Town and Country Planning Act 1990

Appeal by Gleeson Land and John Alison Land and Research Ltd

Land at Land at Downlands Farm, Uckfield, TN22 3PU

Wealden District Council Ref:	Planning Inspectorate Ref:
WD/2021/1637/MEA	APP/C1435/W/22/332978

SUMMARY PROOF OF EVIDENCE

1 Introduction

1.1. My name is Stacey Robins (Mr). I hold a BA Honours degree in Urban Studies and Rural Planning and a post Graduate Diploma in Town Planning, both awarded by the University of Sheffield. I am a Chartered Town Planner and have been since 2002. I have just under 25 years of town and country planning experience.

1.2. This appeal is against the Council's refusal of the hybrid application relating to Land at Downlands Farm. The elements of the refusal (full and outline) are set out in the respective Statements of Case ('SoC')

1.3. My evidence should be read alongside that of:

- Gabrielle Graham / Mr David Massheder in relation to the impact on the Ancient Woodland and how the appeal proposals would lead to direct and indirect impacts upon veteran trees and ancient woodland, leading to deterioration and loss of irreplaceable habitat; (**CD1/44** and **CD1/47**)
- Ms Heather Hall in relation to heritage matters (**CD1/21**)
- Mr Roger New in relation to accessibility, transport and highways (**CD1/22**)
- Drainage (to be prepared by Graham Keane, though this is dependent upon the Drainage SoCG, not yet concluded at time of concluding this Proof)

And in the context of the following agreed Statement(s) of Common Ground ('SoCG')

- Planning SoCG (**CD1/10)**
- Heritage SoCG (**CD1/12**)
- Housing Land Supply SoCG (**CD1/11)**
- Ancient Woodland (still in progress at time of completing this Proof)
- Drainage (still in progress at time of completing this Proof)

Planning History

1.7 A previous application (WD/2006/2855/MEA) was made by Clarence Preston Will Trust & Barham Estates Ltd on 9 October 2006 (`the 2006 Application').

1.8 The 2006 Application was considered at Inquiry, conjoined with two other sites elsewhere at Uckfield, Bird in Eye North and Bird in Eye South. The appeal was recovered by the Secretary of State (`SoS') who issued her, as it was then, decision **refusing** the appeals on 24 February 2009. As noted, these can be found at **CD4/2** and **CD4/3**.

2 SITE & SURROUNDING AREA

2.1 A description of the site is within the Planning SoCG (**CD1/10**) but can also be found at Chapter 3 Site & Development Description of the submitted Environmental Statement (ES) (**CD2/36**).

2.2 Extensive description of the site is unnecessary, not least for this summary. The majority of the woodland on the Site, with the exception of the woodland within the north and southeast, is classed as Ancient and Semi-Natural Woodland. Two wooded ghylls provide natural divisions in the land here. Longwood Gill is a narrow woodland strip with a stream, while Shermanreed Wood is slightly broader in width. There is a woodland belt along the A22 bypass to the west of an old carriage driveway. This is also Ancient Woodland here (Thirty Acre Shaw), but the inventory shows boundaries to this woodland that do not exist on the ground. All of this woodland, on the western side of the site abutting the A22, is priority habitat.

2.3 Part of the site adjoins Paygate Wood and lower parts around Budletts Wood were laid out as parkland in the nineteenth century, when the land was part of the Rocks Estate. Immediately adjoining it to the south is Lake Wood, a SNCI (county site of nature conservation importance) with public access, which is managed by The Woodland Trust (an objector to the scheme). Other nearby SNCIs are west of the A22.

2.4 There are designated and non-designated heritage assets close by. The Council's position with regards to these is set out in the Heritage SoCG and the proof of evidence of Ms. Hall (**CD1/12**).

3 PLANNING POLICY OVERVIEW

THE DEVELOPMENT PLAN

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the

development plan unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions.

3.2 The adopted development plan documents relevant to the application proposals are:

- the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan (2013) ('CSLP') (**CD6/4**),
- the Affordable Housing Delivery Local Plan (2016) ('AHDLP') **(CD6/7)** and
- the 'saved' policies of the Wealden Local Plan (1998) ('WLP') (**CD6/3**).

3.3 It is common ground the Council does not have a five year housing land supply.

4 THE COUNCIL'S CASE

4.1 My main Proof sets out the Council's case on each Reason for Refusal. It is important to note that some reasons have, in part, been resolved by subsequent submissions and work on topic based SoCG.

4.2 The spatial strategy for the District is set out in the WLP 1998 (**CD6/3**) and the CSLP 2013 (**CD6/4**)

4.3 Saved Policies GD2 and DC17 of the WLP 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 (such as rural affordable housing exception sites) as set out in saved Policies GD2 and DC17 of the WLP 1998 but also in national guidance through the NPPF, paragraph 80 (a). The supporting text of Paragraph 5.91 to Policy DC17 sets out the range of special justifications for allowing development outside development boundaries. The proposed application does not comply with any of these exceptions, nor does the site qualify as a Rural Exceptions site under Policy WCS9 of the CSLP.

4.5 In their Grounds of Appeal ('GoA'), the Appellant relies on three main points, with qualification, as justification for the current appeal scheme beyond the development boundaries (see Section 6.0 of the GoA, **CD1/5**):

4.6 My Main Proof comments on each of these points in turn. I do not repeat them here, but do not consider they override conflict with the development plan.

4.7 As expanded upon under the specific reasons for refusal, the adverse impacts include:

- Harm to the **Ancient Woodland and Veteran Trees** and therefore contrary to development plan policies EN1, EN12, EN13 of the WLP, Policies WCS12 and WCS14 of the CSLP and NPPF paragraphs 180(c);

- **Unsustainable location** of the site and the inability of the proposals to offer a real choice of sustainable transport modes and therefore contrary to development plan policies GD2, EN1, EN2, TR3, TR13 of the WLP, Spatial Planning Objective SPO3 SPO7, SPO15 and Policies WCS7 and WCS14 of the CSLP and NPPF paragraphs 104, 105, 110, 112 and 113;

- Adverse impact on the setting on **designated and non designated heritage assets** contrary to policies EN1 and EN27 of the WLP; CSLP SP02; as well as Chapter 12 of the Wealden Design Guide and NPPF paragraphs 197, 199, 200, 201, 202, 203, 204 and 205.

- **Failure to provide a safe access**, contrary to development plan policies TR3 and TR13, Spatial Planning Objective SPO12, Policy WCS14 of the CSLP and NPPF paragraphs. 104, 110 and 112; and

- **Failure to mitigate traffic impact** (contrary to development plan policies TR3 and CS1 of the WLP, Policy WCS7 and WCS14 of the CSLP and NPPF paragraphs 111).

5 THE OVERALL PLANNING BALANCE

5.1 At the heart of the NPPF is the presumption in favour of sustainable development as set out Paragraph 11. In this regard the starting point for the determination is the development plan and thereafter the consideration of material considerations including the tests set out in paragraph 11 of the NPPF.

THE DEVELOPMENT PLAN

5.2 The adopted development plan documents relevant to the appeal site are the “saved policies” of the WLP (1998), The CSLP (2013) and the AHDLP (2016).

5.3 The Council cannot demonstrate a five year supply of deliverable housing land and therefore the restrictive policies Saved Policies GD2 and DC17 that apply to new housing are accepted to be out of date.

5.4 Paragraph 11(d) of the NPPF states that where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, that planning permission should be granted unless either of the tests under Parts (i) or (ii) are triggered. With regard to Part (i) my main Proof explains the Appeal Scheme will lead to the deterioration and/or loss of Ancient Woodland, an irreplaceable habitat as defined under Footnote 7 of the NPPF. Therefore, in accordance with Paragraph 11(d)(i) the Appeal Scheme should be refused. Again, should it be considered that the Appeal Scheme does not merit refusal on this ground, Paragraph 11(d)(ii) is clear that planning permission should not be granted if any adverse impacts of doing so would demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole.

5.5 My main Proof assess the **benefits** and **harm** arising from the Appeal Scheme and for the purposes of this I have weighted the extent of the benefit or harm by using the categories of Very Substantial, Substantial, Moderate, Limited, and Nil.

6 CONCLUSION

6.1 The starting point for determining planning applications is the Development Plan. Section 38(6) of the Town and Country Planning Act (TCPA) 1990 provides that planning applications must be determined in accordance with the Development Plan unless other material considerations indicate otherwise.

6.2 Framework Paragraph 11 c) provides that there is a policy presumption in favour of development that accords with an up-to-date Development Plan. In this respect, the Framework thus makes clear that it does not change the statutory position which makes the development plan the starting point in any determination. This application is clearly not in accordance with the development plan. It breaches a number of important policies: Policy GD2, DC17, EN1, EN2, EN12, EN13, TR3, TR13, CS1 of the WLP and Strategic Planning Objectives SPO3, SPO7, SPO12, SPO13 and SPO15 and Policies WCS6, WCS7, WCS12 and WCS14 of the CSLP.

6.3 It is acknowledged that, by reason of the failure of the LPA to demonstrate a 5-year supply of deliverable housing land, those Local Plan policies relating to housing need and supply are deemed to be out of date (Saved Policies GD2 (Development outside the development boundaries) and DC17 (Housing development)). This brings paragraph 11(d) of the NPPF into play.

6.4 Limb (i) of Paragraph 11 d) refers to policies in the Framework that protect areas or assets as defined in footnote 7. These include the Framework's policies relating irreplaceable habitats. Decision makers must then look at paragraph 180 of the Framework which is clear that :

c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) **should be refused**, unless there are wholly exceptional reasons and a suitable compensation strategy exists (emphasis added).

6.5 Paragraph 180(c) has its own footnote, number 63, which identifies the type of project that might present wholly exceptional reasons. None are in play in this case.

6.6 It is beyond any doubt the scheme when viewed as a whole will lead to loss or deterioration of the Ancient Woodland. As such, the scheme cannot comply with paragraph 180 (c) NPPF it is therefore considered that the proposals should be refused in accordance with NPPF Paragraph 11 part d) limb i) and the tilted balance in favour of sustainable development does not apply (Paragraph 11 d) ii).

6.7 Turning to the tilted balance under paragraph 11(d)(ii) it is clear that the adverse impacts of granting planning permission for the Appeal Scheme would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.

6.8 The delivery of 424 houses, open market, affordable and other forms of housing need (custom and self build) are afforded significant weight when viewed against the five year housing land supply shortfall. I further consider that the provision of 35% affordable housing should attract very significant weight (so long as this is secured through a legal agreement). There are other more limited benefits which I have addressed above.

6.9 The harms which the Appeal Scheme would bring significantly and demonstrably outweigh those benefits whether considered individually or as a whole.

- First, the location of the site is wholly unsustainable, an issue which has attracted objection from the statutory highway authority. This is contrary to local plan policies and also key paragraphs of the NPPF EN1, EN2, TR3 and SPO7 and WCS14 and paragraphs 104, 105 and 8 NPPF. As set out above, this is an issue which in and of itself significantly and demonstrably outweighs the benefits of the proposal.

- Second, the appeal proposal has failed to provide safe access for all users. This clearly breaches local policy TR3 and 110(b) of the NPPF. Again, this is an issue which in and of itself significantly and demonstrably outweighs the benefits of the proposal.

- Third, the appeal proposal will lead to harm to designated and non-designated heritage assets. This breaches local policy EN1 and EN25 and paragraphs 199, 200, 202 and 203 of the NPPF. The harm to the significance of designated heritage assets is an issue which should be given considerable importance and weight. Again, this is an issue which in and of itself significantly and demonstrably outweighs the benefits of the proposal.

- Fourth, the adverse impact of the Appeal Proposal upon ancient woodland which is an irreplaceable habitat breaches local policy EN12, EN13, WCS14 and 180 of the NPPF]. Again, this is an issue which in and of itself significantly and demonstrably outweighs the benefits of the appeal proposal.

6.10 Overall, therefore, this Appeal Scheme leads to a breach of the development plan when considered as a whole and material considerations do not indicate that a decision should be taken other than in accordance with the development plan. As such, it is my opinion that permission should be refused.