LAND AT DOWNLANDS FARM, UCKFIELD

Rebuttal to Council's Planning Proof of Evidence prepared by Stacey Robins

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WDC REFERENCE: WD/2022/1637/MEA
APPEAL REF: APP/C1435/W/23/3321978

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On behalf of **Gleeson Land and John Alison Land and Research Limited**

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LAND AT DOWNLANDS FARM, UCKFIELD

APPEAL AGAINST THE REFUSAL OF A PLANNING PERMISSION FOR:

HYBRID PLANNING APPLICATION COMPRISING: OUTLINE APPLICATION (WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS) FOR THE ERECTION OF UP TO 424 NO. RESIDENTIAL DWELLINGS INCLUDING AFFORDABLE HOUSING, THE PROVISION OF VEHICULAR, PEDESTRIAN AND CYCLE ACCESS AND SEPARATE EMERGENCY ACCESS FROM THE UCKFIELD BYPASS (A22), PEDESTRIAN AND CYCLE ACCESS FROM SNATTS ROAD, OPEN SPACES INCLUDING CHILDREN'S PLAY SPACE, SUSTAINABLE URBAN DRAINAGE SYSTEMS, ASSOCIATED LANDSCAPING, INFRASTRUCTURE AND EARTHWORKS; AND
FULL APPLICATION COMPRISING CREATION OF A STRATEGIC SANG, ASSOCIATED LANDSCAPING AND CAR PARKING, AND DEMOLITION OF EXISTING RESIDENTIAL PROPERTY AND OTHER BUILDINGS AND PROVISION OF PEDESTRIAN AND CYCLE ACCESS FROM ROCKS ROAD, ASSOCIATED LANDSCAPING, INFRASTRUCTURE AND EARTHWORKS

Rebuttal to Council's Planning Proof of Evidence prepared by Stacey Robins

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1.0 INTRODUCTION

1.1 This Rebuttal is prepared by myself, Joshua Mellor, in response to the Planning Proof of Evidence submitted by Mr Robins on behalf of Wealden District Council (**CD1/41**). It should be read alongside my Planning Proof of Evidence (**CD1/50**), Appendices (**CD1/51**) and Summary (**CD1/51**).

1.2 This Rebuttal responds to points raised by Mr Robin in his Proof of Evidence relating to matters of:

(1) Irreplaceable Habitats / Footnote 63;
(2) Provision of Public Open Space; and
(3) SANG Provision.

1.3 This Rebuttal is not intended to respond to every point raised by Mr Robins. A non-response should not be considered an agreement and I reserve the right to comment on wider points during the Inquiry.

2.0 PLANNING REBUTTAL

Irreplaceable Habitats and Footnote 63

2.1 Para 180 c) of the Framework (**CD6/16**) is an important consideration for the Appeal reflecting on the presence of Ancient Woodland within and around the Appeal Site. This states that development resulting in the loss or deterioration of irreplaceable habitats (inc. Ancient Woodland) should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists.

2.2 As summarised in my Proof of Evidence (**CD1/50**) and as detailed in the evidence of Mr Baxter in respect of biodiversity (**CD1/59**) and Mr Forbes-Laird in respect of arboriculture (**CD1/56**) the Appeal Proposals would not lead to loss or deterioration of irreplaceable habitats.

2.3 This is because the Appeal Proposals have been specifically designed to avoid loss or deterioration to the Ancient Woodland by employing appropriately sized buffers, use of boardwalks and provision of visitor management for SANG and woodlands.

2.4 Nevertheless, if the Inspector concludes a loss or deterioration does occur a consideration as to whether wholly exceptional reasons exist and a suitable compensation is provided is needed.

2.5 Mr Robin's interpretation of this requirement is provided at para 4.27 of his Proof of Evidence (**CD1/41**), which identifies that the exceptional reasons test only applies (with reference to Footnote 63) to those projects "which are identified as being infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills)".

2.6 This is a misinterpretation of Footnote 63, which clearly does not provide a 'closed list' of projects for which the wholly exceptional reasons test would apply. The language of Footnote 63 is important in this regard, referencing the identification of 'infrastructure projects' only as an **example** of where public benefits may be present.

2.7 Where loss or deterioration is identified, the logical approach to Para 180 c) should be:

(1) Concluding what level of loss or deterioration would occur;

(2) Considering what the public benefits are;
(3) Weighing up the benefits against the level of loss or deterioration and assessing whether these are 'clearly' outweighed by the benefits; and,
(4) Confirming if a suitable compensation strategy exists.

2.8 Alongside a suitable compensation strategy, I consider, if necessary, the Appeal Proposals do deliver the "wholly exceptional reasons" to meet the requirements of Para 180 c) of the Framework.

2.9 This is set out at para 5.30 – 5.35 of my Proof of Evidence and follows what is in my view a logical interpretation of the guidance of Footnote 63.

Provision of Public Open Space

2.10 The Appeal Proposals include provision for an on-site SANG. Whilst having the primary purpose of mitigating recreational disturbance on the Ashdown Forest SPA, it would nevertheless also contribute to the range of on-site recreational opportunities proposed. Whilst in this instance it is provided for as part of the Appeal Proposals on-site, it is not necessary for a SANG which enables housing development to be adjoining the development proposed.

2.11 At para 2.63 of my Proof of Evidence (**CD1/50**) I afford to the provision of on-site public open spaces moderate weight in favour of the Appeal Proposals.

2.12 The open space provision I identify in Table 2.3 of my Proof of Evidence, namely the SANG provision and multi-functional spaces at 'Central Park' and 'Amenity Park' would be secured by (1) the Full application for the SANG (**CD1/16 and CD1/17**) and (2) the Green Infrastructure Parameter Plan (**CD2/116**).

2.13 Together this provides for 15.7 hectares of open space against a requirement of 2.4 hectares, i.e. a significant overprovision.

2.14 Mr Robins asserts, at Para 5.38 of his Proof of Evidence (**CD1/41**) that the "actual level of amenity space provided can only be ascertained once a Reserved Matters application has been submitted" and "unless the actual provision is secured through an appropriately worded legal agreement, there is no assurance that the level of open space will be delivered, managed and retained in perpetuity". I accept this may be the case for incidental open spaces

which would be provided within the residential development itself, however it is clearly not the case for the spaces indicated above which would be secured through the approved plans.

2.15 Mr Robins gives no weight to the provision of open space as a benefit as he considers it mitigation directly related to the development. Whilst he references the Mornings Mill Farm decision (**CD4/21**) to reflect this position, the quotation provided is not found within the Inspector's decision. Instead, the Mornings Mill Farm Inspector concludes at para 105:

> **The proposal would deliver a number of benefits, including a significant number of much needed market and affordable houses, economic benefits through job creation during construction and operation of the development, delivery of open space and sports facilities and a biodiversity net gain, amongst other things. Taken together, the benefits of the scheme attract substantial weight.**

2.16 The Morning Mills Farm Inspector therefore clearly found the provision of open spaces should have some positive weight.

2.17 Similarly:

- Land West of Station Road, Hailsham (**CD4/27**) where the Inspector concluded the over provision of public open space and sports pitches, significantly in excess of policy requirement, would be a benefit of significant weight in favour of the appeal (para 54); and
- Clear View Farm, Chiddingly Road, Horam (**CD4/12**) where the Inspector concluded the provision of children's play area and open space would provide community and recreational benefit, which alongside the provision of affordable housing and provision of custom / self-build plots would deliver social benefits carrying significant weight in favour of the appeal (para 46).

2.18 It is clear Mr Robins' assertion that open space provision should be considered a "mitigation" which attracts no weight is wrong and my assessment of this benefit attracting moderate weight should be favoured.

<u>SANG Provision</u>

2.19 As I recognise above, the primary purpose of SANG is mitigating recreational disturbance on the Ashdown Forest SPA. The SANG provides 'capacity' mitigating the potential effect a certain number of new homes could have on the Ashdown Forest.

2.20 In this instance, the proposed SANG would secure capacity for 468 dwellings, as detailed in the Report to Inform a Habitats Regulations Assessment, Update August 2023 **(Enclosure 3 of CD1/14**).

2.21 Para 2.65 of my Proof of Evidence (**CD1/50**) reflects my position that the provision of SANG as a mitigation measure for the Appeal Proposals (i.e. 424 of the 468 dwelling capacity) has neutral weight in the planning balance. Mr Robins shares this position at 5.17 of his Proof of Evidence (**CD1/41**).

2.22 However, Mr Robins applies the same neutral weight to the role the proposed SANG has in enabling an additional 40 dwellings beyond that delivered by the Appeal Proposals. Conversely, I consider this a benefit which is of significant weight in favour of the Appeal Proposals (**para 2.69 of CD1/50**).

2.23 I consider Mr Robin's position is wrong.

2.24 This is because the Council not only has a significant housing shortfall in the immediate 5-year period (**CD1/29**), but also has a significant housing need beyond this which is currently not being addressed (i.e. post 5-years / over the emerging Plan period). Opportunities to address this on sustainable sites should be maximised, either through decision-taking or plan-making.

2.25 For residential development sites in Crowborough and Uckfield, which are two of the three District Centres defined by the Core Strategy Local Plan (**CD6/4**) as being the most sustainable settlements in the District, SANG is required to mitigate impacts on the Ashdown Forest SPA. This can be provided for on-site or through taking up capacity of SANG which exists elsewhere.

2.26 In the case of on-site provision, this needs to be of a suitable scale (including a 2.3km walk) and attractiveness. It can, in some cases, lead to an impact on developable areas which otherwise would accommodate additional residential development. The consequence of this would be the need for further sites to accommodate the residential development displaced by SANG.

2.27 The over-provision of SANG capacity on suitable SANG sites therefore should be supported, enabling further residential development to come forward in two of the most sustainable locations in the District (Uckfield and Crowborough), as well as potentially other locations within the 7km zone from the Ashdown Forest, and reducing the need for additional SANG elsewhere. To not give this benefit positive weight in the planning balance would plainly be wrong.

2.28 Additionally, Mr Robins at para 5.27 of his Proof of Evidence (**CD1/41**) identifies that the CIL regulations result in the additional SANG capacity being incapable of being considered a benefit.

2.29 I consider this to be incorrect and illogical. The SANG forms a fundamental part of the Appeal Proposals, as defined in the Description of Development, the application plans, Environmental Statement and other submission material. It is part of the proposed development, and therefore part of the planning permission sought (i.e. permission is not just being sought for the SANG capacity necessary to mitigate the housing delivered as part of the Appeal Proposals).

2.30 This would be no different from how other public benefits above policy requirements are considered, e.g. the over-delivery of public space, the over-provision of affordable housing, etc…

2.31 I therefore consider Mr Robins position is illogical and the over-provision of SANG is a benefit which is of significant weight in favour of the Appeal Proposals.