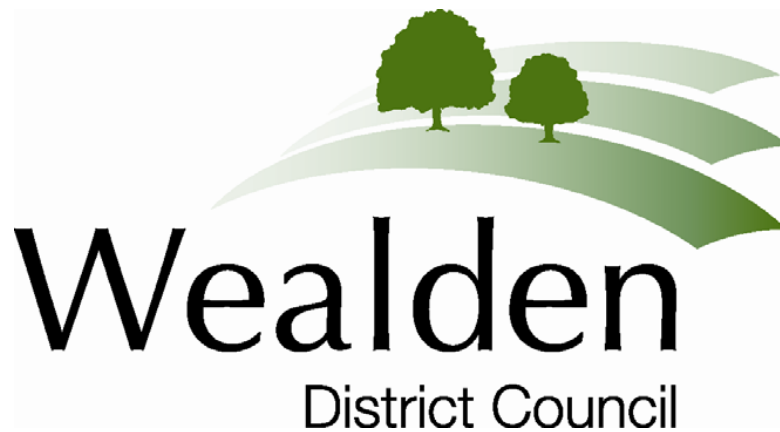




Town and Country Planning Act 1990

Appeal by Hertfordshire Holdings Ltd

DEVELOPMENT OF UP TO 124 NO. RESIDENTIAL DWELLINGS, ASSOCIATED
INFRASTRUCTURE (INCLUDING A NEW ACCESS JUNCTION ONTO THE A271)
AND OPEN SPACE.

**Land South of the A271 and east of the A22, Lower Horsebridge, Hailsham, East
Sussex, BN27 4DN**

Wealden District Council Ref:

Planning Inspectorate Ref:

WD/2022/3222/MAO

APP/C1435/W/23/3335625

STATEMENT OF CASE

(RULE 6)

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1 INTRODUCTION

- 1.1 Wealden District Council submits this Statement of Case (SoC) in respect of the forthcoming Public Inquiry into the appeal ref APP/C1435/W/23/3335625 by Hertfordshire Holdings Ltd (the Appellants) pursuant to section 78 of the Town and Country Planning Act 1990 (the 1990 Act)
- 1.2 The appeal is against the Council's refusal of outline planning permission that was lodged under application reference WD/2022/3222/MAO with all matters reserved, except for the means of access off the A271 for a development of up to 124 residential dwellings associated infrastructure and open space at land to the south of the A271 and east of the A22, Lower Horsebridge.
- 1.3 This Statement of Case (SoC) is provided pursuant to Rule 6 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. It sets out the grounds why planning consent should not be granted, further details of which will be expanded upon in the Proofs of Evidence to be submitted by 26th March 2024 before the Public Inquiry scheduled for the 23th April 2024.
- 1.4 The Appellant has drafted a Statement of Common Ground ('SoCG'). It has been reviewed by the Council and the parties are working towards completing this ahead of the Casework Management Conference (CMC).
- 1.5 The Appellants have helpfully begun constructing a Core Document (CD) list to be read alongside the SoCG. To avoid duplication, the Council has adopted the CD references.
- 1.6 A full list of the determined drawings can be found in the Council Notice of Decision. This is attached in **CD4.2**.

2 THE APPLICATION

- 2.1 The appeal scheme is seeking outline planning permission for residential development with all matters reserved for future consideration with the exception of access.
- 2.2 The application was received on the 7 December 2022 and registered complete on 2 February 2023.
- 2.3 The appeal scheme proposes the construction of “up to 124 dwellings”. Vehicular access to the proposed development would be via a new access off the A271.
- 2.4 In addition to the application forms and certificates, the following plans and documents were submitted as part of the original application:
- Site location plan (drawing 231703C/007)
 - Development parameter drawing (maximum building height zones and access) (TOR-XX-ZZ-DR-A-P011)
 - Site Access Design Ghost Island Junction (332110699_5501_SK001)
 - Illustrative Masterplan (TOR-XX-ZZ-DR-A-P010)
 - Planning, Design and Access Statement
 - Topographical Survey T-332110699-03
 - Transport Assessment
 - Flood Risk Assessment and Surface Water Drainage Strategy
 - Landscape and Visual Appraisal
 - Illustrative Landscape Strategy (TOR-XX-XX-DR-L-P-013)
 - Ground Contamination Assessment
 - Desk Based Heritage Assessment
 - Ecological Appraisal
 - Ecological Impact Assessment
 - Winter Bird Survey
 - Biodiversity Net Gain Report Ecological Services,
 - Biodiversity Metric
 - Arboricultural Impact Appraisal and Method Statement
 - Manual for Managing Trees on Development Sites

- Tree Protection Plan
- Framework Travel Plan
- Noise Impact Assessment
- Air Quality Assessment
- Utilities Appraisal Report
- Energy Statement
- Lighting Strategy Report
- Technical Note RSA Stage 1 Response TN001 V2

2.5 The applicant submitted the following on 4 April 2023 which had been omitted from the original submission (Appendix C to the Transport Assessment):

- Vehicle Tracking for 11.2m Refuse Vehicle 332110699_5501_SK004 Rev P01
- Vehicle Tracking for 7.9m Emergency Vehicle 332110699_5501_SK005 Rev P01 4

2.6 In response to matters raised during the determination period the applicant also prepared and submitted the following on 2nd June 2023:

- Consultation response letter
- Technical note, Response to ESCC Highways
- Site Access Layout Dwg 332110699_5501_SK009 Rev P01
- Composite Plan – NW Hailsham Growth Approved, proposed and potential development Dwg no/231703C/P0010
- Illustrative Masterplan TOR-XX-ZZ-DR-A-P010 Rev B
- Parameters Plan Maximum Building Heights and Access TOR-XX-ZZ-DR-A-P011 Rev B

2.7 The planning application was refused on 30 June 2023 (see the decision notice and officer's report. **(CD4.2)**).

2.8 As part of the appeal documentation the Appellant has submitted the following revised plans on 18 December 2023:

- Parameters Plan: Maximum Building Heights Dwg TOR-XX-ZZ-DR-A-P011 Rev C; and

- Illustrative Masterplan Dwg TOR-XX-ZZ-DR-A-P010 Rev C.

2.9 There is no relevant planning history for the site.

2.10 A summary of the responses received in reply to the normal consultation procedures, from within the Council, statutory consultees and from third parties is within the Council's Delegated Officer Report (DoR) **(CD4.1)** which was sent with the appeal questionnaire.

3.0 APPEAL SITE AND SURROUNDING AREA

- 3.1 The appeal site lies in a predominantly rural landscape close to the urban edge of Upper Horsebridge and Hailsham, located on the southern edge of Lower Horsebridge adjacent to the Boship roundabout junction between the A22, A267 and A271 and close to the north-western edge of Hailsham. The site is currently accessed from the A22 bypass or A271 via gated field accesses. A narrow (around 1m) footway is available along the site frontage on the A271.
- 3.2 The northern and western boundaries of the site are defined by existing hedgerows. The native hedgerows on site comprise 80% or more cover of at least one woody UK native species which qualifies them as UK BAP Hedgerow habitat. The hedgerow along the western boundary of the site adjacent to the A22 Bypass is classified as 'Important' under the Hedgerow Regulations 1997. The appeal site is clearly visible from the A271 over the existing field hedgerow.
- 3.3 The River Cuckmere lies south of the appeal site.
- 3.4 To the south of the River Cuckmere lies the housing development of Welbury and Woodholm, Welbury Meadows both allocated housing sites, approved and developed under the Non-Statutory Wealden Local Plan in 2005.
- 3.5 There are two Grade II listed buildings in close proximity to the appeal site:
- Brook House (1353343) lies to the north of the A271 opposite the appeal site. The house dates to around 1830. It is half-H-shaped and of two storeys with three windows. Ground floor is of red brick and grey headers; the house is tile-hung above. It has a tiled roof. There are casement windows. The wings have gables with scalloped bargeboards. The ground floor of the centre portion has been filled in later to form a porch.
 - The Boship Farm Hotel (1180372) lies to the west of the A22 and the appeal site. It was originally known as Horeship Farm and was built by M. Fuller in 1652. It is a timber-framed building, encased in red brick and altered in the early 19th century. It includes two storeys and attic with four windows, with three gables containing attic windows. The centre gable has a pendant with

the date 1653 and the initials "M.F.". A pentice is located on west side of west gable. The building includes a cemented stringcourse. The hotel has a tiled roof. Early 19th century windows have rusticated painted surrounds and double or triple narrow sashes. A four-centred doorway is flanked by narrow lights. A brick chimney breast with offsets on east wall.

- 3.6 The site is located within a combination of Flood Zones 1, 2 & 3 which relate to areas of low, medium and high risk respectively.

4 PLANNING POLICY CONTEXT

4.1 The Development Plan

4.1.1 The adopted development plan for Wealden District comprises the following documents:

- The Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan adopted 19th February 2013 ('CSLP') **(CD5.2)**;
- The Wealden Local Plan (adopted December 1998) (Saved Policies) ('WLP') **(CD5.1)**;
- The East Sussex and Brighton & Hove Waste Local Plan (adopted February 2006) (Saved Policies).
- East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan (adopted February 2013).
- The Affordable Housing Delivery Local Plan (May 2016) ('AHDP') **(CD5.5)**

4.1.2 The Development Plan also includes three neighbourhood plans, of which the Hellingly Neighbourhood Plan is applicable to the appeal site **(CD5.4)**

4.2 CSLP – changes to Policy WCS 12

4.2.1 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) but allowed the appeal on Ground 3. The Judgment in Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681 can be found at **CDXX**

- 4.2.2 Ground 3 related to whether the Council had considered reasonable alternatives to the use of a 7km zone in relation to the provision of mitigation in relation to Ashdown Forest Special Protection Area (SPA). On 9 July 2015 in response to the Court of Appeal decision, the Council published changes to CSLP Policy WCS12 as directed by the Court of Appeal relating to Ashdown Forest SPA.
- 4.2.3 Prior to the Court of Appeal Judgment, Policy WCS12 provided that any net increase in residential development between 400m and 7km of the SPA 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 and the specific mitigation identified in this policy was removed. However, all relevant planning applications continue to be subject to the Habitat Regulations which protect the Ashdown Forest SPA.
- 4.2.4 The rest of the CSLP was unaffected therefore remains intact as part of the adopted development plan for the purposes of this application.

4.3 WLP Saved Policies

- 4.3.1 Certain policies of the WLP (1998) were '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.
- 4.3.2 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. The Council considers that the weight to be given to 'saved' policies and the Design Guide is dependent on the degree to which they are consistent with the NPPF (having regard to NPPF paragraph 213).

4.4 Relevant Development Plan Policies

- 4.4.1 The relevant development plan policies include:
- *Wealden Local Plan 1998*: Saved Policies GD2, EN1, EN2, EN8, EN14, EN27, EN29, DC17, TR13 and CS1.

- *Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan 2013: Policies WCS6, WCS7, WCS9, WCS12, WCS13 and WCS14 and Spatial Planning Objectives SPO2, SPO3, SPO13.*
- *Affordable Housing Delivery Local Plan 2016: Policy AFH1.*
- *Hellingly Neighbourhood Plan July 2021: Policies LHB1.*

4.5 National Planning Policy Framework (NPPF)

4.5.1 The latest iteration of the National Planning Policy Framework (NPPF) came into force in December 2023 (the updated paragraph references are shown in bracketed italics) and is a material consideration in assessing and determining planning applications. Due regard has been had to any relevant national policy guidance, in particular Paragraphs 7, 8, 9, 10 and 11, (*7, 8, 9, 10 and 11 Dec 2023*) those requiring good design in particular Paragraphs 130, 131 and 134 (*135, 136 and 139 Dec 2023*) and those that seek to ensure that development protects and enhances the natural and built environment in particular Paragraph 174 (*180 Dec 2023*) and to protect and conserve designated heritage assets Paragraphs 189, 197, 199 and Paragraphs 200 and 206 (*195, 203, 205, 206 and 212 Dec 2023*).

4.6 Draft Wealden Local Plan

4.6.1 The Council had produced a new draft Wealden Local Plan which was submitted to the Secretary of State on the 18 January 2019 for examination. The Examination Hearings began on the 21 May 2019, but at the rise of Stage 1 of the Examination, the Inspector declared the plan to be unsound. It was withdrawn by the Council in early 2020.

4.6.2 Work has since been ongoing on a new Local Plan. A 'Direction of Travel' consultation took place between 23 November 2020 and 18 January 2021. The Wealden Draft Local Plan was discussed at an Extraordinary Meeting of Full Council on Thursday 8th February 2024 where Councillors approved the Wealden Draft Local Plan Regulation 18 document and other accompanying documents (Habitats Regulations Assessment and Initial Sustainability Appraisal) and agreed for the formal Regulation 18 consultation commencing in March 2024. The consultation will run. for eight weeks.

4.6.3 The Council considers that, at present, the emerging Local Plan is insufficiently advanced for its policies to attract material weight in relation to this appeal.

4.7 Strategic Housing and Economic Land Availability Assessment (SHELAA)

4.7.1 The appeal site forms part of the 16.43 hectare site submitted under SHELAA (Site ref 780/3100). The site was considered unsuitable for both housing or employment in the Strategic Housing and Economic Land Availability Assessment January 2019. The assessment stated that *“This corridor is an important swathe of undeveloped land which separates the village of Lower Horsebridge from the urban area of Upper Horsebridge and Hailsham. It is a low-lying area and most of the site is within flood zones 2 or 3 and therefore at risk from flooding which precludes development in this location.”*

4.7.2 The recently published SHELAA assessment (February 2024) reaffirms the unsuitability of the site for either residential or employment development. In considering the suitability of the site for development, reference is made to *“the 2023 Landscape Sensitivity Assessment which states that the site is of moderate to high sensitivity to residential development, in part due to the area’s role in separation between the settlements of Hailsham and Lower Horsebridge, the areas of deciduous woodland and the undulating course of the River Cuckmere and open views into the site from the A271. The site forms part of the wider River Cuckmere corridor, which continues to the north towards Hellingly and to the south towards Upper Dicker. This corridor is an important swathe of undeveloped land which separates the village of Lower Horsebridge from the urban area of Upper Horsebridge and Hailsham.”*

5.0 DETERMINATION OF THE APPLICATION

- 5.1 Section 70 of the Town and Country Planning Act 1990 requires a planning authority (and any decision maker) to have regard the provisions of the development plan, so far as material to the application as well as any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that determination must be made in accordance with the development plan unless material considerations indicate otherwise.
- 5.2 The Council's Constitution was updated by Full Council on the 23 February 2023. It includes at Part 7 – a Management Structure & Scheme of Delegation. Under Section H7, authority is delegated to exercise all the Council's powers duties and functions relating to the responding to appeals, whether or not subject of any determination made on behalf of the Council and to make arrangements for the holding of a public local inquiry or hearing or to attend any hearing arranged by the Courts and if necessary in relation to such matters to use or instruct consultants, internal or external solicitors or counsel to make submissions or represent or appear on behalf of the Council.
- 5.3 This appeal is made against the refusal of planning permission issued by the Council on the 30 June 2023. There were four reasons for refusal and a copy of the Notice of Decision can be found at **CD4.2**. The officer's report sets out reasoning for the Decision (**CD4.1**). The officer's report is not repeated unnecessarily here.
- 5.4 Since the lodging of the appeal, ESCC Highways have advised that they are withdrawing their objection on grounds of accessibility having regard to the changed circumstances since the application was determined, not least the recent resolution to approve by Members at Planning Committee South a new sports hub facility at Knights Farm (WD/2023/2100/DC). The withdrawal of ESSC Highway's objection to the appeal scheme is subject to securing the necessary highways works and sustainable transport mitigation within a legal agreement. The District Council adopts the position of ESCC Highways on this issue and therefore considers that reason for refusal 3 can be addressed through a suitable legal agreement.

5.5 The Inspector will note the informative attached to the decision as follows:

Reason 4 is a matter that can be secured through an appropriate legal agreement and Statement of Common Ground. That being so, this reason would not be contested in any s78 appeal.

5.6 The same approach is now taken in relation to reason for refusal 3. In light of the above, and assuming an acceptable legal agreement is advanced to cover Reasons 3 and 4 of the refusal, the appeal is considered to relate to the following matters:

- Location of site beyond development boundary;
- Whether the appeal site can realistically accommodate up to 124 homes without unacceptable adverse impacts;
- The effect of the development on the landscape character and appearance of the site and the surrounding area; and
- The effect of the scheme upon designated heritage assets;

5.7 More detail for each of the above reasons why the Council considers the appeal should be dismissed is set out below.

6.0 CASE FOR THE LOCAL PLANNING AUTHORITY

6.1 Conflict with the Development Plan

Reason for Refusal 1:

The site lies outside any development boundary and within open countryside where the principle of residential development would be unacceptable having regard to local planning policy as it would be contrary to policies GD2, DC17 and EN27 of the Wealden Local Plan 1998 and Policy WCS6 and WCS9 of the Wealden District Core Strategy Local Plan (2013) (CS). These, taken together and amongst other objectives, preclude development within open countryside, set a classification of settlements suitable for additional housing and the quantum of housing and also seek development that respects the character of the area.

The proposed development would be detrimental to the character and appearance of the locality. Any residential development on this site will inevitably and irrevocably change the character and appearance of this part of the River Cuckmere corridor, which is an important swathe of undeveloped land separating the village of Lower Horsebridge from the urban area of Upper Horsebridge and Hailsham, by extending development southwards and the harmful urbanising impact which would arise from the development. The application site is considered integral to the character and visual setting of the River Cuckmere corridor. As such, the application site holds not only visual significance in terms of the landscape setting but also in terms of the historic settlement form and character and its relationship to the listed buildings to the north and west.

The proposed development for 124 dwellings on this site represents an unacceptable and inappropriate form of development. The development as indicated on the submitted plans is considered to be overdevelopment of the site, fails to reflect the existing grain of development and is poorly related to the surrounding built form and landscape. The development would appear as a highly urbanised housing estate, out of keeping with the rural location and existing low density development.

It is considered that the adverse harm caused by the development resulting in urbanisation of agricultural land and impact on the landscape and historic character would be contrary to local planning policies that seek to protect and complement the environment. The development does not therefore meet the definition of sustainable development within the National Planning Policy Framework and the adverse harm identified would significantly and demonstrably outweigh the benefits of the proposal. The development would therefore be contrary to Policies GD2, DC17, EN1, EN2, EN8, EN14, EN27, EN29 and TR13 of the Wealden Local Plan; Spatial Planning Objective SPO13 and Policies WCS6, WCS9, WCS12, WCS13 and WCS14 of the Core Strategy, Policy LBH1 of the Hellingly Neighbourhood Development Plan and National Planning Policy Framework policies relating to sustainable development including Paragraphs 7, 8, 9, 10 and 11, those requiring good design in particular Paragraphs 130, 131 and 134 and those that seek to ensure that development protects and enhances the natural and built environment in particular Paragraph 174 in addition to advice in the Wealden Design Guide 2008, adopted Supplementary Planning Document, Chapter 2 Section 3, Chapter 5 Section 8 and Chapter 7.

6.1.1 The mains issues as set out in the reason for refusal:

- (i) whether the appeal site is in a suitable location for the proposed development having regard to the development plan's spatial strategy;
- (ii) the effect of the proposed development on the landscape character and appearance of the site and the surrounding area and the visual impact; and
- (iii) whether the quantum of development proposed can be satisfactorily accommodated on site.

6.1.2 These are addressed sequentially below:

- (i) whether the appeal site is in a suitable location for the proposed development having regard to the development plan's spatial strategy

The appeal site is located outside any defined settlement boundary, in an area which is treated as countryside for purposes of the development plan.

To the extent that development plan policies are material to this appeal, the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004). The Council acknowledges that in the absence of a five year supply of deliverable housing land the effect of policies GD2 and DC17 would be to restrict the supply of housing and prevent local housing needs being met. It also does not dispute that limited weight should be given to these two policies when considering applications outside development boundaries if the tilted balance of Paragraph 11 of the NPPF is engaged. This means that policies relating to the supply of housing should not be considered up to date and that the proposals should be considered in the context of the presumption of sustainable development as set out in the NPPF. Whether or not the tilted balance is engaged or not, the appeal proposal is in conflict with the development plan as a result of the development's location.

Lower Horsebridge is a small linear village on the A271 north of Hailsham located to the east of the appeal site. The existing village consists of primarily frontage development along the A271. The village is bounded by open agricultural land and a large recreation ground to the south. The 1998 Wealden Local Plan development boundary was drawn around the well-defined edge of the existing settlement to prevent an outward extension of Lower Horsebridge, including further ribbon or backland development. This was to prevent undesirable encroachment into the surrounding countryside, and specifically to the south in order to prevent the coalescence of the Hailsham with the surrounding settlements including Lower Horsebridge.

The Core Strategy removed the development boundary for Lower Horsebridge, formalised by Policy WCS6 which advises that retained or new development boundaries would be reviewed as part of the Delivery and Site Allocations DPD as appropriate. The CSLP confirms that development boundaries are used to define built up areas (within the development boundary) and the countryside (outside the development boundary) and that in principle development in the countryside is subject to greater restrictions, to preserve the character of the rural area.

The adopted CSLP accepted that the development boundaries contained within the 1998 Local Plan would have to be breached to deliver the level of housing required. Notwithstanding this, the Core Strategy is clear that the majority of new housing should be accommodated within, or as sustainable extensions to existing towns, whilst allowing for limited growth within those villages capable of accommodating development in a sustainable fashion (SPO3).

The location of the appeal scheme within the open countryside is not policy compliant in terms of the spatial growth strategy identified in the development plan. The site does not lie immediately adjacent to the edge of the existing village of Lower Horsebridge defined as a neighbourhood centre. Its location separated from the village and within open fields would erode the landscape and important visual gap between Lower Horsebridge and Hailsham, the edge of Hailsham being clearly defined by Welbury Meadows, located approximately 185 metres to the south of the River Cuckmere. Policy EN2 of the Wealden Local Plan is clear that the Council will seek to maintain the existing settlement pattern and this is supported by Policy EN8 which states that development in the Low Weald will only be permitted if it conserves the rolling agricultural character of the landscape and highlights that among other things particular regard will be given the setting of settlements and the retention of boundary trees and hedges.

The Appellants state that the development plan does not deal with sufficient growth and also that other sites locally and elsewhere have been approved outside development boundary locations. The Inquiry can be appraised on any of those sites proffered by the Appellants. Whilst it is correct that development has been approved outside of development boundary locations, this does not mean that all development outside of settlement boundaries is necessarily acceptable.

Section 38 (6) of the Planning and Compulsory Purchase Act requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

(ii) the effect of the proposed development on the landscape character and appearance of the site and the surrounding area;

The site is located in the open countryside that lies to the north of Hailsham. The northern boundary of the site is formed by the A271 and north of the A271 is a small group of properties facing the road which includes the Grade II listed Brook House and its substantial wooded garden.

To the north east of the site, separated by the Lower Horsebridge Stream a tributary stream of the Cuckmere River, is the village of Lower Horsebridge which is predominately formed of linear development along the three roads that meet at the junction between the A271 and the B2104. The eastern and southern boundaries of the site are formed by the meandering Lower Horsebridge Stream which runs initially to the south before turning westwards towards the A22.

The western boundary of the site is formed by the A22. The Grade II listed Boship Farm Hotel with its extensive grounds is located west of the A22. The Lower Horsebridge Stream joins the River Cuckmere west of the A22.

The northern edge of Hailsham is formed by recent development at Welbury Meadows. Between the northern edge of Hailsham is the River Cuckmere. It has a meandering form with treed river banks. It comes from the northeast from Hellingly and continues to the south west towards Upper Dicker. The River Cuckmere is located within a broad area of low lying land which also contains numerous tributary streams and channels. It is described as the River Cuckmere corridor to encompass this important characteristic. Land on both sides of the River Cuckmere, and on both sides of the Lower Horsebridge Stream, lies within flood zone 3, with areas of flood zone 2 at the furthest edges. This area forms an important swathe of undeveloped land on the northern edge of Hailsham.

Within this part of the River Cuckmere corridor, south of the river itself, is an area of marshy land with riverine vegetation accessible from new development on the edge of Hailsham. This part of the River Cuckmere corridor provides a good transitional edge to Hailsham, both filtering views of the new developments from the wider landscape and providing attractive access to the wider landscape from the town. The village of Lower Horsebridge is separated from Hailsham by the River Cuckmere and from the site by the Lower Horsebridge Stream.

The proposed development on the site is located in the north western corner in order to avoid flood zones 2 & 3. It is not connected to either the village of Lower Horsebridge or the town of Hailsham. The parameters plan and the illustrative landscape strategy show development facing onto the two A roads that form the northern and western boundaries where there are currently no settlements. The proposed development would be isolated from the existing settlements by the River Cuckmere corridor which here includes the River Cuckmere, the Lower Horsebridge Stream and their associated flood zones. The development would appear as a detached, dense housing estate in the countryside.

It is not considered that the site itself is a valued landscape in accordance with the NPPF (paragraph 180). However it lies in close proximity to one, the River Cuckmere corridor, and development on this site would impact on that valued landscape. Currently the whole of this section of the River Cuckmere corridor is connected to the wider landscape. Although there is sporadic development within the landscape north of the site, such as around the Boship Roundabout, it is still evidently open countryside. The site forms part of the connection between the River Cuckmere corridor and the wider landscape. Consequently the undeveloped character of the site is integral to the character and visual setting of the River Cuckmere corridor. With the development in place this section of the River Cuckmere corridor would be trapped between two areas of residential development which would significantly harm its character.

In addition to harming the character of the River Cuckmere corridor itself, the proposed development would harm the role that the River Cuckmere corridor plays in providing an effective and attractive edge to Hailsham. Built form within Hailsham is currently entirely located to the south and east of the Cuckmere Valley. The proposed development would be the first development to breach this barrier and extend Hailsham into the wider landscape north and west of the valley.

The undeveloped character of the site also contributes to the historic settlement form and character and provides an important area of undeveloped landscape within the settings of the listed buildings.

The isolated but dense character of the proposed development would appear entirely out of character within a wider landscape that consists of sporadic dispersed settlement of low density and would urbanise this part of the countryside. It is assumed that the almost continuous facades along the A22 and A271 in the Illustrative Masterplan T(OR-XX-ZZ-DR-A-P010 Rev. C) are a response to the Noise Assessment which recommends '*The use of continuous buildings adjacent to the surrounding road network should be considered to maximise acoustic screening to other areas of the site which do not front onto the A37. If this is not practicable, reducing gaps between dwellings should be considered.*'¹ This layout, whilst it might reduce noise from the roads, is unsuited to the rural location and entirely uncharacteristic of the existing settlement pattern. This wall of buildings will exacerbate the urbanising effect of the development.

The harm to the character of the local landscape, would be evident from the surrounding roads, from the Public Right of Way (PRoW) that runs to the east of the site and from the Public Open Space (POS) north of the existing settlement edge of Hailsham.

The Council considers that the development would significantly harm the character and appearance of the area and would therefore be in conflict with

¹ Noise Impact Assessment (Stantec) Decision 2022 Paragraph 4.7.6 third bullet point

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development plan policies which require proposals to conserve the Low Weald landscape and to conserve existing landscape character. It would also be in conflict with NPPF policies including that:

- Valued landscapes should be protected (180),
- The natural, built and historic environments should be protected (8C).
- New development should be sympathetic to local character (135c).

With regard to landscape and visual matters the appellant's Statement of Case (SoC) appears to rely on what it describes as '*the limited extent of visibility of the site*' (paragraph 4.22). The Landscape and Visual Appraisal (LVA) submitted with the application describes it as '*the effective enclosure of the site*' (paragraph 1.120). The Council does not agree that the site is enclosed or that there is limited visibility.

There is no enclosure on the eastern and southern boundaries of the site and the proposals would be clearly visible from the PRoW to the east of the site, from the POS at the northern edge of Hailsham, from the Boship Roundabout and from the A271. Visual effects are effects on people and the Council considers that there is a significant number of people whose visual amenity would be harmed by the proposed development.

With regard to landscape effects the LVA does not acknowledge the important role that the undeveloped nature of the site plays in the character of the River Cuckmere corridor. Consequently, the LVA does not recognise the harm that the development would do to the character of the River Cuckmere corridor.

Neither the LVA nor the SoC explain in what way '*The appeal proposals have been carefully designed having regard to the surrounding built form and landscape.*' The LVA concludes that '*existing views often include elements of the existing developments and major roads that form part of the landscape in the local area so that in many cases, the proposed development would not be immediately noticeable or be at odds with the character of the wider views.*' The Council considers that the development would be immediately noticeable and would be at considerable variance to the existing character of the landscape.

(iii) *whether the quantum of development proposed can be satisfactorily accommodated on site and is appropriate having regard to the location of the site.*

In addition to the Council's position that the residential development of the site is unacceptable, the Council also considers that the quantum of development proposed cannot be satisfactorily accommodated. 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 (including type and size), internal roadways, parking, amenity space and proposed planting are all matters for later consideration in the event the appeal is allowed. At this outline stage the applicant must demonstrate that the quantum of development proposed, accessed from the location detailed can be adequately accommodated within the constraints of the site. It is noted that the Appellant states in Paragraph 4.36 of their Statement of Case (SoC) that *"the number of units is expressed in the application as an 'up to' figure, giving flexibility to reduce the number of units delivered at detailed design stage if/where needed."* The Council considers that as a maximum number of dwellings is referred to in the description of development, it is important that the Appellant demonstrates that the proposed maximum number of units can be accommodated on site in an appropriate layout and form. The Council is of the view that the site cannot accommodate that level of development within the net developable area of the site (the developable area being strictly defined by the extents of the land within Flood Zone 1, otherwise the appeal site would be required to undertake a sequential test) and meet the necessary spatial design requirements as set out in adopted local design guidance and policy.

With a developable area of approximately 2.77 hectares, based on the provision of 124 dwellings this equates to a net density of 44.7 dph, which is significantly higher than any of the major housing schemes that have been approved and built out in and around the Hellingly and Hailsham area.

It is acknowledged that density can be calculated in a variety of ways and, whether based on units per hectare or habitable rooms per hectare, only provides a broad indication of the intensity of development and is sometimes

not particularly effective in predicting or controlling the form of development. Whilst it is recognised that there is a need to make effective use of land, it is equally important that new development should be of quality design and respect the character of the area. Density is not the primary means of assessing design acceptability but of greater importance is the relationship to the site and the surrounding context. Therefore, in considering the ability of the appeal site to accommodate the number of units, it is the combination of the density plus the relationship of the development to the site, the locality and the ability of the development to meet all the necessary spatial requirements regarding parking, access, amenity space, back-to-back distances, surface water drainage etc. that is important. Whilst these matters do not form part of the consideration of this application, as in the event of the appeal being allowed, they would be determined through the submission of reserved matters, the proofing layout in the form of the Illustrative Masterplan provides an effective mechanism of assessing the overall capacity of the site.

The appeal proposal is accompanied by an Illustrative Masterplan Dwg TOR-XX-ZZ-DR-A-P010 Rev C that shows 54 dwellings with gardens and the remainder of the development (equating to 70 units) as flat blocks in three substantial buildings facing Lower Horsebridge Road (A271). The Parameters Plan also indicates that almost 50% of the site will be in the form of 2.5 to 3 storey buildings.

Two long L-shaped blocks of flatted development of between 42 and 46m in length fronting the A271 Lower Horsebridge Road and an inward facing block at the junction of the Boship Roundabout with the A22 and A271, all of which are shown as being up to 12m high above finished floor levels is completely inappropriate in the context of the surrounding area and existing built development typified by two storey ribbon development along the A271. Furthermore, as currently proposed, the illustrative site layout would not meet the local design standards as set out in the Wealden Design Guide, Draft Outdoor Playing Space SPG, Development Plan Policies, and the Good Practice Guide for Property Developers: Refuse and Recycling Storage at New Residential Developments within the Eastbourne, Hastings, Wealden and Rother Council Areas. The ability to meet the necessary spatial

standards would be even more challenged if all or even some of the flatted building forms were changed to housing, assuming that satisfactory noise mitigation measures could be delivered, and would clearly mean that the quantum of development proposed would need to be significantly reduced in numbers. This is on a scheme that the appellant has already acknowledged that the amended plans submitted in support of the appeal would impact on the ability to deliver the maximum 124 units proposed.

Even if the Appellant can demonstrate that the maximum number of units proposed can be accommodated whilst meeting the constraints and policy requirements such as parking, amenity space etc. listed above, the proposed amended Parameter and the Illustrative plans would result in a scheme which is uncharacteristic and discordant with its surroundings both in terms of the open rural countryside landscape and the adjacent low-density development of Lower Horsebridge. Such a scheme is contrary to the aims and objectives of the Framework and Local Plan Policies EN2, EN8 and EN27 of the Wealden Local Plan 1998 and Policy WCS13 of CSLP which seeks to ensure that developments add to the overall quality of an area, are sympathetic to local character, built environment and landscape setting and contribute to and enhance the natural and local environment, including by recognising the intrinsic character and beauty of the countryside.

6.2 Effect on Heritage Assets

Reason for Refusal 2:

The development would undermine the character of the setting of Brook House and Boship Farm Hotel by virtue of divorcing them from their countryside setting, providing an alien and urbanising development which by virtue of the scale, form and quantum of development would cause unacceptable harm to the character and significance of the setting of the heritage assets, and that this harm would not be outweighed by the public benefits resulting from the proposal. As such the proposal would be contrary to Section 66 of the Planning (Listed Buildings and Conservation Area) Act 1990, Policy EN1 and EN27 of the Wealden Local Plan 1998, Policy SPO2 of the Core Strategy and paragraphs 130, 189, 197, 199, 200 and 206 of the

- 6.2.1 The Council has a duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses under Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (hereafter referred to as 'the Act'). The statutory duty is reinforced by the National Planning Policy Framework (NPPF), Chapter 16 of which sets the national agenda for 'Conserving and enhancing the historic environment'. There are two listed buildings immediately surrounding the site, including Brook House (NHLE 1353343) and Boship Farm Hotel (NHLE 1180372) both of which are Grade II listed.
- 6.2.2 The Courts have held that 'preserve' under the statutory duty means an absence of harm. The NPPF recognises that heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance (Paragraph 195). It makes clear that the significance of a designated heritage asset can be harmed or lost through alteration or destruction of the heritage asset or through development within its setting (Paragraph 206). Harm can be either 'substantial' or 'less than substantial' (Paragraph 205), requires clear and convincing justification (Paragraph 206), and is to be weighed against the public benefits of the proposal (Paragraphs 207 and 208). When considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether harm amounts to substantial harm, total loss or less than substantial harm to significance (Paragraph 205).
- 6.2.3 Under Paragraph 212 of the NPPF, LPAs are tasked with looking for opportunities for new development within the setting of heritage assets to enhance or better reveal their significance and treat favourably proposals that 'preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance)'. When considering the impact of a proposal on a heritage asset, LPAs should take into account the particular significance of any heritage asset affected by the proposal, to avoid or minimise any conflict between the asset's conservation and any aspect of the proposal (Paragraph 201).

- 6.2.4 The NPPF also places great importance on development being sympathetic to local character and history, including the surrounding built environment and landscape setting, to ensure the integration of new development into the existing environment (Paragraph 135). Chapters 5 and 7 of the Wealden Design Guide also encourage high-quality, contextual design.
- 6.2.5 This national policy intent is addressed by 'saved' Local Plan Policies EN1 and EN27 of the Wealden Local Plan 1998; Core Strategy Policy SP02; as well as Chapters 5, 7 and 12 of the Wealden Design Guide.
- 6.2.6 WDC's position is that the Appeal Site contributes positively to the significance of both Brook House and Boship Farm Hotel through their settings. It is the Council's position that harm would arise to the significance of Brook House and Boship Farm Hotel through the proposed development within their settings by divorcing them from their countryside setting and providing an alien and urbanising development of a scale, form and quantum that would not lead to the site being read as a sympathetic development within their settings and thereby diminishing the appreciation of their significance. For both assets, the level of harm would be less than substantial.
- 6.2.7 Omission of the housing to the east of the new access as shown in the revised Appeal Proposals (Illustrative Masterplan TOR-XX-ZZ-DR-A-P010 Rev. C) would not alone be sufficient in reducing the level of harm to Brook House in the context of the urban character of the development as a whole. It is the Council's position therefore that the level of harm to the significance of Brook House remains at a medium level of less than substantial.
- 6.2.8 In terms of Boship Farm Hotel, the Appellant has erred in understanding the historical and visual relationships between the listed building and the part of its surroundings which includes the Appeal Site. The Council considers that the Appeal Site contributes positively to the significance of Boship Farm Hotel, and that this urbanising form of development would serve to severely erode the wider rural setting of the asset. The level of harm would be at the lower end of less than substantial.
- 6.2.9 The development would be in sharp contrast to the surviving rural qualities of the area which presently characterises the setting of both heritage assets. As such, it

is difficult to see how the quantum of development proposed might be achieved in a manner which would avoid or minimise harm to the significance of these heritage assets.

6.2.10 The contribution of up to 124 units (made up of both market and affordable housing) to unmet need, would be considerable and as such, this should be given substantial weight together with the social and economic benefits which flow from that. However, the development would cause harm to the setting of designated assets by failing to robustly consider the relationship of the appeal site to designated assets and underplaying the significance of the rural landscape to the appreciation of the setting to the listed buildings contrary to Policy EN1 and EN27 of the Wealden Local Plan 1998, Policy SPO2 of the Core Strategy and paragraphs 135, 195, 203, 205, 206 and 212 of the National Planning Policy Framework as updated in December 2023.

6.2.11 Overall the harm to the setting of the listed assets should be given considerable importance and weight in the planning balance. In this case the harm to the heritage assets is not outweighed by the public benefits of the appeal scheme. Further, the harm to heritage assets in this case significantly and demonstrably outweighs the benefits of the appeal scheme.

6.3 Locational Sustainability and Accessibility

Reason for Refusal 3:

The proposal has failed to demonstrate that, the site is suitably accessible by non-car modes. The development would therefore be contrary to Saved Policies EN1, EN2, TR3, TR13 and CS1 of the Wealden Local Plan 1998, Spatial Planning Objectives SPO7 and SPO15 and Policies WCS7 and WSC14 of the Wealden Core Strategy Local Plan 2013 and the guidance within Chapter 9 of the NPPF in particular paragraphs 111 and 112.

6.3.1 ESCC Highways have advised that having regard to a change in circumstances since the application was determined that they are withdrawing their objection relating to Reason for refusal 3. This is subject to the completion of a legal agreement to secure highway improvements and funding towards sustainable transport. WDC have already confirmed to PINS and the Appellant in an email on

21 February 2024, that in light of ESCC's withdrawal of its objection, the Council considers that RfR3 can be addressed through a suitable legal agreement and therefore it will not be defending Reason for Refusal 3.

6.4 No mechanism to secure appropriate policy compliance and/or necessary infrastructure

Reason for Refusal 4:

The Planning Statement confirms the intention to deliver a policy compliant scheme to secure affordable housing. Custom build or self build homes will also be required. No mechanism exists to secure an appropriate package that would ensure delivery of these matters and as a result the proposed development is contrary to the provisions of Policy AFH1 of the Affordable Housing Delivery Local Plan 2016, Spatial Planning Objective SPO3 and Policy WCS14 of the Wealden Core Strategy Local Plan 2013 and paragraphs 60, 61, 62, 63 and 65 the National Planning Policy Framework 2021.

- 6.4.1 Reason 4 relates to matters that can be secured through an appropriate legal agreement. In the event that a suitable legal agreement is provided, this reason would not be contested at the Inquiry.

6.5 Planning Balance.

- 6.5.1 It is accepted that the decision-making function is transferred to the SoS via the appointed Inspector. As part of that, the Inspector will undertake his or her own planning balance.
- 6.5.2 The starting point, under s38(6) Planning and Compulsory Purchase Act 2004 is the Development Plan. As set out under the reasons for refusal above, this application breaches a number of development plan policies. When considered as a whole, the application is not in accordance with the development plan and this will be explained further in the Council's evidence.

The latest iteration of the NPPF introduced a new paragraph 226 whereby certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing (with a buffer, if applicable). This policy applies to authorities

which have an emerging local plan that has reached Regulation 18 stage. The Council's Regulation 18 consultation is due to commence in March 2024. As such by the time of the Inquiry the Council will only be required to demonstrate a four years supply for the purposes of the tilted balance in the NPPF.

- 6.5.3 Within the Five-Year Housing Land Supply Statement as of 1st April 2023, published December 2023, the Council confirmed 3.83 years of housing (or 76.6%) of land supply as of 1 April 2023.
- 6.5.4 Since April 2023 the Council have approved a number of significant major applications and a number of development sites previously considered to have stalled have commenced on site with the result that this has changed the housing land supply situation, such that the Council is near to having a four year housing land supply. If the Council meets a four-year housing land supply target by the time of the Inquiry, the tilted balance in favour of sustainable development set out under Paragraph 11 of the NPPF, as updated December 2023, is disengaged. The Council will update the Inspector and the Appellant if and when it is able to demonstrate a four-year housing land supply and whether it intends to call evidence on this issue at the Inquiry.
- 6.5.5 In the event that the tilted balance applies to the appeal scheme, the benefits, of the scheme include the provision of up to 124 new homes, which would contribute to the government's target to significantly boost the supply of homes. The types of housing secured would address the needs of groups with specific housing requirements including affordable housing and people wishing to commission or build their own homes. These are positive aspects to the development and taken together, should be afforded substantial weight.
- 6.5.6 Future occupants would be likely to contribute to the local economy and there would be temporary economic benefits of employment and investment during construction although these are considered to be of limited weight in the planning balance which will be explained in the Council's Proof of Evidence.
- 6.5.7 However, despite the acknowledged benefits of the appeal proposal, the identified harms (detrimental impacts to the setting of listed buildings, the landscape and historic character of the surrounding area and the landscape of the Cuckmere River corridor) either individually or in combination, are of greater weight. Without

sufficient benefits to overcome the very significant harms identified above and the conflict with the development plan (even allowing for the reduced weight to the conflict with Policy GD2 and DC17 in the event of the Council's housing land supply falling below the parameters set out under the Framework), the adverse impacts of this proposal significantly and demonstrably outweigh the benefits of the proposal and that in the context of the NPPF Paragraph 11, the presumption in favour of sustainable development is not applicable and therefore the appeal should be refused.

6.6 Comments on Appellants' Statement of Case

- 6.6.1 It is confirmed that the Council will work with the Appellants to draw up a SoCG. At the time of writing the Council has commented in a draft and sent it back to the Appellant.
- 6.6.2 The areas in dispute are set out in the SoCG and fully detailed in Appendix B: Areas of Disagreement and need not be repeated here.

7.0 Conditions and Legal Agreement

- 7.1 Prior to the Public Inquiry, the Local Planning Authority and the Appellant will agree a list of conditions to be attached in the event of the appeal being allowed. These will include measures relating to issues upon which there is common ground and that there is no objection subject to appropriate conditions. The main parties will also identify any difference between them on the conditions to be attached.
- 7.2 Prior to the Inquiry the appellants have indicated they will submit a Legal Agreement to provide on-site and off-site infrastructure under the provisions of Section 106 of the 1990 Act in the event of the appeal being allowed. The Council lawyers are instructed, and an update will be provided at the CMC.

8.0 Conclusion

- 8.1 In conclusion, the Council will contend that for the reasons set out above, planning permission should be refused. It is considered that these grounds are sound and clear cut having given the matter full and proper consideration in the light of Government advice, the provisions of the development plan, and other material considerations. The Council will show that the proposal does not accord with the current development plan and the guidance within the National Planning Policy Framework (NPPF).