

DANESCROFT (FREF V WILLINGDON) LLP

**DEVELOPMENT OF LAND AT HINDSLAND, EASTBOURNE ROAD, WILINGDON
EAST SUSSEX BN20 9NU**

PUBLIC INQUIRY – 5 AND 6 JULY 2022

THE CLOSING SPEECH OF THE APPELLANT

Section 1 - Introduction

1. This short closing statement draws together and summarises the Appellant's case, as it has been presented over the last two days.
2. We will not repeat the content of our opening statement, which should be read together with and as part of our case.
3. Ordinarily, an appellant's closing speech addresses the points made by the main parties opposed to the proposal. But in this case, there are no main parties in opposition. The LPA agrees that permission should be granted. There is no Rule 6 party. There is in truth hardly any objection to this Proposal.
4. Several people have spoken to the inquiry to oppose the Proposal. As is so common, however, the objections come from those who are already fortunate to have homes of their own in the area. Their desire to avoid residential development near to where they live is understandable.
5. But such desires do not amount to an objective planning reason to resist development which is so urgently and demonstrably needed in this district particularly for those who do not currently have adequate housing or any housing.
6. You will recall, Madam, that in his evidence in chief, Mr Neame explained that he had adopted a three-stage approach to his assessment of the Proposal. First, he considered the compliance of the Proposal with the development plan, as required by s. 38(6). Secondly, he looked at other material considerations, including the NPPF and the specific issues raised by objectors. Finally, he turned to the planning balance.
7. We will set out our case in closing in the same three stages.

Section 2 – the development plan

8. There is no dispute about the relevant development plan policies. They are set out in the SoCG at section 5.
9. Mr Neame identified the main policies of relevance to the appeal, and clearly and compellingly showed that the Proposal complies with all of them.
10. CS Policies WCS1, WCS2 and WCS4 are all concerned, in essence, with directing housing to the most sustainable locations in the borough.¹ The result of that assessment process was the allocation of the Site. The Site's status as a highly sustainable location for residential development, and indeed medical centre development, is thus recognised by the Core Strategy itself. The Proposal clearly complies with those policies.
11. Similarly, WCS14, which imports into the development plan the presumption in favour of sustainable development, is agreed to be complied with: hardly a surprise for development on an allocated site.
12. Mr Neame has produced a table which goes through each and every one of the relevant development plan policies, and he has explained clearly why the Proposal complies with them all.²
13. There is no serious dispute about this, and he was not challenged on this evidence by anyone.
14. The only policies where there is any dispute about compliance are saved policies DC17 and GC2 of the old 1998 local plan. DC17 is a protective countryside policy which restricts development outside of settlement boundaries, and GC2 seeks to achieve the same effect by reference to the 1998 plan's defined settlement boundaries.
15. The LPA accepts that those policies should carry very limited weight.³ As Mr Neame explained, however, in truth even very limited weight is too much:
 - 15.1. The policies are massively out of date: they do not remotely reflect the current housing need of Wealden, they are incompatible with the 2013 Core Strategy, and entirely out of kilter with every iteration of the NPPF.

¹ Neame PoE para 4.6 et seq.

² Neame table 2.

³ LPA SoC.

- 15.2. More importantly, the allocation of the Site in 2013 fundamentally changed the position. In planning terms, the Site is no longer in the countryside or beyond settlement boundaries: the allocation brought it into the urban area as a matter of principle. For the purposes of this inquiry, therefore, Policies DC17 and GC2 are inconsistent with CS Policy WCS4: and in such a case it is the later policy which must prevail.⁴
16. In those circumstances Mr Neame was right to give no weight to those policies.
17. Before leaving the development plan, it must be noted that it is in any case out of date. There are two independent routes to that conclusion:
- 17.1. The development plan at least partly predates, and is inconsistent with, the NPPF. It does not reflect the current agreed level of housing need in Wealden. And it is incomplete: contrary to the stated intention of the Core Strategy, no Site Allocations DPD has ever been produced.
- 17.2. It is common ground that Wealden cannot demonstrate a 5 year housing land supply, and it is common ground that none of the footnote 7 policies are engaged. So the development plan is out of date by virtue of NPPF para 11 as well.
18. Thus even if there were a conflict with any part of the development plan (which there is not), the weight which could be attached to that conflict is necessarily reduced by the plan's status.
19. Conversely, and as Mr Neame explained in chief, the allocation policy for the Site has, if anything, acquired even more importance with the passage of time: since the Site was allocated, the highways position in the vicinity has improved and the need for housing has become even more acute.
20. Each and every one of the applicable, non-superseded development plan policies is complied with. And on any conceivable view the Proposal complies with the development plan overall.
21. In those circumstances, the statutory presumption in s. 38(6) is engaged, and the Proposal should be permitted unless material circumstances indicate otherwise.

⁴ S. 38(5) of the PCPA 2004 says this in terms.

Section 3 – other material considerations

22. There are a number of material considerations which are engaged by the Proposal. Taken together, they clearly and convincingly support the development plan position.

The need for housing and affordable housing

23. The NPPF stresses the importance of significantly boosting the delivery of new homes, as a matter of national priority. Where an area cannot demonstrate a 5 year HLS, the NPPF responds by introducing the para 11 tilted balance in favour of the grant of permission for residential developments.
24. It is common ground that the tilted balance is engaged here.
25. Wealden's housing delivery record is very poor. It can show only 3.66 years' supply: that is a shortfall of some 1,964 homes against the requirement (including the 20% buffer). The picture is even bleaker when you consider Wealden's poor delivery record.⁵
26. On any view, this is a dire state of affairs. The homes delivered by the Proposal are thus a very significant benefit to the area which carries very substantial weight.
27. A similar position applies to affordable housing. There is an overwhelming need for affordable units in Wealden. As Mr Neame explained, as at August 2021 there was a need in the borough for 867 affordable dwellings per annum. Last year Wealden delivered only 275 such units: some 31% of the requirement.
28. And the need for affordable homes is not just a district-wide issue: it applies to the specific locality of the Site as well. As Mr Neame confirmed, the LPA's own housing officer has identified an acute need for affordable homes in Willingdon and Jevington. The objectors were wrong, therefore, to say that there is no need for housing in this locality: the very opposite is the case.
29. The delivery of up to 63 affordable units is another benefit which carries very substantial weight.

⁵ Neame PoE table 4.

The locality and the Site are sustainable

30. There can be no doubt about the sustainability of the Site for the proposed development.
31. Mr Neame explained that the Wealden district is heavily constrained.⁶ The highest-order settlements in Wealden are service centres, and both Willingdon and Polegate are within that order. The area is highly sustainable in transport terms, as shown by the report of Mr Marshall⁷ (and as is obvious: the Site would hardly have been allocated otherwise).
32. The Site is also rare and unusual in that it carries no landscape designations or restrictions, and is not agricultural land, as explained in detailed, unchallenged evidence from Mrs Brockhurst. It is no surprise that it is allocated. And of course, it must be recalled that the allocation is not just the result of the LPA's support: it was also promoted by the South Downs NPA and endorsed by an inspector following an exhaustive EiP.
33. In short, few sites in Wealden can boast the sustainability credentials of this one.

The medical centre

34. An important material consideration in this case is the delivery of the new medical centre as part of the Proposal.
35. The need for the medical centre is universally recognised: not a single person spoke against it, which is virtually unheard of in planning.
36. The need for centre is long-standing, and the delivery of such a centre was endorsed by the inspector who considered the 2019 Morningsmill Farm appeal.⁸ The Appellant has a letter of support from a respected developer, Assura, who will deliver the centre.⁹
37. A number of local residents spoke in support of a condition requiring the medical centre to be delivered before the housing on the Site. While we understand their position, it is unsustainable in planning terms and any such condition would be contrary to the NPPF. A condition can only be imposed if, amongst other things, it is necessary to make a proposal acceptable in planning terms. Would the delivery of

⁶ Neame App 8.

⁷ Neame App 5.

⁸ CD15.1 para 43.

⁹ Neame App 10 and 12.

the residential elements of the scheme be acceptable if it occurred separately from the medical centre? Of course it would: the need for housing in the area is incontrovertible and the Site is allocated for that purpose. The condition sought by the local objectors would thus be unnecessary and so cannot be imposed.

38. Even if a condition could be imposed, it would be inappropriate in a case, like this one, where the delivery of the medical centre is dependent on third party (CCG) involvement and consent which is beyond the developer's control.
39. In any case, local residents can take comfort from Sch 12 to the s. 106 agreement, which contains trigger mechanisms to ensure the delivery of the medical centre, and from the fact that the Appellant has done everything which it can have done at this stage to ensure the practical delivery of the medical centre once the various required consents are obtained.¹⁰

Highways

40. A number of objectors have raised concerns about the traffic impacts of the Proposal.
41. The starting point for considering any such objections is to remember that, under the NPPF, there is a high threshold indeed which must be met before a proposal can be refused on highway grounds: it must give rise either to a severe residual cumulative impact on traffic, or an unacceptable impact on highway safety.
42. On the evidence, neither of those tests is close to being satisfied here.
43. The only expert evidence on highways matters before the inquiry is that of Mr Marshall, and he has formed the clear view that the Proposal is acceptable in transport and highway terms.¹¹ In particular, his evidence shows that there is no unacceptable traffic or congestion issue on Eastbourne Road; a view with which the highway authority concurs. He confirmed in response to questions that the junction arrangements are perfectly acceptable of the scale of development proposed here.
44. Mr Marshall's evidence also shows the acceptability of the access arrangements for the Proposal. Again, the highway authority is in agreement on this point.
45. In an extremely late submission, National Highways requested the imposition of a further condition, requiring the delivery of off-site highway works to the Cophall roundabout. No evidence was presented by National Highways in support of their position, and both Mr Marshall and Ms Kamboh, the highways experts actually

¹⁰ Neame in answer to the Inspector's questions.

¹¹ Neame App 5.

before the inquiry, were content that the condition was not required. There is no basis for it to be imposed at all.

Landscape

46. The South Downs NPA has raised concerns (though has not, as Mrs Brockhurst explained, gone as far as to object to the Proposal) about its potential impact on the setting of the National Park, as well as on the dark skies reserve.
47. Those concerns were comprehensively refuted by the unchallenged evidence of Mrs Brockhurst, an expert landscape specialist.
48. She confirmed, having reviewed the LVIA which accompanies the Proposal, that it is fully compliant with GLVIA3 and the relevant professional bodies' guidance on such assessments. Unusually, there are no in-principle landscape or visual objections before the inquiry from anyone: the LPA is content with the Proposal, and no local resident has raised any concerns.
49. As Mrs Brockhurst explained, the context of the area around the Site is one of urban residential development already. The Proposal is wholly consistent with those character aspects. And its scale is such that it will make no discernible difference to the character of the area at the level of the setting of the National Park.
50. Mrs Brockhurst was firm in her conclusion that there would be no impact from the scheme on the setting of the National Park. There is no evidence to the contrary before this inquiry.
51. As for the dark skies reserve, Mrs Brockhurst explained that this has been fully assessed, and found to be acceptable, in the LVIA.¹² Indeed, Mrs Brockhurst pointed out that the NPA had considered the impact of the 2019 Morningsmill Farm proposal to be acceptable in this regard: if that scheme were acceptable, then by definition the current proposal is as well.
52. Mrs Brockhurst carefully considered the layout of, and zones within, the dark skies reserve. She showed that the Proposal, if properly designed at the RM stage, will avoid impacts on the reserve even at the periphery, and will have absolutely no effect on the core zone or its buffer.¹³

¹² See also Brockhurst PoE Vol 2 App LP1.

¹³ Brockhurst fig 3.4.

Infrastructure

53. A number of objectors have raised concerns about the level of infrastructure to be delivered by the Proposal.
54. In addition to the medical centre, the proposal will in fact deliver a wide range of new community benefits, as set out by Mr Neame and listed in our opening speech.¹⁴ A range of other community infrastructure benefits will be delivered via the scheme's CIL contributions. This is the standard, well-established way of delivering such infrastructure. The LPA has no concerns at all in this regard, and there is no evidence (as opposed to speculation) before the inquiry that there will be any unmitigated impacts.
55. Much was made by objectors of the lack of sports facilities in the area. The position is in fact much better than they suggested, as Nortoft explained in its report.¹⁵
56. It is notable that Sport England is content with the Proposal, and has not suggested that any additional sports pitches need to be provided. The Proposal's sports contribution has been calculated on a bespoke basis, in line with Sport England's calculator, and there are a range of identified opportunities for the money to be spent locally.¹⁶
57. It is also important to recall, as Mrs Brockhurst pointed out, that the residents of this area have, on their doorsteps, an immense and enviable resource for natural recreation, in the form of the National Park itself. Very few people in this country are lucky enough to live in and have such easy access to a space of this nature. The development of what is currently a fairly small area of private land, to which there is no public access at all, must be understood in that context.
58. Finally, it must be said that, even if residents' concerns about a lack of existing facilities are accepted by the inquiry, it is not the Appellant's role to address those concerns. The Proposal is acceptable if it mitigates the impact which it itself will generate, and that is clearly the case here, as Nortoft has shown. While we understand why local residents may wish for more provision to be made in the area, this is not an EiP and it is not the responsibility of the developer to rectify any existing deficiencies which may or may not exist.

¹⁴ Neame PoE para 4.64.

¹⁵ Neame App 6.

¹⁶ CD11.1.

Other matters

59. In his evidence, and the evidence of the other experts that is appended to Mr Neame's proof, the acceptability of the Proposal is demonstrated in respect of a number of other matters, including:

59.1. Ecology: Mr Newman's evidence,¹⁷ which is unchallenged, shows both the suitability of the Proposal in general ecological terms, as well as the Proposal's ability to deliver in excess of 10% BNG.

59.2. The acceptability of the Proposal in terms of noise and air quality.¹⁸

59.3. The design compliance of the Proposal.¹⁹

60. Since there is no challenge to any of the evidence on these points, we will not dwell on them further.

Section 4 – the planning balance

61. Finally, we come to the planning balance.

62. Mr Neame has identified a wide range of substantial, and some very substantial, planning benefits of the Proposal. These are fully set out in his proof of evidence.²⁰ No challenge has been made either to his identification of the proposal's benefits, or to his weighting of them.

63. It is worth recalling the most important of these myriad benefits:

63.1. The early provision of up to 180 much-needed new homes;

63.2. The provision of up to 63 onsite affordable dwellings;

63.3. The provision of nine serviced plots for custom and self-build homes;

63.4. Development in a sustainable location on an allocated site, thus realising the local vision contained in the statutory development plan;

¹⁷ Neame App 7.

¹⁸ Neame App 13.

¹⁹ Neame App 4.

²⁰ Neame PoE table 5.

- 63.5. The provision of an appropriate dwelling mix, including the tenure split for the affordable units;
- 63.6. The delivery of a new medical centre, much needed by the local community, and in a location supported by the LPA, local GPs, and by the relevant Clinical Commissioning Group;
- 63.7. The provision of an extension and enhancement to the highway authority's committed highway scheme in the area, the Hailsham, Polegate and Eastbourne Movement and Access Corridor ("HPEMAC");
- 63.8. The delivery of a highly sustainable construction. Of particular note is the aspiration for delivering a zero carbon medical centre – this is a substantial environmental benefit in a time of climate crisis; and
- 63.9. The delivery of over 10% biodiversity net gain.
64. Cumulatively as Mr Neame stated these benefits demand significant weight when added together for the purposes of the planning balance.
65. On the other hand, there are virtually no identified harms to set against those benefits. It is no wonder that the LPA chose to support the Proposal.
66. As Mr Neame shows, and as is obvious, frankly, the benefits of the Proposal dramatically outweigh its impacts, even on a flat balance.
67. But the balance is not flat. It is tilted in favour of the Proposal, both because the Proposal complies with the development plan and because NPPF para 11(d)(ii) is agreed to be engaged.
68. In short, the case for the grant of permission for this Proposal is overwhelming.
69. If a Proposal of this kind, on an allocated site and in a context of an acknowledged housing shortfall of this magnitude, is refused permission, then it is hard to see how any housing at all can come forward for Wealden, which so desperately needs it.
70. This is a site which has been considered for housing in the development plan for 9 years, that principle has been reconsidered by the LPA in 2019 and 2022 and re-affirmed. The simple point is that whenever this site and this location is considered for housing in the development plan or by planning applications the planning judgment is reached by the LPA officers and members to be appropriate for housing.

71. That is a judgment repeatedly reached and one we wholeheartedly endorse.
72. For all of those reasons, the Appellant invites you to do what the LPA now agrees it should have done already, and grant permission for this excellent Proposal.

6 JULY 2022

**SASHA WHITE Q.C. and LUKE WILCOX
LANDMARK CHAMBERS**
