. As a site which is not designated, it clearly sits at the lowest end of the scale of protection to be afforded to landscape areas.

9 PLANNING BALANCE

9.1 Introduction

- 9.1.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) indicates that development proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. I have accepted that the proposals conflict with policies OSS1, OSS2, DIM2 and RA3 of the adopted development plan and the development plan when taken as a whole. However, this chapter sets out the material considerations which I consider favour the grant of planning permission.
- 9.1.2 I have set out my position that the §11(d) tilted presumption of the Framework is engaged in respect of this appeal. I consider that the most important policies restricting development of the appeal site for housing are out-of-date because no five year supply of housing can be evidenced. Furthermore in accordance with Footnote 8 of the NPPF, the tilted balance is also engaged due to the Council's HDT result falling below the 75% threshold.
- 9.1.3 Paragraph 11 d) of the Framework states that where the policies which are most important for determining the application are out-of-date, as is the case here, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In respect of 11 d) (i), Footnote 7 of the Framework provides a closed list of the policies of the Framework which protect assets of particular importance. One such example is that of policies relating to Habitats Sites such as the Pevensey Levels SAC / Ramsar site. Paragraph 182 of the Framework states that "the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely effect the integrity of the habitats site". In this case, the appeal inspector, in their role as decision-maker, becomes the competent authority for the purposes of Habitats Regulations Assessment.
- 9.1.4 It is common ground between the main parties that with consideration of the proposed measures intended to avoid or reduce effects, the proposed development will not have any adverse effect on the integrity of the Pevensey Levels SAC / Ramsar site, either alone or in combination with other plans or projects. In light of this, I consider that in this case the

Inspector has sufficient information to conclude that the project will not adversely affect the integrity of the Pevensey Levels SAC, such that there is no clear reason to refuse the proposal under paragraph 11 d) (i) and the presumption at 11 d) (ii) is not disengaged. The appeal should therefore be allowed unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

9.2 Hallam Land Judgment

- 9.2.1 Davis Lindblom and Heckingbottom LJ in *Hallam Land vs SSCLG*²⁹ (CD11.01) made clear that the extent of the five year housing land supply shortfall is a material consideration in determining the weight to be afforded to the benefits of providing new housing on a particular proposal:

The policies in paragraphs 14 and 49 [as were] of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker's planning judgment, and the court will not interfere with that planning judgment except on public law grounds. But the weight to be given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet. [para. 51]

- 9.2.2 As such, while the tilted balance applies in any event in this case, the weight to be afforded to the benefit of market and affordable housing, and the corresponding weight to harm resulting from conflict with policies which restrict the supply of new housing, will depend on the extent of the shortfall. In this appeal, it is common ground between the Appellant and the Council that the housing land supply in Rother is a maximum of just 2.89 years. This is a **very** significant shortfall to which considerable weight must be attached. Furthermore, as outlined in this proof of evidence, RDC does not have a credible short or medium term strategy to address the land supply shortfall. If the appeal is allowed, for the reasons I have set out, I consider the majority of the homes will be delivered within the five year period and that this will make a considerable contribution towards the existing shortfall of at least 1,871 dwellings. As such, it follows that the weight to be afforded to the benefit of new housing must be considerably increased, and

²⁹ [2018] EWCA Civ 1808

the weight to conflict with those policies which restrict the supply of housing (OSS1, OSS2, RA3 and DIM2) must be decreased accordingly.

9.3 The Balance

- 9.3.1 In the first instance, I consider that the myriad benefits set out at section 8 of my evidence alone are strong material considerations, to which very substantial weight attaches, which indicate that planning permission should be granted in this case.
- 9.3.2 However, having found that there are no specific policies in the Framework which provide a clear reason for refusing the appeal scheme, the tilted balance at paragraph 11(d)(ii) of the Framework is a further material consideration which may indicate that departure from the development plan is warranted in this case.
- 9.3.3 The approach I have taken when assessing and grading weight is to use the following categories of descriptors – very significant, significant, moderate, limited, very limited and negligible.
- 9.3.4 In respect of public benefits, I afford **very significant weight** to the provision of up to 63 affordable dwellings given the acknowledged local affordable housing need (and lack of supply) outlined in this proof of evidence, along with the dire affordability ratios in the district, and **very significant weight** to the provision of up to 147 market dwellings given the substantial shortfall in housing land supply, which the Council does not have a strategy for addressing in the short to medium term. I afford **moderate weight** to the considerable economic benefits of the proposals along with provision of almost 40% of the appeal site as new accessible open space, and the provision of a sustainable drainage system. I afford **limited weight** to the contributions which will be made towards community infrastructure, to the extent that they will provide a benefit for existing members of the community alongside new residents.
- 9.3.5 Against this, in terms of adverse impacts, I acknowledge that there will be some limited landscape harm as the proposals involve built development on a greenfield site, however as established the site is not designated and is not considered to fall within a valued landscape, and as such it should receive the lowest level of protection. Mr Jackson is clear that the site can be developed in a way that will not result in any significant or unacceptable harm to local landscape, settlement character, nor visual amenity. I therefore afford **limited weight** to this landscape harm.

- 9.3.6 I have identified that the appeal proposals conflict with out-of-date policies OSS1, OSS2, RA3 and DIM2 of the development plan, however I only afford **very limited weight** to this conflict for the reasons outlined in my evidence.
- 9.3.7 In my view, the identified harm does not come close to significantly and demonstrably outweighing the benefits of the provision of up to 210 homes, including 30% affordable housing, in a district with a chronic shortfall in housing land supply, with no credible strategy to meet the shortfall in the short to medium term, and in a sustainable location on the edge of the top tier settlement. This is particularly pertinent in Rother district where there are limited opportunities outside of the AONB and outside of national or international importance for nature conservation value to address the housing shortfall. The putative reasons for refusal in respect of the appeal can therefore not be substantiated and the balance clearly tips in favour of the grant of planning permission.

10 SUMMARY AND CONCLUSIONS

10.1 Introduction

- 10.1.1 I set out a summary of the key material considerations pertaining to the case in favour of the appeal proposals and draw my conclusions in respect of each.
- 10.1.2 This section aims to identify the relevant material considerations and demonstrate that in the planning balance the benefits of the proposal demonstrably outweigh the harm identified.
- 10.1.3 Sustainable development is about positive growth; making economic, environmental and social progress for this and future generations. The appeal proposals strongly accord with the three dimensions of sustainable development; economic, social and environmental.

10.2 The Development Plan

- 10.2.1 The starting point for assessing the appeal proposals in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 is the development plan. The development plan, as relevant to the appeal, comprises:
- Rother Core Strategy (2014); and
 - Development and Site Allocations Plan (2019).
- 10.2.2 As a matter of principle, I accept that the appeal proposals would conflict with RLPCS policies OSS1, OSS2 and RA3 and DaSA LP policy DIM2 by virtue of the appeal site's location outside of the development boundary of Bexhill. However, in order to assess the weight to be afforded to this conflict, it is important to consider the degree of harm that would be caused if the appeal were to be allowed.
- 10.2.3 Based on my professional judgement and the accompanying evidence of the appellant's landscape and locational sustainability witnesses, it is my view that the appeal site is well-related to the existing built-up area of the settlement functionally and spatially, which itself reduces the weight to be afforded to a policy conflict.
- 10.2.4 I have also described how the built-up area which the appeal site adjoins is explicitly acknowledged to be the 'top tier' settlement in the district; an area that should be a focus for growth over the plan period and that benefits from the best economic and sustainable transport opportunities within the plan area. I also describe how Rother district is tightly

constrained, with c. 82% of the district falling within the High Weald AONB and a further 7% being covered by ecological designations.

10.2.5 The Council concedes that it does not have a five-year housing land supply. On this basis, I believe that it would be somewhat irrational to attach any significant weight to a policy that prevents sites from coming forward in sustainable locations, which can deliver housing to meet the five year housing land shortfall.

10.2.6 For the foregoing reasons, it is therefore my professional opinion that the level of planning harm which would arise from a conflict with the RLPCS' spatial strategy through a conflict with policies OSS1, OSS2, RA3 and DIM2 would be very limited, and it follows logically therefore that I attach very limited weight to that policy conflict.

10.2.7 I have described how the appeal proposals would be consistent with all other relevant policies of the development plan and would not give rise to any conflict or harm to be weighed in the planning balance in this respect.

10.3 Other Material Considerations

National Planning Policy Framework

10.3.1 I have demonstrated that the appeal proposals achieve demonstrable accordance with the overall holistic objectives and relevant policies of the NPPF, in particular, the 'presumption in favour of sustainable development' which is clearly invoked in respect of the appeal proposals.

10.3.2 The appellant's evidence is clear that paragraph 11(d) of the NPPF is engaged and consequently, the 'tilted balance' is engaged. There are no specific policies in the Framework which indicate that development should be restricted and the presumption dis-engaged. It is therefore my professional opinion that in accordance with the Framework, planning permission should be granted provided that any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Emerging Local Plan

10.3.3 As there are no emerging policies for the proposals to be assessed against, the emerging Local Plan attracts no material weight in the determination of this appeal.

Housing Need and Supply

- 10.3.4 As described above when assessing the issue of compliance with the development plan, it is the case that the Council are currently unable to demonstrate a five-year housing land supply.
- 10.3.5 On the basis of the authority's most recent housing land supply position statement [CD6.01], for the purposes of this appeal it is agreed that the Council can demonstrate a maximum land supply of 2.89 years for the period 2021-26, equating to a shortfall of at least 1,871 dwellings, which I consider to be **very significant** and to which **very significant** weight should be attached.
- 10.3.6 I have noted how the Council does not appear to have a credible short- nor medium-term strategy to address this shortfall. As such, and noting the comments of Davis LJ, Lindblom LJ and Heekingbottom LJ in *Hallam Land vs SSCLG*³⁰ [CD11.01], it is my view that that the weight to be afforded to the benefit of new housing must be considerably increased and the weight to conflict with those policies which restrict the supply of housing (OSS1, OSS2, RA3 and DIM2) must be decreased accordingly.

Affordable Housing Need

- 10.3.7 The proposals meet an identified affordable housing need and will contribute up to 63 affordable dwellings (30% of the total dwellings proposed) which will enable people in significant housing need to access housing in the district. The proposals will assist in helping to maintain and enhance the vitality of the community and will also ensure that they contribute towards the Framework's objective of creating mixed and balanced communities.
- 10.3.8 The provision of a policy compliant level of affordable housing is a very important material consideration that weighs heavily in favour of the appeal proposals.

Economic Impact and Benefits

- 10.3.9 The proposal will result in economic benefits, through construction spend, job creation and an increase in Council Tax revenue. The proposal will attract a young, economically active population to Bexhill, creating a considerable level of new expenditure to support retailers and other services in the area. The new residents would generate household retail and other expenditure within the local economy and the wider housing market area.

³⁰ [2018] EWCA Civ 1808

- 10.3.10 Having examined the beneficial economic impacts that would arise from the appeal proposals, these should be considered to be important material planning benefits that weigh heavily in favour of the proposals.

Sustainable Location, Sustainable Site

- 10.3.11 The appeal proposals constitute sustainable development and will contribute to enhancing the vitality of Bexhill and the surrounding area. The proposals will deliver new homes of the right type, at the right place and at the right time to support the district's growth aspirations. The development accords with these principles in the Framework.
- 10.3.12 Where necessary, obligations will be secured via a Section 106 agreement, to mitigate against the impacts of the appeal proposals.
- 10.3.13 A mix of housing (up to 210 new dwellings) comprising a range of house sizes and types is proposed. This will add to the choice of high-quality homes available in the district and, specifically, Bexhill. The proposal also sets a framework to enable the delivery of a high-quality residential development.
- 10.3.14 Existing and new residents will benefit from the additional social infrastructure provision on-site, on land which is currently not accessible to the public. Circa 4.39 hectares of public open space is proposed on-site (c.39% of the site), including an equipped play area, general amenity space, structural planting, ecological habitat enhancement and recreational footpaths.
- 10.3.15 In respect of the locational sustainability of the site, I adopt the position of Mr Regan, which is that a wide range of services and facilities are accessible from the appeal site via walking, cycling and public transport. The appellant has taken up appropriate opportunities to further enhance the accessibility of the site via sustainable transport modes through the offer of contributions towards a digital demand responsive transport service for the appeal site and wider vicinity, in line with East Sussex County Council's Bus Service Improvement Plan, as well as the offer to set up a new EV car club on site allowing new and existing residents to utilise this additional sustainable travel mode.
- 10.3.16 With regard to the impact of the appeal proposals on the strategic highway network, I understand that at the time of writing Mr Regan's team continue to liaise with National Highways in order to reach the maximum possible common ground on this issue prior to the inquiry. However, I adopt for these purposes Mr Regan's principal position which is that the appeal proposals would not result in a significant, still less severe, impact upon the junctions in question.

- 10.3.17 In respect of impact upon the integrity of the Pevensey Levels SAC, information has been submitted with this proof of evidence to demonstrate that, taking into account mitigation, the proposed development would not have an adverse impact either alone or in combination with other plans and projects. This information will allow the Inspector to discharge his role as Competent Authority for this appeal, in consultation with Natural England.
- 10.3.18 In respect of impact upon the living conditions of the occupiers of no. 11 and 15 Fryatts Way, the Noise Addendum Assessment Report submitted alongside this proof of evidence, demonstrates that with mitigation the appeal proposals would not result in an adverse impact on the amenity of these occupiers due to noise impacts. In my evidence, I conclude that the implementation of the recommended mitigation would be in keeping with the character and appearance of the area, would not result in overbearing or other amenity issues, and would not cause conflict with users of the access road in terms of visibility splays.
- 10.3.19 In respect of impact on the character and appearance of the area, while the appeal proposals will result in an element of landscape and visual harm, as is inevitable with the development of a greenfield site, this harm is limited and localised as outlined by Mr Jackson.

10.4 Summary Overview

- 10.4.1 The tilted balance contained within paragraph 11(d) of the Framework is clearly engaged in respect of the appeal proposals by virtue of the Council being unable to demonstrate a five-year housing land supply and not meeting the requirements of the housing delivery test.
- 10.4.2 It has been clearly demonstrated that there are no adverse impacts that arise as a consequence of the appeal that demonstrably outweigh the significant benefits of the proposals when assessed against the policies within the Framework.
- 10.4.3 There are very significant material considerations which indicate that planning permission should be granted; most notably the provision of up to 63 affordable homes and 147 market homes in a sustainable location at a time when the Council have a very considerable housing land supply deficit and no realistic ability to meet the shortfall in the short to medium term.
- 10.4.4 It is submitted that the proper application of section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the grant of planning permission and it is respectfully requested that planning permission be granted.