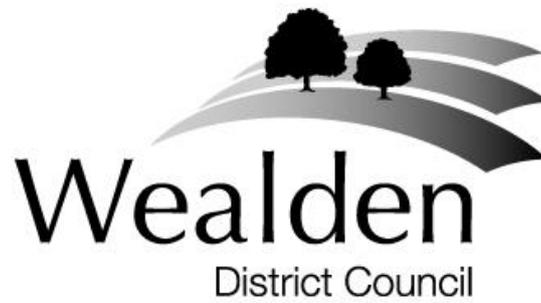


TOWN AND COUNTRY PLANNING ACT 1990  
(AS AMENDED)

Appeal by  
Prime Crest Homes Limited

Site at  
Land South of South Street, East Hoathly



**STATEMENT OF CASE**

WDC Ref: WD/2018/1508/MAO

PINS Ref: APP/C1435/W/19/3223599

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## Summary Position

The appeal is lodged against the failure of the Local Planning Authority (LPA) to reach a decision.

It is confirmed that had the LPA determined the case, it would have been by way of **REFUSAL** of planning permission. As a result the appeal is contested.

The appeal scheme gives rise to three principal issues:

1. Location of the site beyond the adopted and emerging development boundary;
2. In combination impacts upon the Ashdown Forest, designated as Special Protection Area and Special Area of Conservation; and
3. Impact on biodiversity and protected species and therefore failure to meet the environmental objective of sustainable development;

The development plan has statutory status as the starting point for decision making. This Statement demonstrates that the residential development proposed is contrary to Local Plan Policies GD2 and DC17 of the WLP 1998 and WCS6 of the WCSLP and the application should be refused unless material considerations indicate otherwise in line with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004. The two most relevant other material considerations are the NPPF and the Submission Wealden Local Plan.

Balancing the conflict with the local plan policies set against the other material considerations it is concluded that the appeal scheme should be dismissed, the proposal representing unsustainable development when set against the NPPF and being contrary to the emerging policies in the Submission Plan.

## 1.0 Appeal Site and Surroundings

- 1.1 The appeal site lies to the east of South Street and adjacent to a linear group of dwellings which form a spur off South Street which has no through route. The site is currently in arable use and includes woodland and grassland areas. A strong woodland belt and stream extends along the eastern boundary and a hedgerow and ditch along the northern boundary. A section of woodland bisects the northern part of the site. A public footpath runs from South Street along the southern boundary of the site. The East Hoathly Wastewater Treatment Works is situated on land further south east of the site. There are views into the site from residential properties along South Street but the site is generally well contained by surrounding landscape features. The site is located approximately 800m from East Hoathly village centre and 400m from the nearest existing bus stop.
- 1.2 This 5.69 hectare site is beyond the development boundary of East Hoathly.
- 1.3 An appeal plan showing designations can be found at Appendix 1.
- 1.4 An aerial image below shows the context of the site



Google Earth Imagery, Image date 10 October 2018  
(use subject to Government User Agreement, 31 January 2018)

## **2.0 Planning History**

- 2.1 There is no recent planning history for this site. An application for residential development was refused on 23 September 1970.
  
- 2.2 The appellant refers to the pre-application engagement and advice and that the application was prepared on the basis of this advice. A pre-application meeting was held with the appellant and their representatives in November 2016. Advice was provided regarding the key issues and principle of development in the absence of a five year housing land supply and site specific issues that would need to be addressed in the event of an application being submitted. The revised Wealden Local Plan Draft Proposed Submission was published in March 2017 and crucially for East Hoathly sites there were no allocations proposed in the emerging draft local plan. The appellant was advised in email correspondence in October 2017 that the acceptability of housing in East Hoathly had shifted considerably since the pre-application meeting in 2016 having regard to the publication of the draft plan which removed any provision for new housing in East Hoathly, albeit that the plan carried no material weight at that stage. A follow up pre-application meeting solely addressed layout issues.

### 3.0 Consultations

- 3.1 The appellant has summarised the consultation responses in Section 7 of their Statement of Case. The summarised responses are not repeated here to avoid duplication. The consultation response from the Council's Biodiversity Officer (which is not included in the appellant's Statement of Case) is set out below.

WDC Biodiversity Officer and Arboriculturist      Objection

#### Hazel Dormice

The Extended Phase 1 Habitat Survey Report dated 3<sup>rd</sup> July 2018 highlighted that:

*"6.5.27 Hazel dormice and their resting places (nests) are fully protected under The Conservation of Habitats and Species Regulations 2010 (as amended) and the Wildlife and Countryside Act 1981 (as amended). This gives them protection from killing, injury and disturbance.*

*6.5.28 Dormice surveys are likely to be required where the following habitats are affected by design proposals: hedgerows, trees, and woodland. Any surveys undertaken for affected habitat will inform any further recommendations to protect this species"*

No further dormice surveys have been undertaken to inform the application and the proposed development includes removal of woodland and hedgerow.

It is recommended dormice survey, consistent with Natural England's standing advice for protected species and associated best practice documents, is submitted to inform the application and provision of suitable avoidance, mitigation or compensation and ascertain whether a European Protected Species Licence is required.

#### Bats species, European Protected Species

The proposed development is relatively large and, while the arable land is not likely to be important habitat to commuting and foraging bats, the north and east parts of the proposed site are comprised of habitats bats use for commuting and foraging, namely woodland, hedgerow, grassland of a moderate species-rich composition, scrub and marsh and aquatic features. It is noted that these features appear to provide a wildlife corridor in the landscape between ancient woodland to the north and south of the development site. Furthermore, the southern end of this connecting habitat contains a sewage works, which are often important feeding grounds for bat species, such as barbastelles. This corridor is also currently unlit and it is well accepted that some bat species, including rarer species, actively avoid light sources.

The northern end of this linear habitat linkage is proposed to be infilled with housing and supports the access road to the new development. I assume this would be proposed to be permanently lit.

The Bat, Great Crested Newt and Reptile Survey Report dated July 2018 states: “2.4.6 *The woodland, hedgerows and waterways on site provide good habitat for commuting and foraging bats, particularly as they are well-connected to suitable woodland habitat in the surrounds*”.

Bat foraging, commuting or activity has not been surveyed on the site, and whilst lighting recommendations are based on best practice guidance, the development to the north and east of the site may impact bats and it is concluded that this has not been adequately addressed.

I therefore recommend bat activity surveys are required to inform the application. The severing of important bat commuting routes has the potential to affect local populations of bat species.

#### *Biodiversity net loss/gain*

The woodland onsite was identified as plantation woodland however it was noted it comprised of native broadleaf species, including oak, alder, ash and hazel, species of particular value for biodiversity. This woodland flanked other habitats of value including marsh, moderately species-rich grassland, scrub and hedgerow, contributing to a habitat mosaic. Mosaics of habitat are generally of higher value for biodiversity.

Whilst the development is an outline application, the indicative site plan depicts the removal of native species woodland, moderately species-rich grassland on the north and west of the site, hedgerow and extensive area of arable land. I note a number of biodiversity features have been recommended to be incorporated into the development however these appear disproportionate to the semi-natural habitat lost from the developments extent and it is reasoned that the development would result in a net loss of biodiversity.

#### *Ecological objection*

- Net loss of biodiversity, contrary to national and local policy, NPPF 2019 S175, Wealden Local Plan (draft submission 2017) Policy EA1 Biodiversity.
- Insufficient information on protected species to process the application: Bat activity/commuting/foraging surveys and dormice surveys have not been submitted with the application.

## **4.0 Planning Policies and Guidance**

4.1 The up-to-date approved 'development plan' for Wealden District Council comprises the following documents:

- The Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan (adopted 19 February 2013) (CSLP).
- The Wealden Local Plan (adopted December 1998) (Saved Policies) (WLP)
- The Affordable Housing Delivery Local Plan (May 2016).

4.2 On 28 March 2013 an application was made to the High Court under Section 113 of the Planning and Compulsory Purchase Act 2004 challenging the validity of the CSLP on the grounds that it failed to comply with the requirements of Directive 2001/43/EC on the Assessment and Effect of Certain Plans and Programmes on the Environment and the implementing Environmental Assessment of Plans and Programmes Regulations 2004. This was dismissed by Order dated 21 February 2014. However, an appeal on 3 grounds was made to the Court of Appeal. On 7 October 2014, the Court of Appeal dismissed Grounds 1 and 2 relating to the housing numbers in the Core Strategy (original ruling was upheld).

4.3 Ground 3 related to whether the Council had considered reasonable alternatives to the use of a 7 km zone in relation to the provision of SANGS. On 9 July 2015 in response to a Court of Appeal decision, the Council has made changes to its Core Strategy Policy WCS 12 relating to Ashdown Forest.

4.4 Prior to the Court of Appeal Judgment, Policy WCS12 provided that any net increase in residential development between 400m and 7km would be required to mitigate its recreational impact through the provision of Suitable Alternative Natural Green Space (SANGS) and on-site visitor management measures. The reference to the 7km zone of influence and the specific mitigation identified in this policy has now been removed. However all planning applications will continue to be subject to the Habitat Regulations which protect the Ashdown Forest Special Protection Area (SPA).

4.5 The rest of the CSLP is unaffected therefore remains intact as part of the adopted development plan for the purposes of this application.

4.6 Certain policies of the WLP (1998) have been 'saved' via Direction of the Secretary of State dated 25 September 2007, under the provisions of Paragraph 1(3), Schedule 8 of the Planning & Compulsory Purchase Act 2004.

4.7 Under 'saved' policies EN1 (sustainable development) and EN27 (layout and design) of the WLP 1998, the Council has also formally adopted the Wealden Design Guide, November 2008, as a Supplementary Planning Document. Some 'saved' policies (and the Design Guide) continue to have material weight where they are in compliance with the NPPF and CSLP (having regard to paragraph 213 of the NPPF).

4.8 Relevant policies to the appeal scheme are:-

- Saved Policies GD2, DC17, EN1, EN2, EN8, EN12, EN14 and EN27 of the adopted Wealden Local Plan 1998.
- Strategic Planning Objective SPO1, SPO3, SPO7, SPO13 and Policies WCS6, WCS7, WCS12 and WCS13, WCS14 of the Core Strategy Local Plan 2013
- Wealden Design Guide 2008 (adopted Supplementary Planning Document), Chapter(s) 2, 3 and 7
- Due regard has been had to any relevant national policy guidance, in particular paragraphs 1-2, 7-12, 38, 47-50, 54-56, 59, 73, 77-79, 83, 84, 96, 103, 108-111, 117-118, 122, 127, 130, 148, 153, 170, 175-177, 178, 184, 192, 199, 212-213 of the NPPF.

4.9 The Council is producing a new plan that was submitted to the Secretary of State for Examination on the 18 January 2019. The Hearings begin on the 21 May 2019.

4.10 Weight can be afforded respective to the stage at which the emerging plan is in line with para 48 of the NPPF.

4.11 The most relevant policies of the emerging plan in relation to this development proposal are AF1, AF2, WLP1, WLP3, WLP4, WLP7, EA1, EA3, EA4, BED 1 and Strategic Objectives SO1, SO7 and SO9. A copy of the Submission Wealden Local Plan January 2019 is attached at Appendix 8 (this is divided into 2 separate parts due to file size).

4.12 As described later in this Statement, the appeal site is not identified for development in the Submission Plan.

#### ***Local Plan 1998***

4.13 Policy GD2 is an overarching policy which precludes development outside development boundaries and in the countryside unless in accordance with other policies in the Plan.

4.14 Policy DC17 precludes residential development outside development boundaries.

4.15 Policy EN1 advocates the principle of sustainable development.

4.16 Policy EN2 requires development to respect settlement patterns and locate major new development efficiently in relating to existing development and public transport.

4.17 Policy EN8 precludes development in the Low Weald unless it would enhance or conserve the character of the landscape.

- 4.18 Policy EN12 seeks to protect the landscape character of the District and Policy EN14 endorses the need to retain existing trees, significant hedgerows and other valuable site features.
- 4.19 Policy EN27 requires development inter alia to respect the context, character, landscape characteristics and local distinctiveness of the site and the immediate environs.

### ***Core Strategy 2013***

- 4.20 Strategic Policy SPO1 sets the overarching vision of management of the countryside as a resource to be protected and enhanced, including recognised biodiversity and geodiversity. This includes, in particular internationally important sites including the Pevensy Levels and Ashdown Forest as well as nationally designated distinct landscapes such as the High Weald AONB.
- 4.21 SPO3 sets out the strategy for growth with the majority of housing to be provided as sustainable extensions to existing towns with limited growth in villages for development capable of accommodating development sustainably. SPO7 seeks to reduce travel by car by promoting more sustainable modes of Transport and SPO13 again references the importance of creating sustainable distinctive and durable places.
- 4.22 Policies WCS6 sets out the rural strategy, the classification of settlements and those settlements which are identified for additional housing development up until 2027
- 4.23 Policy WCS7 requires that land release is dependent upon there being sufficient capacity in the existing local infrastructure to meet the requirements generated by the development.
- 4.24 Policy WCS12 Biodiversity seeks to ensure development does not have an adverse effect on the integrity of the Ashdown Forest Special Protection Area of Conservation, with the aim of reducing the recreational impact of visitors resulting from new housing development within 15km of the Ashdown Forest (note the amendment to this policy as a result of the judgement).
- 4.25 Policy WCS13 seeks to protect the existing network of green infrastructure and maintain and improve biodiversity.
- 4.26 Policy WCS14 accords with Chapter 2 of the NPPF and states that the Council will take a positive approach to the presumption in favour of sustainable development, and will approve such developments unless any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF when taken as a whole or where specific policies in the NPPF indicate that development would be restricted.

## ***Design Guide***

4.27 The Wealden Design Guide (November 2008) was produced under the auspices of 'saved' Policies EN1 (sustainable development) and EN27 (layout and design) of the Wealden Local Plan 1998. It supplements EN8 (development and the Low Weald). The Design Guide continues to have material weight, where in compliance with the NPPF having regard to paragraph 213.

- Section 3 embraces the importance of the protection of the landscape character of the District. Part 2 of this chapter advocates early and appropriate surveys of assets, seeks that development proposals have regard to the implications of the intensity of a use, the integration and enhancement of the landscape and linkages between sites.
- Part 6 of this chapter again emphasises the need to protect and enhance the landscape, woodland and hedgerows.
- Part 10 highlights the importance of secondary woodland and the importance it can have in its own right as valuable habitat.
- Part 15 emphasises the need for consideration of protected species early in the development process.
- Part 18 relates to the importance to minimise light pollution in rural areas.

4.28 A copy of the relevant part of the Design Guide is attached to this statement as Appendix 12.

## **5.0 The Appeal Development**

5.1 The appeal application was lodged seeking outline planning permission for the erection of up to 74 dwellings. All matters are reserved for future consideration with the exception of access.

## **6.0 Key Issues**

6.1 The key issues in this appeal are considered to be:-

- Location of the site beyond the adopted and emerging development boundary;
- In combination impacts upon the Ashdown Forest, designated as Special Protection Area and Special Area of Conservation.
- Net loss of biodiversity within the site and insufficient information relating to the presence or absence of protected species specifically dormice and impact on bats; and

## **7.0 Detailed Submissions**

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) states 'If regard is to be had to the development plan for the purpose 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'. This therefore provides a presumption in favour of the development plan.
- 7.2 Section 70(2) of the Town and Country Planning Act states 'In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations'
- 7.3 Development should therefore be determined in accordance with the Local Plan unless material considerations indicate otherwise.
- 7.4 Currently for the purposes of Section 38(6) of the PCPA 2004, the current development plan for the area in which the application site is located comprises the Policies of the Wealden Local Plan 1998 which were saved in 2007 and the Core Strategy Local Plan which was formally adopted on 19 February 2013.

### **Issue 1: Development outside of Development Boundary**

- 7.5 The site is not located within any defined development boundary in the adopted development plan. Saved policies within the WLP 1998 resist new housing development in the countryside which is not essential for agriculture or forestry needs or has some other similar justification for a rural location as set out in Saved Policy DC17. Outside of the development boundaries, residential development is generally resisted under Policy GD2.
- 7.6 In the Wealden Local Plan 1998, the original development boundary sought to conserve the rural character and setting of East Hoathly by preventing further ribbon development along the A22 and resisting outward encroachment of development into the surrounding open countryside. Paragraph 19.8.7 of the WLP 1998 states *"To the south, the development boundary follows the clear physical edge to development backed by Moat Wood and open fields. The isolated ribbon of development fronting the A22 to the south of Park Lodge has been excluded since the intervening open land is considered to be an important and integral part of the countryside surrounding East Hoathly, where any extension or consolidation of development would be harmful to the character and landscape setting of the village"*. The overall purpose was to avoid visually intrusive development and detriment to the more rural character. This premise has been carried forward and is set out in paragraph 25.216 of the Submission Local Plan (page 405) which identified the new development boundary for the village.
- 7.7 Policy WCS6 of the CSLP identifies a range of rural villages suitable for some growth, but no provision of housing at East Hoathly. Within the CSLP East

Hoathly is designated as a neighbourhood centre. This includes a wide range of settlements with limited, basic or no facilities but with access to another centre, or a settlement with facilities but poor accessibility or access only to a service or local centre, and where further development would be unsustainable (see Table 1 at page 10 of Core Strategy Local Plan). The Submission Wealden Local Plan identifies in Table 1 page 31 East Hoathly as Large Village – type 2 and categorises it as a sustainable settlement which is accessible with very good local facilities albeit that the range of retail outlets and businesses are more limited than larger villages, but with access to essential facilities.

- 7.8 Policy WCS6 of the CSLP removed the development boundary for East Hoathly. Implicit in the removal of the Development Boundary was a move to restrict further growth in this settlement.
- 7.9 The Submission Plan 2019 has redefined the development boundary for East Hoathly. The relevant Development Boundary Background Paper, lodged as part of the Submission Local Plan, can be seen at Appendix 4, together with the an extract from the Submission Wealden Local Plan Sustainability Appraisal Report - March 2017, Chapter 6 pages 1827-1861 and Appendix DD (1-2) pages 2313-2384 which is the assessment of how the development boundary for East Hoathly was determined.
- 7.10 Policy WLP7 of the WLP 2019 identifies the location and quantum of development to be delivered within a number of settlements in terms of site allocations, SHELLA sites and windfall allowances. Within the context of the WLP 2019, the site lies within the Middle Super Output Area (MSOA) Wealden 013 South. The proposed distribution of homes in this MSOA is only for 48 windfall dwellings within the East Hoathly development boundary and policy compliant new dwellings in the countryside. Having regard to the consents that have already been granted, the remaining allowance for windfalls dwellings is reduced to 30 units. There are no site specific housing allocations in this MSOA.
- 7.11 The provision of residential development on the appeal site would conflict with GD2 and DC17 of the WLP and WCS6 of the WCSLP and permission should be refused unless material considerations indicate otherwise. Although the Council has designated the development boundary for the village in the Submission Plan 2019, the site lies outside this development boundary. Furthermore, the scale and extent of the housing scheme would substantially exceed the allowances defined within emerging policy WLP7 for windfall allowances and the scheme does not qualify under the policy provisions for new dwellings in the countryside under emerging policy RAS2 of the Wealden Local Plan 2019.
- 7.12 Central to the case for up to 74 dwellings on the edge of the village is the case of need for housing set against a 5 years deficit. The appellant justifies the acceptability of the development on the basis of the five year housing land supply.

- 7.13 Whilst the site does occupy a countryside location on the edge of the village, it is acknowledged that the Council does not have a five-year supply of deliverable housing sites at the present time. As such Housing Supply policies within the Local Plan would, for the purposes of decision making, be considered in practical terms to be out of date limiting any weight in the decision making process as per para 11 footnote 7 and would revert decision making under the NPPF to the presumption in favour of sustainable development (although as set out in this instance the presumption would not apply due to the impacts to the SAC set out later).
- 7.14 As set out in the Authority Monitoring Report December 2018 (copy at Appendix 2), the Council can only currently demonstrate 2.62 years supply of housing land. However, following the submission of the Wealden Local Plan and production of the associated Air Quality Mitigation Interim Tariff Appendix 3), the Council is now able to rapidly improve its five-year land supply position. It is projected within the Authority Monitoring Report December 2018 that once relevant consents are issued (those with resolutions to grant permission, awaiting the completion of legal agreements), based on the framework set by the submission Wealden Local Plan, the Council will be able to show in excess of a 5 year supply (5.69 years). The Council will continue to update this position at regular intervals.
- 7.15 The Council has approved a submission version of the Plan for EIP in May of this year. Para 48 of the NPPF allows weight to be afforded to emerging plans. This is tempered by the stage they are at. The current Plan has been through public consultation and been modified in response. The Plan has been produced to be consistent with the aims of the framework. This allows weight to be afforded to it.
- 7.16 The Plan has been produced on the back of very detailed ecological work in relation to the impacts to the SAC in and around the District and this evidence base is important to the growth strategy and consideration of all applications with traffic movement implications on this basis due to the requirements to assess in combination impacts of all development with other plans and projects under the Habitat regulations. The Plan endeavours to allow growth compliant with the Habitats Regulations 2017.
- 7.17 Whilst the Submission Plan explains where policy compliant development can result in a positive appropriate assessment, the appeal scheme is not policy compliant. Mitigation cannot be secured. Paragraph 177 makes it clear 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 affect the integrity of the habitats site. As such for the purposes of decision making in relation to the NPPF the presumption does not apply in this instance and the 'significant and demonstrable' test of 11 d(ii) along with the presumption in favour is not invoked and in the simplest sense the application falls to be determined within the normal planning balance of whether the harm outweighs

the benefits taking into account the local plan and any other material considerations.

**Issue 2: Development would be likely to have adverse effects on the integrity of Ashdown Forest and Lewes Downs Special Areas of Conservation**

- 7.18 Nitrogen deposition from vehicle emissions is demonstrated to cause ecological harm to the SACs through additional traffic on the roads through the SACs.
- 7.19 The emerging WLP includes the very latest monitoring and ecological work in regard of the forest in producing the HRA for the plan with the updated model for transport through the Ashdown Forest. It has altered the position with regard to the impacts to the SAC from nitrogen deposition as a result of increased traffic movements. In addition, following the People over Wind case, any screening can no longer take account of mitigation to mitigate impacts to the SAC and development requires an Appropriate Assessment for the traffic generation from the site, leading to potential impacts from nitrogen deposition on the Ashdown Forest SAC that in combination would impact upon the integrity and conservation objectives of that protected site. This stance is reflected in PINS Note 05/2018 (Consideration of avoidance and reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta).
- 7.20 It was concluded in the transport assessment that accompanied the planning application that this site post development would generate in the region of 305 daily 2-way trips relating to the domestic occupation of the site. The modelling for the emerging plan identifies that there is potential for a proportion of these domestic trips to be distributed across the roads within the SAC.
- 7.21 As already outlined earlier in the statement, the proposed dwellings would not be policy compliant in terms of the growth strategy in the Wealden Local Plan 2019. The development in addition to the commitments in the Wealden Local Plan (2019) would create potential for additional vehicular movements across the SACs leading to a likely significant effect to site integrity.
- 7.22 Such conclusions have been drawn on other sites well beyond the 7Km zone of the Special Areas of Conservation, with three recent examples (April 2019) being attached (Appendix 7). The Council would quote, for example PINS reference APP/ C1435/W/18/3213892 - Land opposite Robin's Nest, West End, Herstmonceux, East Sussex BN27 4NZ:

*"17. The proposed development would result in a net increase in traffic movements, as I conclude above. Whilst there is no certainty that such movements would be on roads through or adjacent to the SACs there is a fair likelihood that some of them would be, for example on the A26 and/or A27. In any case, under the precautionary principle, it cannot be concluded that such increased traffic movements will not affect the integrity of these SACs".*

7.23 The Conservation Objectives for Ashdown Forest SAC are provided below:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely
- The populations of qualifying species, and,
- The distribution of qualifying species within the site.

7.24 These objectives are integral in considering likely significant effects as well as an appropriate assessment. In this regard maintenance and restoration are important factors.

7.25 With regard to the Lewes Downs SAC and the natural habitats and/or species for which the site has been designated (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats
  - The structure and function (including typical species) of qualifying natural habitats, and
  - The supporting processes on which qualifying natural habitats rely
- Lewes Downs Qualifying Features:

H6210. Semi-natural dry grasslands and scrubland facies: on calcareous substrates (Festuco-Brometalia) (important orchid sites); Dry grasslands and scrublands on chalk or limestone (important orchid sites)\*

\* denotes a priority natural habitat or species

7.26 The detailed transport modelling work for the emerging plan, the best and most up to date position, has separated the trip generation and distribution considerations for different uses and excluded certain uses (such as agriculture relevant to this semi-rural site) from being required to meet the requirements of emerging policy AF1 (indicating the HRA for the plan identifies no likely significant effect from such uses). In effect this means any agricultural movements extinguished on the site cannot offset new residential movements. Vehicular movements extinguished from one site cannot be used to allow/mitigate for new/additional movements that will be generated from a new proposal on a totally separate site. Each proposal/site has to be considered

on its individual merits and in the case of the appeal site, agricultural movements extinguished on the site cannot offset residential movements.

7.27 Circular 6/05 advises at paragraph 13 that:

the decision on whether an appropriate assessment is necessary should be made on a precautionary basis. An appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects on a site. This is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgment) which said “any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.

7.28 The latest air quality modelling and transport modelling fed in to the plan has been considered under the HRA for the emerging WLP. This HRA provides for consideration of the potential for likely significant effects from net increases in residential units. (Appendix 6)

7.29 Summary sections reproduced here identify the main conclusion on likely significant effects from nitrogen deposition.

Summary of key observations from air quality monitoring and modelling:

- Monitoring has shown that the critical level for annual mean NH<sub>3</sub> (Ammonia) concentrations is being exceeded close to roads within Ashdown Forest SAC. It is suggested that traffic emissions are driving these exceedances;
- Measured NO<sub>2</sub> (Nitrogen Dioxide) concentrations suggest that the annual mean NO<sub>x</sub> (Nitrogen Oxide) critical level is also being exceeded close to roads.
- Base-year model results show that annual mean NH<sub>3</sub> and NO<sub>x</sub> are exceeded close to a number of roads and that the critical level for 24-hour mean NO<sub>x</sub> is being exceeded across much of the SAC. Additionally, both the lower bound and upper bound critical load for nitrogen deposition is being exceeded close to most of the roads across the SAC and the lower bound critical load is being exceeded across all heathland within the SAC.
- All scenarios modelled in relation to the Wealden Local Plan predict that areas of the SAC will continue to experience an exceedance in critical levels and critical loads. The area predicted to be affected by a continued exceedance differs depending on which scenario is considered. The quantum of SAC area affected as well as the increase in concentration levels or amount of deposition is also scenario dependant.
- There is evidence through both air quality monitoring and modelling that emissions from traffic are driving current exceedances of the annual mean critical levels and exacerbating the exceedances of the critical loads across increases in NO<sub>x</sub> and NH<sub>3</sub> concentrations. This is illustrated by sharp increases in NO<sub>x</sub> and NH<sub>3</sub> concentrations and nitrogen deposition in the

immediate vicinity of roads and more subtle increases at locations away from the road. The latter is as a result of traffic in Wealden District as well as regional pollution and long-range transport of pollution.

- The sharp increases in NO<sub>x</sub>, NH<sub>3</sub> and deposition results in high levels of pollution adjacent to roads. This affects a reasonably small area of the SAC, however, values are substantially in excess of the critical levels and critical load and this is a result of the road as a specific pollution source.
- Moderate to high levels of pollution across large areas of the SAC where large areas do not necessarily exceed critical levels but do somewhat exceed critical loads are likely to be as a result of the integration of all air pollution sources including those from roads that cross the SAC as well as other sources on a local, district, regional, national and international scale.
- The overriding conclusion for the future year with Local Plan and Temprow growth results is that additional development proposed by the Wealden Local Plan is likely to make conditions worse. This includes increased concentration levels and deposition fluxes as well as an increase in the area of the SAC affected by exceedances of the critical levels and critical loads, although for nitrogen deposition this relates to bare ground only due to the SAC already exceeding its critical load.

#### 7.30 Appropriate Assessment findings:

- In considering the literature, experimental field studies, ecological monitoring at Ashdown Forest SAC, a review of habitat management and air quality and deposition modelling it can be concluded that, without additional improvements from those already accounted for in emission scenarios B and C, that it is unlikely for Ashdown Forest SAC in the local plan to be restored to favourable conservation status should growth as that proposed take place.
- This conclusion is made on the basis that should additional concentrations and deposition be added as a result of development proposed in the Wealden Local Plan and modelled growth elsewhere then this will result in a worsening of the current situation which already exceeds environmental limits. Taking into account all elements investigated as part of the appropriate assessment the Wealden Local Plan both alone and in combination will result in an adverse impact on the integrity of the site and will create conditions that would inhibit restoration of the annex I habitats at Ashdown Forest SAC should this growth take place unchecked.
- Whilst noting that the impacts of the amount of growth in the Wealden Local Plan are modest, the appropriate assessment of the Wealden Local Plan has identified that to meet the Habitats Regulations and in accordance with the precautionary principle, avoidance / mitigation measures are required to remove or reduce the effects.

7.31 There is extensive detailed ecological, air quality and transport reports that support the plan and are used in the HRA. It is outside the realistic remit of this appeal to detail this in full, and they will be subject to a through testing,

with the relevant expertise, in the EIP process which will have started at the end of May 2019.

#### 7.32 Taking into account:

- the likelihood of additional trips on roads crossing the Forest;
- the current exceedance of the critical load and levels;
- the conservation objectives to maintain and restore relevant features of the site;
- the exceedance of 1000 AADT on the A26 using the Core Strategy methodology; and
- that the 1% environmental benchmark would be exceeded for a lower amount of trips which would therefore affect a number of other roads adjacent to the SAC.

it is considered that the appeal proposal for up to 74 dwellings will have a likely significant effect in combination with other plans and projects and in the absence of an appropriate assessment it cannot proceed in accordance with Habitats Directive 92/43/EEC and the Conservation of Habitats and Species Regulations 2017 (as amended).

#### 7.33 The seven steps of a Habitats Regulations Assessment are set out in a flow chart in Figure 1 of Circular 06/05 Biodiversity and Geological Conservation.

Step 1 – The development is not directly connected with or necessary to site management for nature conservation.

Step 2 – As set out above the proposal is likely to have potential for a likely significant effect on the SACs in combination with other plans and projects through the provision of additional residential units on the site which are above the planned for growth in the Submission WLP.

Step 3 – The HRA for the plan has concluded that the combined growth in the Plan will harm the sites' conservation objectives. In reference to step 3 of the flowchart the Inspector may wish to seek comments from Natural England regarding the impact to the sites conservation objectives. Both Natural England and the Council were in agreement under the screening threshold test that the growth within the plan was to have a likely significant effect upon the Special Area of Conservation and that an Appropriate Assessment was required. Whilst Natural England have subsequently given views in response to the Regulation 19 consultation for the Wealden Local Plan (5<sup>th</sup> October 2018) to the effect that they see no likely significant effect or need for mitigation in relation to the planned growth, the Council maintain its concern through more detailed evidence that there is a significant habitats issue related to the Plan, let alone additional growth above the level described in the Wealden Local Plan 2019.

Step 4 - The HRA for the plan has concluded that the plan will harm the integrity of the site. The scheme would add to housing commitments in the

Plan, noting the scheme fails to accord with the more detailed growth strategy in WLP4, WLP7, and RAS2 of the Wealden Local Plan 2019.

Step 5 – The Submission WLP does include an allowance for some limited windfall development as part of a carefully considered strategy. These small scale windfalls for housing are included in the Transport Model and can draw upon emerging WLP Policy AF1 and the advanced mitigation in Policy AF2. The Council’s Ashdown Forest Transport Model is a strategic model based on middle super output areas. There is a windfall allowance in this relevant Middle Super Output Area (MSOA 013S) and currently capacity exists for policy compliant dwellings (30 units remain at date of this Statement), such mitigation being secured by a Section 106 Agreement. The charging schedule is accessible for development up to the quantum of growth within Policy WLP7. However, as the appeal scheme is not policy compliant the scheme could not take advantage of this mitigation. To do so would undermine the planned strategy in the Submission Plan.

Step 6 – There are no other options to development of the site with a lesser impact.

Moving on clearly no case is made for IROPI and the conclusion would direct refusal of the development due to in combination impacts to the Ashdown Forest SAC.

- 7.34 It is concluded therefore that the appeal should fail due to in combination impacts to the Ashdown Forest and Lewes Downs SACs.
- 7.35 The appellant has referred to Appeal Ref: APP/C1435/W/18/3197286 Land at Camberlot Stables, Camberlot Road, Upper Dicker BN27 3RG in Paragraph 6.10.4 in their statement of case. That decision is offered by the Appellant in response to impact of development on the Ashdown Forest.
- 7.36 It is material to note the LPA has launched a s288 legal challenge to the decision in APP/C1435/W/18/3197286 and this has been listed for Hearing on the 4 July 2019 under Court reference CO/1112/2019. Correspondence from the Court confirming matters is attached under Appendix 9. Please also see attached the LPAs Statement of Case and the response from the Secretary of State for HCLG in those proceedings.
- 7.37 At this stage, we believe it would be unsound to rely on the decision in APP/C1435/W/18/3197286 which the LPA firmly believes is flawed on four broad topics:
- Ground 1: Misapplication of Regulation 63 of the Habitats Regulations
  - Ground 2: Misdirection as to the context and scope of Natural England’s advice and/or irrational application of it to the Appeal proposal
  - Ground 3: Failure to have regard to the dispute between the Council and Natural England and/or the Council’s position and/or the need for “certainty” and or irrational conclusion that significant effects could be screened out

- Ground 4: failure to give proper, adequate and intelligible reasons

7.38 If we are wrong on that, the SoS himself argues at para 46 of the First Defendant's Summary Grounds for Contesting the Claim that the decision in APP/C1435/W/18/3197286 is not a 'binding precedent'. The para in question is clear:

*46. The Claimant argues that it is "substantially prejudiced by the absence of reasons, not only in this case, but also in seeking to interpret the Appeal Decision in the context of other applications and the Emerging Local Plan" (DC68). That is difficult to follow. The DL is not a binding precedent. It is a decision on a written representations appeal for a small residential development. While the Inspector followed Natural England's advice on the lack of harm to the SAC, the Claimant did not make a case that advice was wrong or ask him to adjudicate on any dispute between the parties on that advice. The decision therefore clearly does not tie the Claimant's hands in the context of other applications and/or the EIP. It is free, if it considers appropriate, to advance the case it did not make before the Inspector in those contexts.*

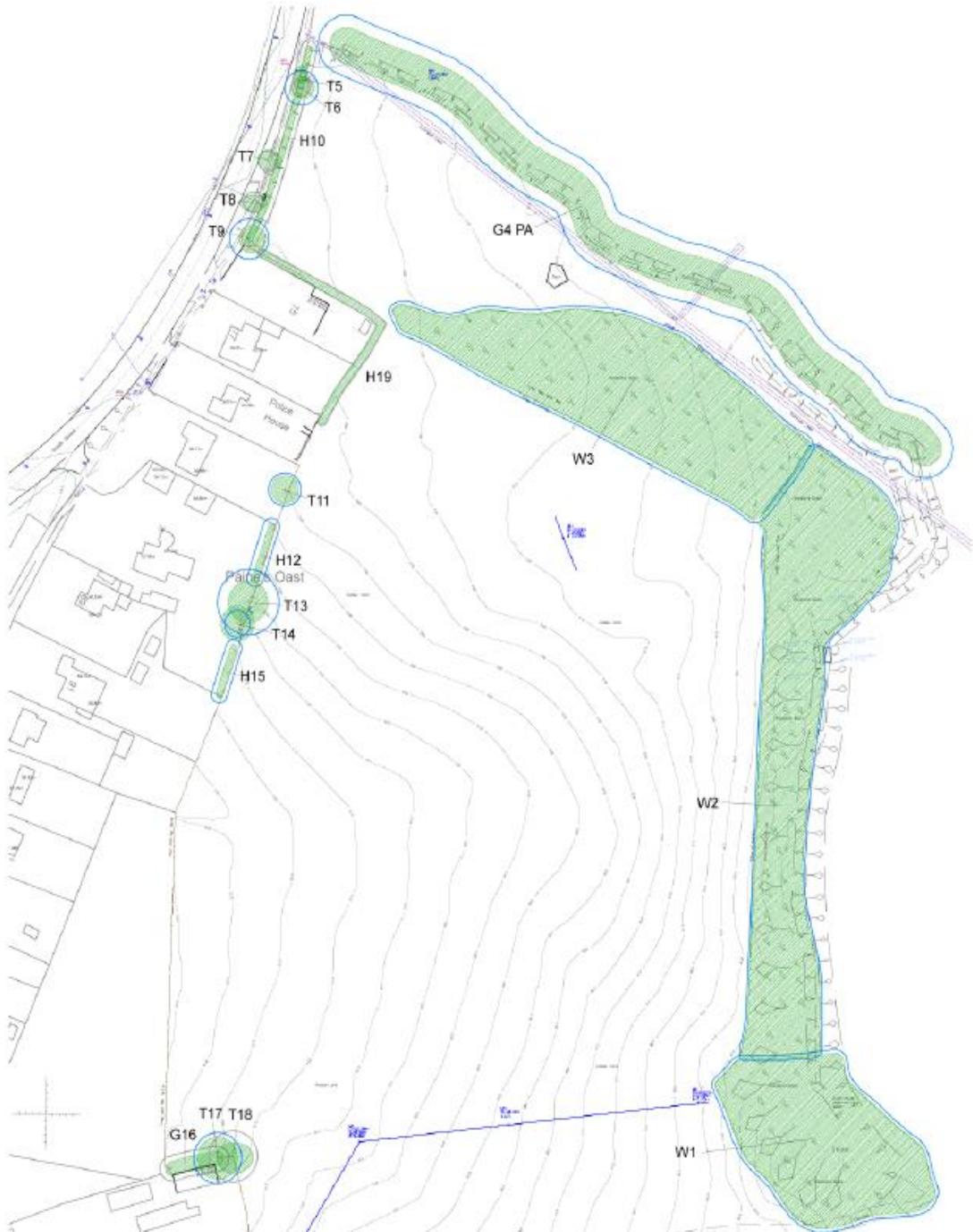
7.39 If the SoS does not consider the decision sets a precedent, we fail to see how the Appellant can rely on the reasoning in the decision.

7.40 Moreover, since the APP/C1435/W/18/3197286 Land at Camberlot Stables, Camberlot Road, Upper Dicker BN27 3RG was issued on the 8 February 2019, the LPA has received three other appeal decisions (all on the 12 April 2019) where Inspector Fagan dismissed scheme in PINS APP/C1435/W/18/3213892, APP/C1435/W/18/3219463 and APP/C1435/W/18/3215358 (copies attached at Appendix 7). In doing so, Inspector Fagan accepted the Appropriate Assessment in the Submission Wealden Local Plan 2019 and that mitigation was only available for policy compliant schemes in the emerging Plan.

7.41 As outlined within this statement, the appeal proposal would result in harm to the Ashdown Forest SAC and therefore the presumption in favour of sustainable development does not apply.

### **Issue 3 Net loss of biodiversity within the site and potential for impact on dormice and bats**

7.42 A woodland belt extends along the eastern boundary and bisects the northern part of the site. The southern section (W1) comprises mature alder and willow woodland which has naturally generated. The central section (W2) is planted alder woodland whilst the northern section (W3) comprises willow, oak and alder. Both W2 and W3 woodland are classified as early mature and in good physiological and structural condition.



7.43 The Extended Phase 1 Habitat Survey identified that the habitats to the north and east of the site, including the hedgerows, wet ditch/stream marshy and semi-improved grassland and woodland be retained. Notwithstanding this recommendation, the development proposals are removing a section of W2 woodland block to enable excavation of a flood attenuation pond and a significant section of the W3 woodland to enable the construction of roads and dwellings as shown in the diagram below.



- 7.44 The Extended Phase 1 Habitat Survey Report indicated that the woodland and hedgerow habitats present on site provided suitable habitat for dormice. The woodland, hedgerows and ditches on site were also identified as providing good habitat for commuting and foraging bats, particularly as they are well connected to suitable woodland habitat in the surrounds.
- 7.45 Yet the proposals include the removal of sections of hedgerow, a tract of woodland extending across the northern part of the site and part of the woodland along the eastern boundary of the site which would affect the habitat for these protected species. Notwithstanding the recommendations in the submitted habitat survey report that dormice surveys be undertaken where hedgerows, trees and woodland are affected by the development, no surveys accompanied the application to demonstrate the likely presence or absence of dormice on site. Nor were any activity surveys for bats submitted to demonstrate the extent that these green corridors are used for commuting and foraging of bats and the species using these.
- 7.46 The development of the site will result in the loss of the quantity, quality and diversity of habitats within the site. The proposals do not demonstrate that the loss of the habitat can be adequately avoided, mitigated or compensated for.

- 7.47 Paragraph 175 of the NPPF states that *“When determining planning applications, local authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused...”*
- 7.48 The proposal would result in loss of habitat that would cause significant harm to the biodiversity of the site and that insufficient information exists for officers to satisfactorily conclude that the proposed development would not result in material harm to protected species. The proposal would therefore be contrary to policies SPO1, SPO13, WCS12, WCS13 and WCS14 of the Wealden District Core Strategy Local Plan 2013 and Policy EN12 of the Wealden District Council Local Plan 1998. When read as a whole, these set out a presumption in favour of sustainable development, require protection and enhancement of biodiversity, achievement of a net gain in biodiversity and sustain wildlife in both rural and urban areas and that any harm to the network of green spaces incorporates measures to mitigate the effects of development and suitable provision is made. The proposal would also conflict with one of the core planning principles set out in Paragraph 8 of the Framework in which planning should contribute to conserving and enhancing the natural environment, paragraph 175 insofar as it would fail to conserve and enhance biodiversity and paragraph 170 which seeks to minimise impacts on and providing net gains for biodiversity..
- 7.49 The proposal fails to meet the three derogation tests:
- (1) preserving public health or public safety or other imperative reasons of over-riding public interest including those of a social or economic nature and beneficial consequences of primary importance to the environment;
  - (2) no satisfactory alternative;
  - (3) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range;
- 7.50 The submitted documentation indicates the possible presence of dormice, and bats, but the evidence submitted does not demonstrate sufficiently the presence or absence, nor the likely impact on these protected species if present and whether there would be an adverse effect. Having regard to the need to take a precautionary approach; and noting that the Council's Biodiversity and Arboricultural officer objects to the proposal on such grounds, it is considered that this carries significant weight against the proposal. It is noted that mitigation is proposed; however in the absence of a proper understanding of the likely effect on protected species, the mitigation is given little weight. Whilst the proposed layout shows replacement planting through the site, it is considered that the development results in an unacceptable loss of habitat and negative impact on biodiversity.

## **Other Issues**

- 7.51 ESCC Highways objected on the basis of insufficient information with the remaining outstanding issue relating to the provision of parking. As an outline application with all matters reserved other than access to the site (i.e. appearance, landscaping, layout and scale), the detailed position of particular buildings, internal roadways, parking, amenity space or proposed planting are all matters for later consideration.

## **8.0 Conclusion and Overall Planning Balance**

- 8.1 Currently for the purposes of Section 38(6) of the PCPA 2004, the current development plan for the area in which the application site is located comprises the policies of the Wealden Local Plan 1998 which were saved in 2007 and the Core Strategy Local Plan which was formally adopted on 19 February 2013.
- 8.2 The development lies outside the development boundary in the Local Plan and should be refused unless material reasons indicate otherwise. The NPPF does not change this statutory presumption in favour of the Development Plan but forms a material consideration in decision making on planning applications within England forming the Government's Planning Policies.
- 8.3 Paragraph 177 makes it clear 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 affect the integrity of the habitats site. As such for the purposes of decision making in relation to the NPPF the presumption does not apply in this instance and the 'significant and demonstrable' test of 11 d(ii) along with the presumption in favour is not invoked and in the simplest sense the application falls to be determined within the normal planning balance of whether the harm outweighs the benefits taking into account the local plan and any other material considerations
- 8.4 Turning to footnote 7 of the NPPF the housing supply policies GD2, DC17 and WCS6 are out of date for the purposes of decision making due to the lack of a five year housing land supply. However it is projected that once relevant consents are issued (those with resolutions to grant permission, awaiting the completion of legal agreements, the Council will be able to show in excess of a 5 year supply (5.69 years).
- 8.5 Assessed against the three strands of sustainability as set out in paragraph 8 the NPPF there is material benefit from the provision of up to 74 new homes on the site towards housing supply which is considered to be of moderate weight. Incoming residents would add towards some economic spend within the area and there would also be shorter term economic benefits from the construction phase of the development albeit these are considered to carry only limited weight. However in considering the environmental objective, whilst there are some facilities within East Hoathly, residents would still be largely reliant on private cars as demonstrated by the submitted Transport Assessment which indicated the development would give rise to 305 daily 2 way trip generation. The woodland onsite comprises native broadleaf species of particular value for biodiversity. This woodland is also flanked by other habitats of value including marsh, moderately species-rich grassland, scrub and hedgerow, contributing to a habitat mosaic. Mosaics of habitat are generally of higher value for biodiversity. The indicative site plan depicts the removal of large areas of the woodland, moderately species-rich grassland on the north and west of the site and hedgerow on the eastern boundary of the

site. Whilst it is acknowledged that biodiversity features have been recommended to be incorporated into the scheme these are considered inadequate to compensate for the semi-natural habitat lost. The development as proposed would therefore result in a net loss of biodiversity. The appeal proposal has also failed to demonstrate the impact of the development on protected species notably dormice and bats. The site would result in additional vehicular movements that would in combination with other plans and projects result in likely significant effects to and harm to the conservation objectives of the SACs identified. This weighs significantly against the proposal and under the Habitat Regulations would direct refusal. The submission Local Plan seeks to deliver full objectively assessed housing need over the Plan period and allied to that strategy is a package of mitigation tested via Habitats Regulation Assessment. Approval of the appeal scheme would add more traffic to the Ashdown Forest than is accounted for in the Habitats Regulation Assessment. The application therefore fails to meet the environmental strand of sustainable development which is given significant weight.

- 8.6 Overall, it is considered that the benefits of the appeal scheme are significantly and demonstrably outweighed by the adverse impacts. The opinion of the LPA is that this is not sustainable development and it is respectfully requested that the appeal be dismissed.

## 9.0 Recommended Planning Conditions

In the event that the appeal is allowed, suggested planning conditions are set out below but they are offered without prejudice to the Council's case.

1. Permission is granted subject to the subsequent approval by the Local Planning Authority of the detailed particulars of the layout, scale and appearance of the buildings to which this permission relates, and the landscaping of the site before any development is commenced, such matters being reserved from the permission.

REASON: To meet the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

2. Application for approval of the matters reserved for subsequent approval must be made to the Local Planning Authority no later than the expiration of three years beginning with the date of the grant of this outline permission; and

The development to which this permission relates must be begun no later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

REASON: To meet the requirements of Section 92 of the Town and Country Planning Act 1990.

3. The development shall not be occupied until the Local Planning Authority has approved, in writing, a scheme to secure further mitigation of increased vehicular movements arising from the scheme.

That mitigation shall include:

- Details of the provision of electric vehicle charging points at the site;
- Demonstrate that freight traffic resulting from new development will not impact on European sites through routing arrangements;
- Provide a personalised travel plan for incoming residents to the site; and
- Details of the ability all dwellings to connect to high speed broadband.

The details shall include phasing and timing of all works to secure delivery of the mitigation and thereafter the development shall proceed strictly in accordance with the agreed further mitigation.

REASON: The development will result in an increase of vehicular movements with a likely significant effect, when taken in combination with other plans and projects, upon European designated sites. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to provide sufficient mitigation for any additional traffic that might cause degradation of air quality upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of

Habitats and Species Regulations 2017 (as amended), the amended version of Policy WCS12 of the Core Strategy Local Plan (following the upheld Judicial Review Case No: C1/2014/1148, heard 11 June 2015), together with WCS14 of the Plan and the requirements of saved Policies EN7 and EN15 of the Wealden Local Plan (1998) and the emerging Wealden Local Plan Policies AF1 and AF2.

4. No work below ground level shall be carried out on site for the development hereby approved, until full written details for a Code of Construction Practice has been submitted to and approved in writing by the Local Planning Authority. The Code of Construction Practice should detail good practice measures for site working to mitigate potential impacts from construction including protection of retained features and surface water bodies on or adjacent to the site, control of run-off, application of design controls for construction equipment and construction vehicles, vehicle routing, wheel washing facilities, sheeting of lorries during transportation of construction materials, provision of water sprays during delivery and dumping of sand and gravel, mixing and batching on wet rather than dry aggregate materials, minimum drop heights to be used for continuous and batch drop activities and waste disposal. The approved Code of Construction Practice shall be implemented throughout the period of work on site.

REASON: In the interests of and for the safety of persons and vehicles on the site and/or adjoining road and to minimise loss of amenity to adjoining properties and minimise potential for environmental impact having regard to SPO2, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policies EN27 and TR3 of the adopted Wealden Local Plan 1998, policies BED1 and INF4 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 109, 127 and 180 of the National Planning Policy Framework 2019

5. No works below ground level shall take place until a scheme for the provision and implementation of foul drainage works has been approved in writing by the Local Planning Authority. Such works shall be implemented to the reasonable satisfaction of the Local Planning Authority before the associated buildings to which they relate are occupied. Any works required to upgrade the infrastructure sufficiently to provide capacity for the new development shall be undertaken prior to acceptance of the development's foul sewerage.

REASON: To protect water quality and to secure a satisfactory standard of development, having regard to SPO12, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policy CS2 of the adopted Wealden Local Plan 1998, policies SPO14 and INF2 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraph 163 of the National Planning Policy Framework 2019.

6. No works below ground level shall take place until details of surface water drainage, which shall follow the principles of sustainable drainage as far as practicable, have been submitted to and approved by the Local Planning Authority. The drainage shall be provided in accordance with the approved details before first occupation of the related dwellings.

REASON: In order to secure a satisfactory standard of development, having regard to SPO12, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policy CS2 of the adopted Wealden Local Plan 1998, policies SPO14 and INF2 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraph 163 of the National Planning Policy Framework 2019.

- 7 There shall be no discharge of foul or contaminated drainage from the site into either the groundwater or any surface waters, whether direct or via soakaways. Prior to being discharged into any watercourse, surface water sewer or soakaways system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies and silt traps to BS 5911:1982 with an overall capacity compatible with the site being drained and shall be retained thereafter.

REASON: To prevent pollution of the water environment, having regard to SPO12, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policy CS2 of the adopted Wealden Local Plan 1998, policies SPO14 and INF2 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraph 163 of the National Planning Policy Framework 2019.

- 8 No floodlighting, security lighting or other external means of illumination of the site shall be provided, installed or operated in the development, except in accordance with a detailed scheme which shall provide for lighting that is low level, hooded and directional, and has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained thereafter.

REASON: To preserve the rural and residential amenities of the locality having regard to SPO2, SPO12, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policy EN29 of the adopted Wealden Local Plan 1998, policies BED1 and NE3 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraph 180 of the National Planning Policy Framework 2019.

- 9 The vehicular access serving the development shall be constructed in accordance with the approved drawing before first occupation of any of the dwellings.

REASON: In the interests of and for the safety of persons and vehicles using the premises and/or the adjoining road, having regard to SPO2, SPO12, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policy TR3 of the adopted Wealden Local Plan 1998, policies BED2 and INF4 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 109 and 110 of the National Planning Policy Framework 2019. No

- 10 No works below ground level shall take place until detailed plans, including levels, sections and constructional details of the proposed road, surface water drainage, foul sewers, outfall disposal and street lighting have been submitted to and approved in writing by the Local Planning Authority, and such work as

approved shall be carried out at the time of the development and thereafter so retained.

REASON: In the interests of and for the safety of persons and vehicles using the premises and/or the adjoining road, having regard to SPO2, SPO12, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policy TR3 of the adopted Wealden Local Plan 1998, policies BED2 and INF4 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 109 and 110 of the National Planning Policy Framework 2019.

- 11 The new estate roads shall be constructed to a standard approved by the Local Planning Authority with a view to subsequent adoption as a maintainable highway and the works phased with the progress of building construction to the approval of the Local Planning Authority.

REASON: In the interests of and for the safety of persons and vehicles using the premises and/or the adjoining road, having regard to SPO2, SPO12, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policy TR3 of the adopted Wealden Local Plan 1998, policies BED2 and INF4 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 109 and 110 of the National Planning Policy Framework 2019.

- 12 Before preparation of ground levels for the development approved, a wildlife management plan shall be submitted and approved, to include as appropriate detailed proposals for the protection of bats, birds, reptiles, dormice and badgers, and measures for the mitigation of any harm to them likely to be caused by the development. The works and other measures forming part of that plan shall be carried out in accordance with it.

REASON: To identify and ensure the survival and protection of important species and those protected by legislation that could be adversely affected by the development, having regard to SPO1, SPO2, WCS12 and WCS14 to the Wealden Core Strategy Local Plan 2013, policy EA1 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 170 and 175 of the National Planning Policy Framework 2019.

- 13 A management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas including surface water drainage systems, other than small privately owned, domestic gardens or areas to be adopted by the Local Highway Authority, shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of any of the dwellings hereby permitted and the landscape and surface water drainage management shall be carried out in accordance with the approved plan.

REASON: To protect visual amenity and the character of the area and to ensure a satisfactory environment having regard to SPO2, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policies EN14 and EN27 of the Wealden Local Plan 1998, policy BED1 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 127 and 170 of the National Planning Policy Framework 2019.

14. No trees and/or hedgerows on the site, unless dead or dangerous, shall be felled, reduced, pruned or destroyed without the consent in writing of the Local Planning Authority. Furthermore, the following work shall not be carried out within the approved protection zone of any tree or hedgerow, except with the consent of the Local Planning Authority:-
- (i) Levels shall not be raised or lowered in relation to the existing ground level within the approved protection zone of the tree or hedgerow.
  - (ii) No roots shall be cut, trenches dug or soil removed within the approved protection zone of the tree or hedgerow.
  - (iii) No buildings, roads or other engineering operations shall be constructed or carried out within the approved protection zone of the tree or hedgerow.
  - (iv). No fires shall be lit within the approved protection zone or in a position where the flames could extend to within 5 metres of the foliage, branches or trunk of the tree or hedgerow as per the requirements of BS5837:2012 Trees in relation to design, demolition & construction - Recommendations.
  - (v) No vehicles shall be driven over the area within the approved protection zone of the tree or hedgerow.
  - (vi) No materials or equipment shall be stored within the approved protection zone of the tree or hedgerow as per the requirements of British Standard 5837:2009 'Trees in Relation to Construction'. TP02

REASON: To preserve trees and hedges on the site in the interests of visual amenity and the character of the area, having regard to SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policies EN12 and EN14 of the adopted Wealden Local Plan 1998, policies EA1 and BED1 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 127, 170 and 175 of the National Planning Policy Framework 2019 and the Wealden Design Guide, Chapter 3, Section 6.

15. No works below ground level shall take place until the implementation of a programme of archaeological works has been secured in accordance with a written scheme of investigation, including a timetable for the investigation, which has been submitted to and approved by the Local Planning Authority. The works shall be undertaken in accordance with the approved details. A written record of any archaeological works undertaken shall be submitted to the Local Planning Authority within 3 months of the completion of any archaeological investigation unless an alternative timescale for submission of the report is first agreed in writing with the Local Planning Authority.

REASON: To enable the recording of any items of historical or archaeological interest, in accordance with the requirements of SPO2, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013, policies HE1 and HE3 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 189 - 199 of the National Planning Policy Framework 2019.

- 16 The development hereby permitted shall not be brought into use until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 15 and that provision for analysis, publication and dissemination of results and archive deposition has been secured.

REASON: To enable the recording of any items of historical or archaeological interest, in accordance with policies HE1 and HE3 of the emerging Wealden Local Plan 2018 coupled with the requirements of paragraphs 189 - 199 of the National Planning Policy Framework 2019.

- 17 In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Local Planning Authority and where remediation is necessary a remediation scheme must be prepared and submitted for approval in writing by the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors, having regard to SPO2, SPO12, SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013 and the requirements of paragraph 170 of the National Planning Policy Framework 2019.

NOTE 1: In connection with the above mentioned access condition, the applicant is advised to contact the Local Area Highway Manager on telephone number 0345 60 80 193.

NOTE 2: The applicant is reminded that under the Wildlife and Countryside Act 1981 (Section 1) it is an offence to take, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act. Trees and scrub are likely to contain nesting birds between 1 March and 31 July. Trees and scrub are present on the application site and should be assumed to contain nesting birds between the above dates unless survey has shown it is absolutely certain that nesting birds are not present. NCN1

NOTE 3: The applicant is reminded that it is an offence to damage or destroy species protected under separate legislation. Planning consent for a development does not provide a defence against prosecution under European and UK wildlife protection legislation. You are advised that it may be necessary, shortly before development commences, for the applicant to

commission an ecological survey from suitably qualified and experienced professionals to determine the presence or otherwise of such protected species. If protected species are found to be present, Natural England should be consulted.

NOTE 4: Your attention is drawn to the requirements of the Building Act 1984 for the deposit of Plans under the Building Regulations and associated legislation.

ACCESS FOR FIRE BRIGADE: Your attention is hereby drawn to the provisions of Section 35 of the East Sussex Act 1981.