Southern Water Local Authority Stakeholder Group

13:00 on Monday 12 June 2023
via MS Teams

Attendees (in Council alphabetical order)

Name	Council
Cllr Steve Neocleous	Adur & Worthing Councils
Karl Roberts	Arun District Council
Anne Shattock	Basingstoke and Deane
Andrea Hall	Brighton & Hove City Council
Liz Hobden	Brighton & Hove City Council
Fiola Stevens	Chichester District Council
Cllr Bill Brisbane	Chichester District Council
Cllr Jonathan Brown	Chichester District Council
Simon Rowberry	East Hampshire District Council
Leigh Palmer	Eastbourne & Lewes Councils
Cllr Jim Martin	Folkestone & Hythe District Council
Cllr Stephen Scoffham	Folkestone & Hythe District Council
Cllr Steve Hammond	Gosport Borough Council
Owen Devine	Gosport Borough Council
Eleanor Evans	Hastings Borough Council
David Hayward	Havant Borough Council
Mike Allgrove	Havant Borough Council
Cllr John Milne	Horsham District Council
Emma Parkes	Horsham District Council
Tom Gilbert	Maidstone Borough Council
Dave Harris	Medway Council
Tim Guymer	New Forest District Council
Simon Kennedy	Partnership for South Hampshire
Jeff Pyrah	Rother District Council
Emma Henshall	Sevenoaks District Council
Carlyn Kan	Sevenoaks District Council
Cllr Chris Farr	Tandridge District Council
Ria Hotchin	Tonbridge & Malling Borough Council
Cllr Rachel Millward	Wealden District Council
Chris Bending	Wealden District Council
Nichola Watters	Wealden District Council
Stacey Robins	Wealden District Council

Apologies

James Appleton	Adur & Worthing Councils
Cllr Vicki Wells	Adur & Worthing Councils
Catherine Hutchins	Adur & Worthing Councils
Andy Hill	Brighton & Hove City Council
Alex Voce	Brighton & Hove City Council
Mita Patel	Brighton & Hove City Council
Andrew Frost	Chichester District Council
Mike Culver	Eastleigh Borough Council
Cllr John Cannan	Hastings Borough Council
Cllr Judy Rogers	Hastings Borough Council
Cameron Morley	Hastings Borough Council
Cllr Lynn Lambert	Horsham District Council
Cllr Paul Cooper	Maidstone Borough Council
Gabby Bussley	Medway Council - attended
Cllr Susan Prochak	Rother District Council
Ben Hook	Rother District Council
Cllr Catherine Sayer	Tandridge District Council
Robert Cotter	Tandridge District Council
Cllr Dave Davis	Tonbridge & Malling Borough Council
Cllr Elizabeth Lloyd	Tonbridge & Malling Borough Council
Gudrun Andrews	Tonbridge & Malling Borough Council

Welcome & Introductions (Cllr Rachel Millward – Wealden District Council Deputy Leader)

RM welcomed everyone to the meeting and introduced herself as Wealden's new Deputy Leader. She explained that Cllr Ian Tysh is Wealden's new Portfolio Holder for Planning & Environmental Health but given her personal interest in dealing with this issue, she has put herself forward for this Group. She asked if everyone was happy with her Chairing this meeting – all were in favour.

CB went on to explain the purpose of this Group, referring to the minutes of the last 2 meetings which everyone should have received (from this wider Stakeholder Group and the smaller Working Group). He emphasised that the focus of this Group is to tackle the issues around foul water, pollution of waterways and bathing waters, arising as a direct result of the actions of Southern Water. Whilst there have also been issues with South East Water recently, these are not the focus of this particular Group.

Background (Chris Bending – Wealden District Council)

CB proceeded to provide a bit of background to those new to this Group.

Wealden Council agreed to take over the administration of this Group, to work with other LPAs to lobby Southern Water. Whilst it is not our responsibility to do this in a legislative sense, we are all getting different answers to different areas around the region. The intention of this Group is to shout with a connected voice on the impact

this is having in our regions/communities – not only aimed towards Southern Water, but also other agencies such as OFWAT, EA, DLUHC etc.

Priorities for group

- **Introduction (Chris Bending – Wealden District Council)**

It was agreed at the first wider Stakeholder Group in January 2023, that a small Working Group be set up to consider the priorities for this Group and how best to achieve those in a meaningful way. We discussed what we should be pushing for on our first step on this journey and after careful consideration of the options, we came up with the following 5 priorities:-

1. **Improved Planning Application Consultation Responses**
    a. to work together with Southern Water to improve the quality of Southern Water planning consultation responses
    b. to improve transparency of Southern Water thinking for the public and clearly set out a tailored response to applications relative to their consenting stage – eg Outline, Reserved Matters, Condition Discharge and encourage/help Southern Water in the quality of their responses
    c. to make a clear link to advice provided to Local Planning Authorities (LPAs) through local plan production. To encourage/help Southern Water in the quality of their responses so there is a clear understanding what part of the planning process they are engaging in and take responsibility for and that their comments are consistent
    d. to collectively lobby for statutory consultee status for Southern Water and the imposition of binding standards on the quality of responses

2. **Standardised data sharing between Southern Water and LPAs**
    a. to work with Southern Water to agree a standard list of data that should be openly shared with LPAs with set timescales, without the need for EIR/FOI requests (at expense to all parties).

3. **Complete CSO data publication**
    a. to work with Southern Water (and EA/OFWAT/DLUHC as necessary) to ensure that Southern Water publish, live, all data from all CSOs – not just those that discharge into bathing waters (see example of Thames Water mapping). Southern Water tell us they use 22,000 data monitors across the region but are slow at sharing this information.

4. **Full transparency around all planned upgrade works**
    a. to require Southern Water to set out publicly their planned upgrade works to serve new development. Getting information is a struggle (we need a timeline detailing how the works will take, what the temporary solutions are, etc) and put it together with housing delivery to check the two are aligned.
    b. To work with Southern Water to test the data under 4.a. to compare upgrade works housing delivery projections to identify problems early. We have recently discovered that their data is incorrect and we want to try and collectively help them with that. As LPAs we would need to give a commitment to review data on a regular basis and share this with them. This is an important step to help move the conversation forward. We need this data to show to the Regulators to hold them to account.

5. **To work with the EA, OFWAT, DLUHC and DEFRA to deliver a more joined up and robust enforcement regime –** we require a more political stance by Members aligned to this Group, to try and encourage a more robust enforcement regime. The multi-agency current theme of "trust us to deliver" is clearly not working. If we are more specific with our requirements this will enable better enforcement of Southern Water by those bodies, which is essential.

CB added that these 5 priorities identified by the Working Group are still very much a draft and work in progress, for discussion/debate within this wider Group.

Open discussion (All)

Cllr Jonathan Brown opened the debate around the enforcement issue. What kind of enforcement has the Group considered? Southern Water has incurred some large fines in recent years, however when broken down into tiny amounts per customer, it was not effective and does not help them or improve the infrastructure. What should really be the nature of the enforcement action (as per priority number 5)? It would be a good, separate conversation to have. Whilst fining/compensating customers is important publicly, it is not actually tackling the problem. We should be trying to seek action.

Owen Devine added that in the Solent, they were lobbying for the fines to come back into a pot to be spent on the natural environment. However their lobbying efforts were unfortunately not upheld. It would be good for the fines to be ploughed back into the area where the harm was caused.

Mike Allgrove raised a point on behalf of his local Member around enforcement. The perception from residents is that the EA are not doing their job. This Group should be used to push the EA on issues related to CSOs. Ultimately we may need to lobby DEFRA to fund the EA given the EA's current resource issues. It would therefore be helpful if we asked the EA to make a presentation to this Group of what their role is, so we could then use that opportunity to discuss with them how we can help them collectively.

Members of the Group agreed this would be a good approach – not only could we discuss how we can help them, but we can also inform them of what we are trying to do as part of this Group.

In terms of other ideas, it was suggested it would be helpful if the LPAs within this Group shared successful planning decisions that have been used to put real influence over Southern Water in development (including reference numbers and the relevance of the decision). These could be conditions that have been upheld or appealed that have significantly affected how a development has progressed (although it is worth noting that any applications that have not gone to appeal, does not indicate it was not successful). This would be particularly beneficial to others in terms of sharing best practice.

CB agreed to share some relevant Wealden cases within the minutes of this meeting. It was also agreed we would add information sharing as a standing item to future meetings.

Additional ideas included:-

A jointly agreed consultation response template provided for Southern Water to avoid confusing consultation responses we currently get.

That consultation responses should have contact details of the Southern Water officer (and not a generic email address) so that comments that leave the reader trying to guess what was meant can be discussed with Southern Water.

A promise from Southern Water that they are more accessible to Council Officers.

It was suggested that it is really important we are united as LPAs such that where they give us information about upgrades etc, that we structure our planning permissions the same. By structuring our consents, it makes it in the developer's interest to secure any works needed to be done and collectively we can move on to Southern Water with the developers alongside us.

Conclusion to this open discussion

By a show of hands, the Group was in agreement with the suggested 5 priorities and the approaches outlined above.

Agreement on priorities (All)

CB agreed to reshare the information of the Group's focus from the last minutes.

CB also agreed to work on the priority list, taking into account the suggestions made today. He thanked those contributing towards getting these priorities into shape.

Next Steps- including working group membership (Chris Bending – Wealden District Council)

In short, CB needs more people involved in the Working Group to get fair representation across the entire region and a fair reflection of what the LPAs want. There is a diverse range of LPAs across the Southern Water catchment area and it would be good to get 6 to 8 people representing the 20+ Councils across the region.

CB highlighted this would not involve a huge amount of time expended. The last Working Group met for just over an hour. All that would be expected is a few hours' work per quarter on this. CB implored the Group to speak to either KR or himself should they have any questions.

Date of Next meeting - TBC

The aim is to hold these meetings quarterly – CB/KE will be in touch in the next few weeks with a couple of suggested dates. CB will also invite the EA to the next meeting.

The Planning Inspectorate

Appeal Decision

Inquiry opened on 14 June 2022 and closed on 11 July 2022
Site visits made on 13 and 17 June 2022

by Martin Whitehead LLB BSc(Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/L3815/W/22/3291160
Land south of Clappers Lane, Earnley, West Sussex, PO20 7JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Seaward Properties Ltd and David Rusbridge against the decision of Chichester District Council.
- The application Ref E/20/03125/OUT, dated 19 November 2020, was refused by notice dated 23 July 2021.
- The development proposed is described on the application as: '*creation of approximately 100 dwellings, 30% affordable housing, public open space, landscaping and access*.'

Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 100 dwellings with associated access, landscaping and public open space on land south of Clappers Lane, Earnley, West Sussex, PO20 7JJ in accordance with the terms of the application, Ref E/20/03125/OUT, subject to the conditions in the attached annex.

Preliminary and Procedural Matters

2. The application was submitted in outline form with all matters of detail, except access, reserved for later consideration. The description given on the Decision Notice is: '*Outline Application for the erection of up to 100 dwellings with associated access, landscaping and public open space. All matters reserved other than access*.' This has been agreed as the description for the development proposed, as confirmed in the Statement of Common Ground. I have therefore based my decision on this description of the development proposed. The appellant has provided illustrative plans of the proposed layout and landscaping, which I have used to give an indication of the proposal in my determination of this appeal.

3. The Inquiry opened on 14 June and sat for 4 days at Bracklesham Barn, with an accompanied site visit on 17 June during an adjournment. The Inquiry was resumed virtually on 28 June when it sat for half a day and resumed virtually on 11 July when it closed.

Main Issues

4. Following the refusal of planning permission, the Council has provided evidence to demonstrate a 5 year housing land supply (HLS), which the appellant has contested. At the Inquiry, the Council accepted that the section 106

Agreement includes the necessary planning obligations to overcome its fourth reason for refusal on the grounds of infrastructure and confirmed that its first reason for refusal regarding the integrity of protected sites has been addressed by additional information provided following refusal. Therefore, the main issues are the effect of the proposal on the character and appearance of the area, including the settlement gap between Bracklesham and Earnley; its effect on pollution in the area, with particular regard to flooding due to foul sewage; and whether the Council can demonstrate a 5 year HLS. In addition, as the 'Competent Authority', I have undertaken an 'Appropriate Assessment' on the integrity of protected wildlife sites, in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

Reasons

5. Chichester Local Plan 2014-2029 Key Policies (CLP) was adopted by the Council on 14 July 2015 and now forms part of the statutory development plan for the parts of the District outside of the South Downs National Park (SDNP). The appeal proposal would be contrary to policies 2 and 45 in that it would be outside the nearest settlement boundary. However, the Council has accepted that CLP Policy 4, which sets the overall housing requirement, is out of date. As the housing requirement has not been reviewed within the last 5 years, as required by the CLP, the Council has also accepted that policies 2 and 45 cannot be considered to be up-to-date, especially as Policy 2 is derived from settlement boundaries which are based on an out-of-date housing requirement. Therefore, I have given CLP policies 2, 4 and 45 limited weight.

6. The other most important policies in my determination of this appeal are CLP policies 33 and 48. CLP Policy 33 requires new development to be in keeping with the character of the surrounding area and its setting in the landscape. CLP Policy 48 seeks to ensure that new development does not have an adverse impact on the 'tranquil and rural character of the area' in criterion 1, and requires that the individual identity of settlements, actual or perceived, is maintained and the integrity of predominantly open and undeveloped land between settlements is not undermined, in criterion 5. I am satisfied that these policies are consistent with policies in the Framework and therefore I have given them significant weight.

7. The Council has brought forward an Interim Position Statement (IPS) for Housing Development, which it claims sets out proactive measures to build the supply of housing, and to encourage appropriate housing schemes, in response to it being unable to demonstrate a 5 year HLS. I have been informed that the draft IPS has been in use in assessing relevant planning applications since 3 June 2020 and has been subject to public consultation but not independent examination. The final IPS was approved on 3 November 2020 and is now in effect. The appellant has referred to a legal opinion that was used at the recent Earnley Concourse appeal[1] to demonstrate that the IPS carries very limited weight. In the absence of any legal opinion to show the contrary, I have given it limited weight in terms of any new policy that it introduces, as relevant regulations and procedures relating to new policy formulation were not followed.

[1] Appeal Ref APP/L3815/W/20/3255383, Earnley Concourse, dated 30 May 2022

Character and Appearance

8. The appeal site is mainly in use as an arable field which at the time of my site visit had a rape seed crop. It is not in an Area of Outstanding Natural Beauty (AONB) and is not subject to any particular landscape designation. Adjacent to the western edge of the site is a substantial hedgeline that separates it from the recent residential development at 'The Beeches', which the Council has acknowledged forms a new settlement boundary to Bracklesham. Clappers Lane runs to the north of the site and, near to the site, gives the appearance of a rural lane with no footways or street lighting along it.

9. To the east of the site is Earnley Rife and the relatively dense vegetation along that feature which separates the site from the Grade 2 listed Earnley Grange and the small settlement of Earnley to the northeast. There are existing public rights of way (PROWs) along the east site boundary and part-way along the south boundary, referred to as footpaths 2.2 and 2.1. These are screened from the site by dense vegetation that includes hedgerows and trees.

10. The West Sussex Landscape Character Assessment (2003) identifies the appeal site as being within 'Character Area' SC2: Manhood Peninsula. The appeal site meets some of the characteristics given in the description for this 'Character Area', in that it consists of a mainly flat open arable field with very few trees or hedgerow cover along its boundary with Clappers Lane. It lies between the traditional small settlement of Earnley and the larger suburban settlement of Bracklesham. There appears to me to be an area of unimproved vegetation along Earnley Rife to the east, together with land that is used for grazing, some of which forms a floodplain.

11. The Landscape Capacity Study Extension (2011) identifies the appeal site as lying to the far east of Sub-area 144: Bracklesham Coastal Plain, much of which has subsequently been developed, including Pebble Reach and The Beeches to the west of the site. A Landscape Capacity Study (March 2019) which has been prepared to inform the evidence base for the emerging Chichester Local Plan Review, identifies the appeal site as the last remaining piece of Sub-area 144. It concludes that Sub-area 144 continues to have a 'High' capacity due to its close relationship with and influence of East Wittering and Bracklesham and recognises the development at The Beeches. The Study accepts change within, and adjacent to, Earnley Conservation Area (CA) '*subject to the protection of existing heritage assets and the settlement pattern, along with avoiding the full coalescence of Bracklesham and Earnley'*.

12. The Council's Housing and Economic Land Availability Assessment (HELAA) 2021 supports the conclusions of the Landscape Capacity Study, listing the appeal site as Site HE002. Under a heading of achievability, it states that '*there are no known constraints that would make development unachievable in principle, however the current and future flood risk significantly constrains the developable area.*' The appeal site is annotated as 'Developable' on the assessments associated plan for East Wittering and Bracklesham.

Settlement Gap

13. One of the main reasons that the Council has given for refusal is that the appeal site comprises the last remaining undeveloped field / greenspace between the current eastern boundary of the settlement of Bracklesham and the western edge of the settlement of Earnley. The Council considers that it is

vital to retain the undeveloped nature of the site in order to maintain the separate identities of Bracklesham and Earnley, which have contrasting characters. In this regard, I accept that the proposal would reduce the gap between the historic development in Earnley and the more modern suburban development in Bracklesham and that there are no natural boundaries within the site to act as a development boundary.

14. The Landscape Gap Assessment for Chichester Local Plan Review 2035 explores areas which may be appropriate for local gaps in principle, as part of the evidence base for the emerging Chichester Local Plan Review. No evidence has been provided to show that the appeal site is currently, or proposed to be, designated as a local gap.

15. The entry or exit point for Bracklesham is at the northwest corner of the appeal site, and the point of entering / leaving Earnley is at the white timber fencing which has a sign on it marked 'Earnley' to the northeast of the site. I acknowledge that these points provide distinct 'gateways' along Clappers Lane to these individual settlements and that the appeal site plays an important role in providing a separation between them. However, the settlements of Bracklesham and Earnley are linked to the north of Clappers Lane by residential dwellings fronting the north of the lane near to Earnley, and Holdens Caravan Park that is set behind a small area of grassland. Also, Earnley Rife separates the appeal site from the settlement of Earnley. There is currently a separation distance of about 325m between the centre of the western boundary of the site and Earnley CA.

16. The appeal proposal on the illustrative plans shows built development confined to a semi-circular shaped area consisting of about a third of the site adjacent to the western boundary with The Beeches development. The remaining area of the site would be managed and maintained as amenity parkland. The appellant has measured a separation distance of some 120m between the edge of the proposed built development and the edge of Earnley.

17. The proposal would replace the development boundary up to the mature hedgeline to the eastern side of The Beeches with a new development boundary of 2 storey housing fronting out onto parkland. Whilst this would result in the loss of the openness of the current arable field between the two settlements, it would add additional hedgerows and tree planting along Clappers Lane and would retain a noticeable area of land between Bracklesham and Earnley that would not have built development on it. There is nothing to prevent the Earnley 'gateway' being retained as it currently is and a new gateway into Bracklesham being provided to the east of the proposed access into the site but still retaining a significant separation distance between gateways, with the set back of the houses from the lane behind a large area of planting adding to the existing planting along the Rife.

18. For the above reasons, I find that the proposal would continue to separate the settlements of Bracklesham and Earnley by an area of undeveloped land. Whilst there would be an increased level of public access to the parkland from that which is available to the arable field and this would alter the nature of the area, I cannot see any reason why it would not be able to make a contribution to the visual and perceived separation between built development in the two settlements.

19. I am therefore satisfied that the perception of a gap between settlements would remain when travelling along Clappers Lane. Views from the appeal site to the buildings at Earnley are limited, and would continue to be limited, due to the intervening vegetation. The eastern edge of Bracklesham would be brought forward in the view, heading west from Earnley, filtered by the proposed planting, with parkland in the foreground. After about 15 years, with the establishment of the hedgerow and tree planting along Clappers Lane, the perception of a separation between settlements would be increased.

Landscape Effect

20. I accept that the stretch of Clappers Lane forming the extent of the northern boundary of the site is characterised by its rural appearance, because of the appeal site being in agricultural use, the relatively narrow lane and there being no footways or street lighting. However, it is near to an area where there are footways along it to the west adjacent to The Beeches and I understand that a footway will be provided on the north side under the planning permission for the Earnley Concourse development. Furthermore, there are dwellings abutting the lane to the northeast near Earnley and a caravan park is visible from it to the north.

21. The appeal proposal would add a significant amount of built development to the western part of the site and would provide an access onto Clappers Lane which would have a footway link on the southern side of the lane to the west. Whilst the illustrative plan shows that the built development would be set back from the highway behind new hedgerows and tree planting, it would stand out in views looking south, especially along the access road. As such, the proposal would have a harmful impact on the rural character and appearance of Clappers Lane, particularly on the west side of the appeal site.

22. At the Inquiry, a local resident presented night time photographs of the area indicating that in views along Clappers Lane near to the appeal site, there is very little light pollution and that any light spillage from the surrounding development in Bracklesham is not apparent. I accept that the proposal would add to the level of light pollution in an area that currently has very little. However, the proposal would not introduce any streetlights along Clappers Lane, the new external lighting would be controlled by planning condition, and the built development would be set back from most of the road behind an area of planting. I am satisfied that these factors would ensure that there would continue to be very little light pollution along most of Clappers Lane with the development occupied, especially towards the east.

23. Earnley Parish Council has expressed concern that reflective bollards would be required along the side of Clappers Lane where there is a drainage ditch, similar to those installed along Clappers Lane near to The Beeches following a Stage 3 Road Safety Audit. The appeal proposal does not include any such bollards and no written evidence has been submitted by the local highway authority to indicate that any bollards would be required. Although the Parish Council has suggested that it could require about 60 bollards to be installed which I accept would detract from the rural character of the lane, I do not give this any great weight due to the limited supporting evidence to show that the circumstances of the appeal proposal would be the same as those at The Beeches that resulted in the need for these reflective bollards.

24. Moving east along Clappers Lane and nearer to Earnley, the built development would be located an increasing distance from the highway behind an area of parkland and would be at least 100m away from the eastern boundary of the site. The residential development would be at a density of about 25 dwellings per hectare but would only cover about a third of the appeal site, the remainder being used for parkland and planting. It would appear as a new urban fringe adjacent to the residential development at The Beeches. I consider that there would be sufficient land left without built development on it, and the proposed buildings would be far enough away from the built development in Earnley and Clappers Lane to the east, to ensure that a sizeable area of land between Earnley and Bracklesham would retain a rural character and appearance, especially after 15 years when the new planting would have matured.

25. The Council has agreed that the appeal site is not a 'valued landscape'. The appellant's Landscape and Visual Impact Assessment (LVIA) has assessed the landscape impacts of the appeal proposal. It does not identify any significant effects on the Manhood Peninsula Landscape Character Area. It concludes that, as with any greenfield site, there would be an adverse effect on landscape character, which it does not identify as significant but as a minor adverse effect due to the contribution of the agricultural field to the field pattern. It also suggests that there would be some beneficial outcomes. Whilst I accept that some beneficial effects on the landscape have been identified, such as the introduction of new hedgerow and tree planting, overall, I consider that the proposal would have a medium adverse effect on landscape character due to the extent of the built development that would harm the rural character and appearance of the area.

Visual Effect

26. The LVIA has identified important viewpoints when carrying out a visual impact assessment of the proposed development. The appellant has included Verified Visual Montages (VVMs) at other viewpoints that it considers give a realistic view of the proposal. Whilst the VVMs are not necessarily taken at the same points as the LVIA viewpoints and not at some of the views from where the development would have the greatest visual impact, I am satisfied that they do provide a reasonable indication of how the development would appear. I accept that the panoramic views could provide a distorted view, but I have also been provided with other views at similar locations and have observed these views on the site. The appellant has confirmed at the Inquiry that the montages take account of the level differences that have been identified in the Flood Risk Assessment (FRA).

27. The level of visual effect would be particularly evident to receptors walking, driving or riding along Clappers Lane. At my site visit I observed the appeal site from the identified viewpoints and looking at the VVMs. From LVIA Viewpoint 03, which is near to the house fronting Clappers Lane to the northwest of the site, the proposed buildings would clearly be visible, but this would be against the existing close views of rooftops in The Beeches.

28. VVM2, which is a panoramic view from a layby along Clappers Lane, provides a view along the access to the development. This view would be suburban, with tree and hedgerow planting either side of the access road. The proposal would dramatically change the appearance of that part of the site, which is to be

expected given that it is at the entrance to the development. However, there are currently distant views of the rooftops at The Beeches to the west and houses to the north at this location.

29. VVM3, which is a panoramic view from Clappers Lane about half way between Bracklesham and Earnley, shows that the proposed buildings would be less apparent than in VVM2 as they would be set back further from the highway behind hedgerows and parkland. Whilst the buildings would be closer than those that are visible at The Beeches, there would be a noticeable gap of undeveloped land between these buildings and Earnley.

30. Views from the edge of Earnley at its 'Gateway' include housing to the north of Clappers Lane and the rooftops of housing in Bracklesham above the vegetation on the horizon to the south and west. VVM4, which is at this location, shows the proposed buildings set forward from the existing built development but the existing planting and the proposed new planting would soften their appearance. I am satisfied that this would ensure that the verdant views at this location would not be significantly harmed by the proposal.

31. Views from within Earnley CA, which include VVM5, would not be significantly affected as the proposed development on the appeal site would mainly be hidden at this location. The views of the trees and vegetation as well as the surrounding buildings in the CA would be retained. There would be distant views of the proposed development from LVIA Viewpoint 7, near to Medmerry Royal Society for the Protection of Birds (RSPB) car park, but this would be set against what I observed to be views of the buildings at the edge of Bracklesham and on the north side of Clappers Lane.

32. The development would be mainly screened from views at locations on footpaths 2-1 and 2-2 where the boundary vegetation prevents any clear views into the appeal site. The proposal would enable gaps in the vegetation to be filled and the buildings would be far enough away to not have any significant visual effect on those using these PROWs.

33. Based on the above observations at my site visit and the montages of the proposed development, I find that most of the views from public vantage points around the site would not be significantly affected by the proposal. Any harmful effect to the views would be very local to the development and mainly confined to those areas nearest to Bracklesham and at the proposed access from Clappers Lane.

Effect on Earnley CA

34. The appeal site is not in a CA, the nearest CA being in Earnley. Earnley Parish Council has argued that the site's agricultural use contributes to the setting of Earnley CA. Although Earnley has historical connections with agriculture, including some of the buildings within the CA, this is not noted in the Character Appraisal and Management Proposals (CAMP) for Earnley CA as contributing to its significance. The CAMP refer to the Earnley Townscape Analysis Map which identifies an adopted view from within the CA from where I viewed the appeal site at my visit. I observed that this view is interrupted by mature hedgerows and immature tree growth along the northern field boundary which would significantly restrict views of the new development.

35. I have noted the concerns of Earnley Parish Council and local residents that the proposal would result in an increase in traffic travelling through the CA, which would harm its 'tranquil' nature. The traffic distribution used within the appellant's Transport Assessment (TA) has been agreed with West Sussex County Council (WSCC), as the local highway authority, and is consistent with the distribution used for other local development sites. Whilst the route via Earnley may be shorter in length, Googlemaps directs traffic via Bracklesham Lane, indicating that it has determined that that route is more attractive. Having driven along the alternative routes, I found the route via Earnley to be on narrower and more windy roads than the route directly onto Bracklesham Lane via Clappers Lane.

36. The results of the turning count survey relied upon by the appellant indicate that the route via Bookers Lane is not currently typically used by traffic travelling between Bracklesham and Chichester during peak periods when traffic on Bracklesham Lane is at its highest. This suggests that Bookers Lane is not used as a 'rat run'. Furthermore, the appellant's modelling of the Clappers Lane / Bracklesham Lane junction indicates that it operates well within capacity with minimal queuing and delay. Therefore, I am satisfied that most of the residents of the proposed development travelling by car would use the Clappers Lane junction with Bracklesham Lane, rather than Bookers Lane and Earnley CA.

37. Earnley Parish Council has referred to evidence provided by HCC Environmental Services, as part of their objection to the expansion of the Medmerry Park Holiday Village which refers to the impact of increased traffic on the CA. At my site visit, which was carried out at about 1700 hours, I noticed some traffic travelling through Earnley CA. Although the appellant's TA indicates that there would be very little traffic increase in Earnley as a result of the development, even using the higher traffic figures put forward by the Parish Council's expert, the proposal would result in about one additional vehicle every 2 minutes at peak times. As such, I find that there would be an insufficient increase in traffic through Earnley CA to result in any material harm to its significance as a heritage asset.

38. I have considered all the evidence presented by Earnley Parish Council regarding the effect of the proposal on the CA. However, it is not supported by any heritage expert evidence and the Council has not refused the proposal on these grounds. The appellant's heritage expert has submitted written evidence that largely supports the views of the Council's Conservation and Design Officer (CDO).

39. The CDO has suggested that a slight increase in traffic volume would not have an appreciable effect on the character and appearance of the CA; and that less than substantial harm would not be caused to a heritage asset by virtue of the distance the development would be from the CA, the preservation of a significant band of open space, the lack of open views on that side of the CA and the additional mitigation that would easily be achievable. I agree with the CDO and am satisfied that the proposal would preserve the character and appearance of Earnley CA and would not cause any material harm to its significance, in accordance with the Framework and CLP Policy 47.

Conclusions

40. For the reasons given above, I find that the proposal would preserve the character and appearance of Earnley CA and it would not result in the coalescence of Earnley with Bracklesham as it would retain an actual and perceived gap between development in these settlements. However, the proposal would have an adverse effect on the character and appearance of the area due to the extent of built development that would be visible from Clappers Lane, especially at the proposed access. It would therefore fail to accord with CLP policies 33 and 48, due to the harm that it would cause to the rural character of the area.

Pollution and Foul Drainage

41. The proposed area of built development is shown illustratively as being confined to the west and northwest parts of the site in Flood Zone 1. Parts of the site to the south and east are within flood zones 2 and 3 which are not shown to be subject to built development. A FRA has been carried out which, subject to measures being taken, has satisfied the Environment Agency (EA) that there would not be any unacceptable risk from flooding.

42. The Council's reason for refusal is regarding flooding due to problems with foul sewage drainage. This issue has been supported by letters of objection that have identified recent problems, especially due to the capacity of the pumping stations. The appeal proposal would drain to Sidlesham Wastewater Treatment Works (WwTW), and the Council confirmed at the Inquiry that it has no issue with the capacity of this WwTW.

43. The Council identified its issues as relating to the right for the proposed development to connect into the public sewer network under section 106 of the Water Industry Act, and the effect that this would have on the need for improvements to pumping stations and pipework to provide the required capacity. It has suggested that the network needs to be improved because of hydraulic overload and development growth on the Peninsula and has identified developments totalling 160 homes south of Clappers Lane in Bracklesham that were connected to the network without any improvement to it.

44. Southern Water (SW), as the statutory undertaker, has an obligation to provide the necessary network reinforcements and upgrades downstream of the practical point of connection to the foul sewer network imposed under section 94 of the Water Industry Act 1991. Should SW fail to meet its obligations under the Act, the industry regulator, OFWAT, is obliged to take appropriate action.

45. In its response to the planning application, SW refers to a likely period of at least 24 months from the grant of any planning permission to survey, design, and construct any necessary improvements. It has also indicated in its response in February 2022 that a connection in Clappers Lane would not have the capacity without improvements to the foul sewer network. However, the appellant has suggested 2 other connection points at Elcombe Close and Woodborough Close. A recent letter from SW, dated 13 May 2022, regarding a 'Level 1 Capacity Check' for the proposed connections to manholes at these locations, states that, following a reassessment, there is currently adequate capacity to accommodate foul flows of 0.73 l/s and 0.9 l/s at the respective manholes.

46. I have not been provided with any evidence to show that these connections would not be feasible, particularly as it is normal to have connections from development in the public highway and there have been no objections from the local highway authority. Therefore, in the absence of any substantive evidence to show otherwise, I have accepted that the connections would be capable of providing the necessary capacity for the foul sewage that would be generated by the proposed development.

47. I have taken account of the concerns expressed by local residents and owners / managers of caravan and camping sites regarding problems that have been encountered as a result of the capacity of the foul sewer network, and in particular the local pumping station at East Bracklesham Drive. In this respect, SW's Drainage and Wastewater Management Plan (DWMP) should ultimately address any issues. The latest DWMP is in draft form, and I have been informed at the Inquiry that consultation would be starting on Monday 20 June. SW is required to provide any necessary upgrades to ensure that the foul sewer network would cope otherwise it would be in breach of its statutory duties. This position is supported in paragraph 188 of the Framework, which states that planning decisions should assume that the pollution control regimes will operate effectively.

48. The Council has referred to a Supreme Court ruling[2] which states: '*…the planning authority has the power, which the sewerage undertaker lacks, of preventing a developer from overloading a sewerage system before the undertaker has taken steps to upgrade the system to cope with the additional load*'. However, this involves a case in Wales where I understand there are different legal powers. I have determined this appeal based on the regime provided by the current legislation and the latest government guidance that is applicable to England.

49. I have considered the previous appeal decisions[3] referred to by the Council in support of this reason for refusal. All three of these decisions pre-date the introduction of the Framework, and state that the statutory undertaker has objected to the proposal. The current appeal involves significantly different circumstances from these other appeals, and in particular there being no objection from the statutory undertaker, SW.

50. Based on the above, I find no valid reason to refuse planning permission for the proposed development due to pollution or foul sewage drainage issues. However, taking a precautionary approach based on existing reported problems with flooding and foul drainage, I have imposed a planning condition that would prevent occupation of the development until SW has confirmed in writing that there is sufficient capacity in its network. I am satisfied that such a 'Grampian' condition would meet the test of whether there is no prospect of the condition being discharged. Therefore, in conclusion on this main issue, the proposal would not result in any unacceptable pollution from flooding in the area due to the disposal of foul sewage and it would comply with paragraphs 174 e) and 185 of the Framework in this respect.

[2] Barratt Homes v Welsh Water [2009] PTSR 651 at [42]
[3] Appeal Decisions Ref APP/V3120/A/08/2080488, Botley, dated 12 November 2008; APP/D3125/A/05/1190988, Stanton Harcourt, dated 11 January 2006; and APP/W1850/A/04/1142871, Ross-on-Wye, dated 12 October 2004

Housing Land Supply (HLS)

51. The Council's current 5 year HLS position statement covers the 5 year period 2021 to 2026 and forms the basis of the Council's position in respect of the 5 year HLS.

Housing Requirement

52. The Local Plan Inspector in 2015 agreed that for a period of 5 years from the date of the Plan being adopted the Council could rely on a suppressed housing delivery target of 435 dwellings per annum (dpa) because of acknowledged strategic constraints in relation to transport capacity issues on the A27 and foul drainage capacity issues. This 5 year period has now passed and therefore the Council has agreed that the housing requirement given in the CLP is no longer up-to-date.

53. As the housing requirement within the plan is out of date, in accordance with the Framework, the Standard Method for Calculating Housing Need, as set out in the Planning Practice Guidance (PPG) is the appropriate method for calculating the housing need within Chichester District. This results in a housing need of 763 dpa in the District, including the SDNP area, when a 5% buffer is applied. The appropriate buffer is set by the annual Housing Delivery Test (HDT). The most recent HDT (2021) showed that Chichester delivered 1,682 homes against a requirement of 1,238 over the previous 3 year period. This gives a HDT measurement of 136%, resulting in a 5% buffer being applied to the baseline requirement.

54. An adjustment should be applied to the housing need figure to account for the part of the Chichester District which is within the SDNP Planning Area. The Objectively Assessed Housing Need (OAN) in the SDNP as a whole is 447 dpa. Of this need, 28% arises in the Chichester District part of the SDNP equivalent to 125 dpa. The Council has adjusted its housing requirement by removing this figure from its overall requirement to avoid double counting. This results in a 5 year housing requirement of 3,350 dwellings, which is 670 dpa, after applying a 5% buffer. This approach has been applied in recent appeal decisions and the appellant has accepted it for the purposes of the current appeal. Based on the evidence provided for this appeal, I therefore accept this as the 5 year housing requirement.

Housing Supply

55. The Council and appellant disagree on the extent of windfall development that should contribute towards the HLS. The Council has made an allowance of 71 dpa in years 4 and 5 of the assessment period, for minor windfalls, by removing the highest and lowest completion years from the past 10 years. It has also allowed up to 140 dpa in years 4 to 5 of the assessment period for major windfalls. The appellant has argued that the 280 dwellings allowed for major windfall development should be removed entirely and the windfall allowance for minor development should also be reduced to 122 to reflect the likely effect of the recent changes to Natural England's water neutrality advice and nutrient neutrality advice.

56. Paragraph 71 of the Framework states that, where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply and that any

allowance should be realistic having regard to the Strategic Housing Land Availability Assessment (SHLAA), historic windfall delivery rates and expected future trends. I find that the Council has provided clear robust evidence to demonstrate that the number of minor windfall permissions has not waned in recent years. The Council has demonstrated that its approach taken in the assessment of windfalls has considered its recent SHLAA, historic windfall rates and possible future trends.

57. The evidence provided by the Council has shown that windfall rates in Chichester District have been consistently very high. In terms of the effect of this supply on the status of the 5 year HLS or Local Plan, table 12 in the Critical Friend paper's windfall assessment, shows that in the years following those when there was no 5 year HLS, or the Plan was still being prepared there is no marked uptake in windfall delivery. With regard to actual windfall delivery rates in Chichester, between 2011/12 and 2020/21 the average annual windfall completion rate was 335 dwellings and in only two years was the actual completion level similar to, or below, the windfall allowance. Also, I am satisfied that the Council's stepped approach to the consideration of expected trends is appropriate.

58. The Council has indicated that it has relied upon the windfall allowance to make up 13% of the supply and that it would be in years 4 and 5 of the 5 year HLS assessment period. Taking account of the evidence provided by the Council, I find that this is a realistic level of windfall, and that by only including it in years 4 and 5, there is some allowance for delays due to issues such as water or nutrient neutrality. I have therefore included the full amount of the Council's windfall allowance of 280 dwellings on major sites and 142 on minor sites.

59. The appellant considers that, applying an assumed lapse rate of 20% to minor development sites (9 dwellings or less), a minimum of 63 units should be removed from the supply. However, there is very little evidence base to support this and there is no need to make an adjustment, given that a buffer is applied to the housing requirement.

60. The appellant has also disputed the position on some of the major sites that have been included. The Framework defines a 'deliverable' site as being '*…available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years*.' In terms of those sites with full planning permission, paragraph a) indicates that to be excluded it is necessary for there to be clear evidence that the housing would not be delivered in the 5-year period. In paragraph b) of the definition, it covers, amongst other things, sites with outline planning permission or that have been allocated in a development plan. It states that such sites '*…should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.'*

61. The Council has accepted the removal of 178 dwellings on Tangmere SDL from its stated HLS at the time of the appeal. It has also accepted that full permission for 50 dwellings on land at Highgrove Farm expired in January 2022. Whilst it is an allocated site and I understand that a planning application for 300 dwellings has been submitted, there is no certainty that permission will be granted and that 50 dwellings would be delivered on the site within the 5 year period.

62. Of the 193 dwellings allowed for on land east of Manor Road, 119 have full permission and the 74 remaining dwellings have outstanding pre-commencement conditions. The Council has suggested that the site is owned by Persimmon Homes, one of the largest volume housebuilders in England, with capacity to complete the development in the next 5 years. The housebuilder is currently building the detailed element of the hybrid application and there are conditions discharged for the outline element. I therefore consider that the Council has provided clear evidence that the site would be deliverable for the full 193 dwellings in the 5 year period.

63. The 24 dwellings on land south of Loxwood Farm Place and 130 dwellings on land north of Cooks Lane both have outline permissions, placing them within paragraph b) of the Framework definition of deliverable sites. The Loxwood site is in an area affected by a water neutrality issue and the Cooks Lane site is in an area affected by nutrient neutrality issues, both of which are issues that Natural England has recently changed its advice on. The appellant has indicated that it has allowed for an adjustment to 80 dwellings on the latter site, due to the nutrient neutrality issue and the projected build-out rates being too optimistic, and has removed the 24 dwellings at the Loxwood site from the HLS.

64. Whilst the Council has identified an approach to previous sites that has been taken to address the nutrient neutrality issue, it appears to me to be at a relatively early stage in formulating an approach to the water neutrality issue. Therefore, based on this and the evidence that has been provided at the Inquiry, I am not satisfied that the Council has provided clear evidence that there would be a strategic solution to the water or nutrient neutrality issue within sufficient time to allow the number of housing completions that it has relied upon beginning on these sites with outline permission within five years. I therefore agree with the appellant's figures of no dwellings at the Loxwood site and 80 at the Cooks Lane site, even though the Council has indicated that the latter site involves Bloor Homes, which is a national housebuilder.

65. At the Inquiry the Council demonstrated a 5 year HLS of 3,356 dwellings, which is 5.01 years based on its housing requirement. The appellant has calculated that it would be 2,795 dwellings, which is a 4.17 year supply, based on the agreed 5 year requirement. Whilst I have not accepted all the appellant's reasons for reducing the 5 year supply, those that I have agreed reduce the figure to 3,232 dwellings, which is about a 4.8 year supply. The Council's calculated 5 year HLS supply is only 6 dwellings over the requirement so that even if I accept a small reduction in delivery due to delays as a result of the water and/or nutrient neutrality issues, which seems likely, there would not be a 5 year HLS.

66. I have considered the findings of the Inspectors in other recent appeal decisions[4] that have been brought to my notice regarding the Council's 5 year HLS. The Raughmere Drive appeal Inspector arrived at a 5.039 year HLS, the Church Road appeal Inspector concluded that the identified supply for the period 2021-2016 would leave the supply at 3,049 dwellings or around 4.6 years, and the Westhampnett appeal Inspector calculated the supply of deliverable dwellings to be 2,774 dwellings or a 5 year HLS of some 4.17 years.

[4] In particular Appeal Decisions APP/L3815/W/21/3284653, Raughmere Drive, dated 11 April 2022,APP/L3815/W/21/3286315, Church Road, dated 22 April 2022, and APP/L3815/W/21/3270721, Westhampnett, dated 27 May 2022

Whilst I have agreed with some of the reasons given for those calculated HLSs, I have based my findings on the most recent evidence that has been submitted to, and discussed at, the current Inquiry. However, I note that two of these other Inspectors have concluded that the Council cannot demonstrate a 5 year HLS.

Other Matters

67. I have considered all the relevant concerns expressed by those objecting to the proposed development both in writing and orally at the Inquiry. Many of these concerns are related to the main issues that I have dealt with above and in particular the effect on the separation gap and foul drainage. The other issues that have been raised, are mentioned below and / or have been addressed in the planning obligations or planning conditions that I have attached to the permission. In the case of the loss of productive agricultural land, I have given this weight as an adverse effect in the planning balance.

Integrity of Protected Wildlife Sites

68. The site lies within the zones of influence of Bracklesham Bay Site of Special Scientific Interest (SSSI), Chichester Harbour SSSI, Chichester and Langstone Harbours SPA, SSSI and RAMSAR site, Pagham Harbour Special Protection Area (SPA) and the Medmerry Solent SPA and Special Area of Conservation (SAC). These are all protected wildlife sites. Therefore, under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) I am required as the 'Competent Authority' to undertake an 'Appropriate Assessment' of the proposal on the basis of its likely significant effects on Protected Sites.

69. The Council undertook an Appropriate Assessment as the Competent Authority, and consulted Natural England, when determining the planning application. At that time, it was the advice of Natural England that it is not possible to ascertain that the proposal would not result in adverse effects on the integrity of the sites in question. This was based on the site being in a highly sensitive location environmentally and there not being appropriate mitigation to guard against the potential negative impacts on protected species and in particular the feeding of over wintering birds in terms of recreational pressure from the residents of the proposed development both individually and cumulatively in-combination with other residential developments. As such, the Council concluded that the proposal would be contrary to Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and CLP Policy 51.

70. Following the Council's Appropriate Assessment, the appellant has provided results of further winter bird surveys carried out in the winter of 2021/22. The Council has agreed with the appellant that these results confirm beyond reasonable scientific doubt that the site does not support qualifying species of Pagham Harbour SPA or Medmerry Compensatory Habitat. Based on this, I am satisfied that the surveys that have been carried out on wintering birds demonstrate that the site does not comprise functionally linked habitat and there would be no potential for a resulting significant effect on the integrity of any Habitats Site to occur.

71. I agree with the Council that any likely significant effects with regard to recreational disturbance during occupation individually and cumulatively in-combination with other residential developments would be suitably mitigated

through established strategic approaches agreed with Natural England which avoid any adverse effect on the wildlife integrity of the protected sites.

72. Based on the new evidence submitted since the application, the Council has confirmed in the Statement of Common Ground that, if it was the Competent Authority for the purposes of the Habitat Regulations, it would conclude that there will be no adverse effect on the integrity of any European site subject to the development securing the required mitigation as detailed in the section 106 Agreement.

73. With regard to the effects as a result of wastewater discharge, the proposal would discharge to the Sidlesham WwTW, which has been removed from the Solent Maritime SAC catchment area. Therefore, there is no potential for likely significant effects from nutrient outputs from foul or surface water as the site lies outside the catchment for nutrient neutrality identified by Natural England, based on its guidance on the matter of nutrient neutrality, dated 20 April 2022.

74. Some objectors have expressed concern about spillages from the Sidlesham WwTW into Pagham Harbour, where a draft report for Natural England by JBA consulting indicates that seagrass beds are in an unfavourable condition due to elevated nutrient levels. However, Natural England has not changed the conservation status of the Pagham Harbour site from it being in a favourable condition or objected to the appeal proposal on this basis. Furthermore, this matter has not been raised by the Council as a reason for refusal.

75. After the Inquiry closed, the Council has provided details of the information that it has relied upon to reach its decision regarding the Appropriate Assessment. Following the submission of these documents to Natural England, I have received a response, dated 9 August, which indicates that Natural England has no objection subject to appropriate mitigation being secured. In terms of this mitigation, a Construction Environmental Management Plan (CEMP) would be secured by a planning condition; and financial contributions to the Solent recreation Mitigation Strategy (Chichester and Langstone Harbours) and for Strategic Access Management and Monitoring at Medmerry Compensatory Habitat would be secured through section 106 planning obligations.

76. On the basis of the above evidence, I conclude that, provided suitable financial contributions for recreational disturbance effects are appropriately secured, the proposed development would result in no significant adverse effect on the integrity of any of the protected Habitats sites. In this respect, it would accord with CLP policies 49, 50, 51 and 52 and Paragraph 180 of the Framework.

Traffic and highway safety

77. No collisions were recorded on Bookers Lane itself throughout the five year study period, which indicates that there are no existing road safety issues regarding the current layout and condition of Bookers Lane. I am aware that there are horse riding stables on Bookers Lane and the lane is used by cyclists, pedestrians and horses. However, even allowing for peak time flows forecast by Earnley Parish Council's expert, the traffic increase on that lane due to the development would not be sufficient to cause any additional risks to these more vulnerable road users, given the highway safety record and that the traffic would be significantly less outside peak hours. As such, and taking the forecast increase in traffic through Earnley CA, I am satisfied that any increase

in traffic associated with the development would not give rise to a potential road safety issue.

Facilities and Services

78. Some objectors have expressed concerns about the lack of facilities and services to support local residents and about the availability of jobs locally. In this respect, Bracklesham is identified in the CLP as a second Tier 'Hub' settlement. It is therefore recognised as being able to serve local residents both in the settlement and within the wider rural parts of the Manhood Peninsula. Furthermore, the Council has accepted that the site is sustainably located with good access to services and facilities. I have been given insufficient evidence to come to a different opinion.

Other Appeal Decisions

79. A significant number of appeal decisions have been referred to in relation to issues raised. I have addressed some of these decisions with regard to foul drainage and 5 year HLS under those topics. The Council has referred to recent appeals at Raughmere Drive[5] and Earnley Concourse[6]. The Raughmere Drive appeal involves significantly different circumstances from those of the current appeal, which have been identified by the appellant. In particular, its relationship to the existing settlements and the SDNP, the capacity rating given in the Council's 2019 Landscape Capacity Study, its designation as a Local Gap in the adopted Neighbourhood Plan and the consideration of the site in the HELAA. The Earnley Concourse appeal was allowed but involves a significantly different policy context from the current appeal, being considered to be previously developed land. Whilst I have noted the points raised, no direct comparisons can be made with the current appeal.

Planning Obligations

80. Following the closure of the Inquiry, the appellant has submitted an engrossed section 106 Agreement between the appellant, WSCC and the Council, dated 12 July 2022, based on that discussed at the Inquiry. I have considered the information given in the Community Infrastructure Levy Regulations 2010 (CIL) compliance statement provided by the Council in support of the planning obligations.

81. An obligation to secure provision of 30% Affordable Housing on site, together with the tenure, is necessary to ensure compliance with CLP Policy 34 and the Council's Planning Obligations & Affordable Housing Supplementary Planning Document (SPD).

82. A contribution payable towards the cost of carrying out junction improvement works to the A27 Chichester Bypass Strategic Road Network, as requested by Highways England, is necessary to mitigate the impact of additional traffic on the highway network, given that the TA has shown that the proposal would be likely to generate additional traffic using the A27 Chichester Bypass junctions. I am satisfied that the level of contribution of £3,248 per dwelling is reasonable and proportionate as it derives from 'The A27 Chichester Bypass Developers Contribution Analysis for Strategic Development Options and Sustainable Transport Measures (2015)', which sets out a detailed methodology to calculate

[5] Appeal Ref APP/L3815/W/21/3284653
[6] Appeal Ref APP/L3815/W/20/3255383, 30 May 2022

contributions from each development location towards the A27 mitigation package. Such a contribution would ensure compliance with CLP Policy 8.

83. An obligation to include management and maintenance is necessary to be set up to maintain the public open space, which would be provided on the appeal site to enhance green infrastructure in the local area, to serve the future residents of the development and to retain a green gap between Bracklesham and Earnley. This obligation is based on the Open Space, Sport and Recreational Facilities Study 2012, which evidenced the Council's Planning Obligations & Affordable Housing SPD, adopted July 2016. This SPD sets out a proportionate approach to setting standards for new development based on the scale, typology and location of proposals.

84. Financial contributions to mitigate the impact of the proposed development on protected European sites in respect of recreational disturbance are necessary as the appeal site is within the 5.6 km of the 'zone of influence' of some of these sites. Without the contributions, the proposal would have an adverse impact on the integrity of the protected European Sites. The contributions accord with CLP Policy 50 and have been derived from the Solent Recreation Mitigation Strategy, which provides a framework that has been agreed with Natural England to mitigate the impact on the Solent SPAs of increased visitor pressure arising from housebuilding through a costed programme of mitigation measures.

85. A contribution to the Pagham Joint Scheme of Mitigation is necessary because the site is close to Medmerry Compensatory Habitat and the Council has suggested that it is treated in planning terms as if it is an SPA/SAC. The contribution is required to mitigate, through an additional payment to the RSPB as site manager for Medmerry, under the Pagham Joint Scheme of Mitigation. Without this additional contribution only the impact on Chichester Harbour would be addressed and not the impact on Medmerry.

86. The provision of, and funding for, a travel plan, including its preparation and implementation, the appointment of a co-ordinator and its monitoring for a period of 3 years is necessary to promote the use of sustainable modes of transport to mitigate the effect of the occupiers of the development on the need to travel in the area. It would ensure that the proposal would accord with CLP policies 7, 8, 13, and 39.

87. I have examined the evidence provided by the Council regarding the need for the above obligations and compliance with CIL Regulation 122. Based on this, and for the reasons given above, I am satisfied that the planning obligations in the Agreement would be necessary to mitigate the effects of the development and they meet the tests in CIL Regulation 122 and paragraph 56 of the Framework. I have therefore taken them into account in my determination of this appeal.

Planning Balance

88. As I have found that the Council cannot demonstrate a 5 year HLS in accordance with the Framework, the presumption in favour of sustainable development, as set out in paragraph 11(d) of the Framework will apply.

89. In terms of the benefits, the provision of market housing carries substantial weight. The proposal would assist in achieving the Government's objective

given in the Framework of significantly boosting the supply of homes. The weight that I have given this is not reliant upon the Council not demonstrating a 5 year HLS, given that this is not a ceiling and that there is a continuing need for new housing.

90. The proposal would provide 30% affordable housing, secured by the section 106 Agreement, which would meet the requirement of CLP Policy 34. The appellant has demonstrated that there is an acute and growing need for more affordable housing in the District. The latest evidence in the Council's Housing and Economic Development Needs Assessment (HEDNA) 2022 shows a net need for 278 new Social/Affordable Rented Homes per annum, of which the largest proportion of need (76 per annum) occurs on the Manhood Peninsula. Table 17 in the Council's latest Annual Monitoring report 2020-21 shows that affordable housing completions have never exceeded 167 per year. The Council has accepted that current affordable housing needs are not being met. I have therefore attached substantial weight to this provision even though it would not exceed the policy requirement.

91. The appellant has provided evidence to demonstrate that the proposal would result in a significant increase in habitat and a net gain for biodiversity. A Biodiversity Net Gain Assessment report by Lizard undertaken for the appellant has calculated using Natural England's Biodiversity Metric 3.0 that the proposal would be capable of a net gain of 44.23% for habitats, 23.83% for hedgerows and 19.04% for river units. There is no other substantive evidence to show otherwise.

92. The appellant has therefore demonstrated that the proposal would be capable of delivering a net gain for biodiversity of above 10%. Whilst a net gain would be expected from the replacement of an agricultural use by parkland, it would meet the requirements given in paragraphs 174(d) and 180(d) of the Framework which do not specify a minimum level. Planning conditions would ensure that the necessary measures would be implemented to achieve a biodiversity net gain but not ensure that it would be at least 10%. As such, I have attached moderate weight to this benefit.

93. The illustrative plans identify that the proposal would provide open space and provision for play and a community garden and orchard. I accept that this would go beyond the requirements of CLP policies 52 and 54 and that the facilities would be likely to be used by local residents and visitors to the area. However, the appellant has not demonstrated that there is a need for the additional play space, given that nearby land in Bracklesham provides a community centre and accompanying open space and play areas. I have therefore attached moderate positive weight to these provisions.

94. Whilst the appeal scheme is in outline, it is common ground with the Council that there is no reason the development cannot present the highest standards of design. However, this is expected in the Framework, in which paragraph 134 indicates that development that is not well designed should be refused. I have therefore attached little weight to this provision.

95. There would be economic benefits through construction employment, and through expenditure by future occupants in the area. Paragraph 81 of the Framework indicates that significant weight should be placed on the need to support economic growth and productivity. The appellant has given an indication of the significant input into the local economy that the development

would make. Therefore, even though the economic benefits associated with the construction would only be short term and most residential development would result in additional expenditure in the local area, I have given significant weight to the resulting support to economic growth and productivity from the development.

96. The adverse effects of the proposal would be as a result of the loss of an open rural landscape, which would be contrary to development plan policies. I have given this substantial weight. It would also result in the loss of an area of land currently used for agriculture. Based on the importance the Framework attaches to retaining 'the best and most versatile agricultural land' and the London & South East Region 1:250,000 Series Agricultural Land Classification maps indicating the site to be Grade 3 (good to moderate), I attach significant weight to the harm arising from this loss of agricultural land.

97. The proposal would also result in an increase in traffic due to additional car journeys that would be generated by the residents. However, the Council has accepted that the site is in a sustainable location, it would provide pedestrian and cycle links to Bracklesham and the use of the car would be reduced by measures to encourage the use of sustainable means of travel, including a travel plan. As such, this carries moderate weight as an adverse effect.

98. I have found non-compliance with some of the most important policies in the CLP in the determination of this appeal, namely policies 33 and 48. As such, I find that the proposal would not accord with the development plan as a whole, even though I have reduced the weight that I have given these policies due to the lack of a 5 year HLS.

99. Turning to paragraph 11(d)(ii) of the Framework, when the above considerations are taken together and weighed in the balance, I find that the adverse impacts would not significantly and demonstrably outweigh the benefits that I have identified, when assessed against the policies in the Framework taken as a whole. I conclude that a presumption in favour of sustainable development has been established for the proposed development. This is a material consideration in favour of the appeal proposal.

Planning Conditions

100. I have considered the suggested conditions should the appeal be allowed that formed the basis of discussions at the Inquiry. It is necessary to impose the conditions regarding the time scale for commencement of the development and the submission of reserved matters[7] to ensure that development would be carried out expediently. A condition referring to the plans[8] is necessary for reasons of clarity and to ensure that access would be completed in accordance with the approved development.

101. A condition to secure and implement a CEMP[9], including the control of hours of working, is necessary to safeguard the environment, public amenity and highway safety during construction and to address some of the concerns of Natural England. A condition to control ground levels[10] is necessary to protect

[7] Conditions 1, 2 and 3
[8] Condition 4
[9] Condition 5
[10] Condition 6

the appearance of the surrounding area. A condition regarding contamination[11] is in the interests of health and safety. A condition to secure a scheme of archaeological investigation[12] is necessary to protect the potential archaeological significance of the site, given the evidence from the Council's database and historical records.

102. Conditions regarding drainage[13] and to ensure compliance with measures given in the flood risk assessment[14] are necessary to prevent pollution and/or flooding and to protect the environment. Conditions to secure the installation of electric vehicle charging points[15], and the implementation of a Sustainable Design and Construction statement[16], including measures to control water consumption, are in the interests of promoting sustainable development. A condition to control external lighting[17] is necessary to protect the environment, the appearance of the area, residential amenity and protected species, including bats.

103. Conditions regarding the construction of the access and protection of visibility splays[18] and pedestrian access[19] are necessary for highway safety reasons. A condition to secure car parking[20] is necessary to protect residential amenity and highway safety. A condition to secure cycle parking[21] is in the interests of promoting sustainable transport. A condition to ensure the provision of landscaping[22], in accordance with the areas shown on the submitted Parameter Plan, is necessary to protect the character and appearance of the area. A condition to ensure the implementation of a Landscape and Ecological Management Plan (LEMP)[23] is necessary in the interests of biodiversity.

104. A condition to secure mitigation regarding the effect on badgers[24] is in the interests of the protection of a wildlife species, given that they have been noted as being present on site. A condition to ensure that adequate foul drainage is provided before the dwellings are occupied[25] is necessary to protect the area from pollution due to flooding from foul sewage, given the concerns that have been expressed at the Inquiry. I am satisfied that the condition suggested by the appellant is appropriate as the evidence indicates that there is very little likelihood that the necessary foul drainage measures would not be carried out within a reasonable timescale.

105. Following the discussions at the Inquiry, I have amended and/or combined some of the suggested conditions. A condition regarding the provision of fire hydrants is unnecessary as it is covered by other legislation. A condition to secure the provision of a travel plan is unnecessary as this would be adequately dealt with under a section 106 planning obligation. A condition

[11] Condition 7
[12] Condition 8
[13] Conditions 9 and 11
[14] Condition 10
[15] Condition 12
[16] Condition 13
[17] Condition 14
[18] Condition 15
[19] Condition 17
[20] Condition 16
[21] Condition 18
[22] Condition 19
[23] Condition 20
[24] Condition 21
[25] Condition 22

suggested by Earnley Parish Council to control the turning movements at the proposed access is not justified as being necessary based on the evidence provided at the Inquiry, including the response from WSCC as the local highway authority.

106. I am satisfied that all the conditions that I have included are reasonable and necessary, meet the tests given in the Framework and reflect the advice in the PPG.

Overall Conclusions

107. In applying section 38(6) of the Planning and Compulsory Purchase Act (2004), I have found that the proposal would not accord with the development plan as a whole. However, I find that the presumption in favour of sustainable development is a material consideration that indicates that the decision should be taken otherwise than in accordance with the development plan. Therefore, for the reasons given and having regard to all relevant matters raised, I conclude that the appeal should succeed.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Parkinson, of Counsel	instructed by Chichester District Council
He called	
Tom Day	Video link for ecology round table session
Pieter Montyn MSc	County Councillor for the Witterings Electoral Division of West Sussex County Council for the foul drainage round table session
David Webster BSc MSc MA CMLI	Senior Landscape Architect, Huskisson Brown Associates
Jeremy Bushell BA(Hons) DipTp MRTPI	Principal Planning Officer, Development Management Service, Chichester District Council
Alex Roberts BSc(Hons) AMRTPI	Director, Lambert Smith Hampton, Planning, Development and Regeneration team, video link for housing land supply round table session

FOR THE APPELLANT:

Charles Banner QC	instructed by Tetra Tech Limited
He called	
Paul Cranley BA(Hons) CMILT	Divisional Director, Pell Frischmann
David West MENV SCI(Hons) CENV MCIEEM	Associate Ecologist, Tetra Tech Limited for ecology round table session
Daniel Allum-Rooney BSc(Hons) MSc GradCIWEM	Drainage and Flood Risk Technical Director, Pell Frischmann for the foul drainage round table session
Nicholas Billington BA(Hons) MSc MRTPI	Associate Director in Planning, Tetra Tech Limited
Andrew Smith BSc(Hons) MSc CMLI	fabrik limited

FOR THE RULE 6 PARTY (EARNLEY PARISH COUNCIL):

Robert Carey	Earnley Parish Councillor
He called	
Graham Bellamy BSc CEng MICE	Partner, Bellamy Roberts
Keith Martin	Chair, Earnley Parish Council
Robert Carey BA (Hons) MA	Earnley Parish Councillor

INTERESTED PERSONS:

Dr Linda Stanley	Resident of Clappers Lane
Julia Tyrrell	Resident of Clappers Lane
Melissa Smith	Clappers Lane Residents Group
Lance Stevens	Resident of Clappers Lane
Louise Pratt	Local Camping and caravan Sites, including Holden's Caravan Site
Rachel Dadds	Resident of Earnley Manor Close

Claire Smith	Resident of Earnley
George Thomas	Resident of Bracklesham
Julia Bowering	Resident of Earnley
Brian Reeves	Chair of East Wittering and Bracklesham Parish Council
Dr Jill Sutcliffe CIEEM	Manhood Wildlife and Heritage Group
Councillor Pieter Montyn	West Sussex County Councillor
Sherrie Streetley	Bracklesham Caravan and Boat Club

DOCUMENTS SUBMITTED AFTER OPENING THE INQUIRY

1 Notification letter and list of those notified, submitted by the Council on 14 June
2 Draft section 106 Planning Agreement, submitted by the Council on 14 June
3 Appellant's opening statement, submitted by the appellant on 14 June
4 Opening comments on behalf of Chichester District Council, submitted by the Council on 14 June
5 Opening Statement- Earnley Parish Council, submitted by Councillor Carey on 14 June
6 Statement of Dr Linda Stanley, submitted by Dr Linda Stanley on 14 June
7 Statement and attachments of Julia Tyrrell, submitted by Julia Tyrrell on 14 June
8 Statement of Melissa Smith on behalf of Clappers Lane Residents Group, submitted by Melissa Smith on 14 June
9 Statement of Lance Stevens, submitted by Lance Stevens on 14 June
10 Statement of Rachel Dadds, submitted by Rachel Dadds on 14 June
11 Statement of Claire Smith, submitted by Claire Smith on 14 June
12 Statement of Julia Bowering and photographs, submitted by Julia Bowering on 14 June
13 Statement of George Thomas, submitted by George Thomas on 14 June
14 Statement of Manhood Wildlife and Heritage Group, submitted by Dr Jill Sutcliffe on 14 June
15 Statement and attachments of Councillor Pieter Montyn, submitted by Councillor Pieter Montyn on 14 June
16 Statement of East Wittering and Bracklesham Parish Council, submitted by Brian Reeves on 14 June
17 Map of photo viewpoints, submitted by Julia Bowering on 14 June
18 A3 Clappers Lane Local Area Street Plan, submitted by Councillor Carey for Earnley Parish Council on 14 June
19 Circular 11/95: Use of Conditions and letter dated 25 November 2002, submitted by the Council on 15 June
20 Map of sewerage in the area of Clappers Lane, submitted by the Council on 15 June
21 Map of the adopted highway, submitted by the Council on 15 June
22 Extract from JBA report on Pagham Harbour Condition Final Assessment: Conclusion, submitted by the appellant on 15 June
23 Extract from JBA report on Pagham Harbour Condition Final Assessment: Summary of Conservation Objectives, attributes and targets, submitted by the appellant on 15 June
24 Photograph of 3D model of development, submitted by the Council on 16 June
25 Extract from Historic England Advice Note 1 (Second Edition): Conservation Area Appraisal, Designation and Management, submitted by Keith Martin for Earnley Parish Council on 16 June
26 Further photographs by Julia Bowering, submitted by Julia Bowering on 17 June
27 Copy of Planning Appeal Ref 3286677, Yatton, submitted by the appellant on 17 June
28 Copy of updated draft of section 106 Planning Agreement, submitted by the appellant on 17 June
29 Amended Planning Condition 26, submitted by the appellant on 17 June
30 Comments by Mrs Victoria Arnott-Ridel, received on 17 June

31 Comments by Mrs Michelle Dunderdale, received on 17 June
32 Comments by Mr Mark Dunderdale, received on 17 June
33 Comments by Ms Janet Holding, received on 17 June
34 Comments by Mrs Tracey Ellis, received on 20 June
35 Earnley Parish Council Rule 6 Party Closing Statement, received on 8 July
36 Closings on behalf of the Council, submitted by the Council on 11 July
37 Appellant's Closing Statement, submitted by the appellant on 11 July
38 Engrossed section 106 Planning Agreement, received on 13 July
39 Letter, dated 13 July from the Council and attached documents regarding the Habitats Regulation Assessment, received on 13 July
40 Letter, dated 9 August 2022, from Natural England to the Planning Inspectorate regarding the Habitats Regulation Assessment, received on 10 August

ANNEX: SCHEDULE OF CONDITIONS

1) Details of the layout, scale, appearance and landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before development commences, and the development shall be carried out as approved.

2) Application for approval of reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3) The development approved shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the following approved plans: 17002/S102 Rev A (Location Plan); 17002/C03; 103859-T001 Rev E (Access Plan); 103859-T-005 Rev B (Footway Connection Plan).

5) No development shall commence including any works of demolition, until a Construction and Environmental Management Plan (CEMP) comprising a schedule of works and accompanying plans for each construction phase has been submitted to and approved in writing by the local planning authority. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period. The CEMP shall include details of the times of working, the phasing, public engagement, and the control of dust, dirt and noise.

6) No development shall commence until plans of the site showing details of the existing and proposed ground levels, proposed finished floor levels, levels of any paths, drives, garages and parking areas and the proposed completed height of the development and any retaining walls have been submitted to and approved in writing by the local planning authority. The development thereafter shall be carried out in accordance with the approved details.

7) In the event that contamination is found at any time when carrying out the development hereby permitted that was not previously identified it shall be reported in writing immediately to the local planning authority. The development shall not be first occupied until:

   i) An investigation and risk assessment has been undertaken in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority; and

   ii) where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the local planning authority. Any remediation shall be fully implemented in accordance with the approved scheme before the development is first occupied; and

   iii) a verification report for the remediation shall be submitted in writing to the local planning authority before the development is first occupied.

8) No development shall commence on the site until a written scheme of archaeological investigation of the site, has been submitted to and approved in writing by the local planning authority. The scheme shall include proposals for an initial trial investigation and mitigation of damage through development to deposits of importance thus identified; and a schedule for the investigation, and the recording of findings and subsequent publication of results. Thereafter the scheme shall be undertaken fully in accordance with the approved details.

9) No development shall commence until details of an overall site wide surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The details shall include the discharge of any flows to a watercourse and the scheme shall follow the hierarchy of preference for different types of surface water drainage disposal as set out in Approved Document H of the Building Regulations and the Sustainable Drainage System (SUDS) Manual produced by CIRIA. Winter ground water monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. The surface water drainage scheme shall be implemented as approved. No building shall be occupied until the complete surface water drainage system serving that property has been implemented in accordance with the approved surface water drainage scheme.

10) No development shall commence until a flood alleviation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include the mitigation measures in the submitted flood risk assessment (ref The Civil Engineering Practice, March 2021), the provision of fluvial floodplain storage with details of land raising and lowering and timing/phasing arrangements. The mitigation measures shall detail:

    • Finished floor levels for all living accommodation set no lower than 4.86 metres above Ordnance Datum (AOD); and

    • Finished floor levels for sleeping accommodation set no lower than 5.16 metres AOD.

    The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be agreed in writing by the local planning authority.

11) No work shall commence on any Sustainable Drainage System (SUDS) until a site-specific maintenance manual setting out full details of the maintenance and management of the SUDS has been submitted to and approved in writing by the local planning authority. The manual shall include arrangements for the replacement of major components at the end of the manufacturer's recommended design life. The SUDS system, shall thereafter be maintained and managed strictly in accordance with the manual.

12) No development shall commence above ground level until there has been submitted to the local planning authority for approval in writing details of the provision of Electric Vehicle charging facilities to accord with the West Sussex County Council: Guidance on Parking at New Developments (September 2020 or any superseding document). The development shall be carried out in accordance with the approved details.

13) A detailed Sustainable Design and Construction Statement (SDCS) shall be submitted with the first application for reserved matters and any subsequent applications for reserved matters and shall demonstrate how the proposal complies with the approved details. The SDCS shall include details of CO2 emission saving measures and water consumption saving measures. The development thereafter shall be carried out in accordance with the approved details.

14) No dwelling hereby permitted shall be first occupied until details of any proposed external lighting of the site have been submitted to and approved in

writing by the local planning authority. The details shall include a layout plan with beam orientation and schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance with the approved details.

15) No part of the development hereby permitted shall be first occupied until such time as the vehicular access and associated works serving the development has been constructed in accordance with the details shown on the drawing titled 'Proposed Site Access Arrangement and Footway Proposals' (by Pell Frischmann) with visibility splay and vehicle swept path analysis and numbered 103859-T-001 Rev E. Once provided the visibility splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metres above adjoining carriageway level.

16) No dwelling hereby permitted shall be first occupied until the car parking space(s) and any associated turning space serving that dwelling have been constructed, surfaced and drained in accordance with plans and details that shall have been submitted to and approved in writing by the local planning authority. The parking space(s) and any associated turning space shall thereafter be retained at all times for their designated purpose.

17) No dwelling hereby permitted shall be first occupied until such time as the pedestrian access serving the development has been constructed in accordance with the details shown on the drawing titled 'Proposed Footway Connection' and numbered 103859-T-005 Rev B.

18) No dwelling hereby permitted shall be occupied until covered and secure cycle storage provision for that dwelling has been provided in accordance with details to be first submitted to and approved in writing by the local planning authority. Such provision shall thereafter be retained for the stated purpose.

19) Notwithstanding the illustrative landscaping details submitted, a detailed scheme of hard and soft landscaping for the whole site shall be submitted to the local planning authority for approval as part of reserved matters. The scheme shall demonstrate compliance with the areas of landscaping and built development detailed on the Parameter Plan (ref. 17002/C03) and shall include details of pedestrian permeability through the site, a planting plan and schedule of plants noting species, plant sizes and numbers/densities, and a programme/timetable for the provision of the hard and soft landscaping. All existing trees and hedgerows on the land shall be indicated including details of any to be retained, together with measures for their protection during the course of development. The hard landscaping shall include the proposed finished levels or contours, pedestrian access and circulation areas, and details and samples of the hard surfacing materials. The works shall be carried out in accordance with the approved details and planting timetable and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice. Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved unless otherwise first agreed in writing by the local planning authority.

20) Notwithstanding any details submitted, no dwelling hereby permitted shall be constructed above damp proof course level until a Landscape and Ecological Management Plan (LEMP), setting out measures to ensure the delivery of

long-term management of open spaces and ecological mitigation, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The LEMP shall be prepared in accordance with the Ecological Impact Assessment by Lizard Landscape Design and Ecology (17 November 2020 ref: LLD1902). The LEMP shall include for:

- Any trees removed to be replaced at a ratio of 2:1.
- New linear features such as hedgerows and treelines to be created or existing features strengthened to improve connectivity between areas of suitable roosting and foraging habitat within the site and the wider area to increase opportunities for commuting bats.
- Filling in gaps in tree lines or hedgerow with native species.
- Wetland area for the benefit of water voles and great crested newts.
- High quality amphibian terrestrial habitat created within the open space.
- Long-term integrity of new and retained habitats through inclusion within a long-term managed strategy.
- Bat and bird boxes installed on site.
- Grassland areas managed to benefit reptiles.
- Log piles on-site.
- Wildflower meadow planting.
- Gaps included at the bottom of fences to allow movement of small mammals across the site.
- Hedgehog nesting boxes included on the site.

Thereafter the strategy shall be implemented fully in accordance with the approved details and implementation timetable.

21) No development shall commence until updated badger surveys have been undertaken to confirm the status of badgers on site and inform any need for avoidance, mitigation and licensing measures. The surveys and an avoidance, mitigation and licensing strategy shall be submitted to and approved in writing by the local planning authority in accordance with a timetable that shall have been agreed in writing by the local planning prior to the commencement of development. Thereafter the strategy shall be implemented fully in accordance with the approved details.

22) No dwelling hereby permitted shall be occupied until the off-site foul drainage infrastructure necessary to serve the development is operational and it is confirmed in writing by the sewerage undertaker that sufficient sewage capacity exists within the network to accommodate the development.

End of Schedule

From: Southern Water Planning <SouthernWaterPlanning@southernwater.co.uk>
Sent: 01 November 2022 16:21
To: [redacted]@wealden.gov.uk
Cc: planning
Subject: RE: WD/2022/1927/MAO

Categories: Consultee

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon [redacted],

Thank you for your enquiry.

Please see response below (in green text) to the points your require further comment on;

1. Which treatment works will be managing the sewage for the above development. This development is in the Eastbourne Wastewater Treatment Works (WWTW) catchment.

2. Confirmation that the treatment works has sufficient capacity for the proposed development. Eastbourne WWTW has sufficient capacity for the proposed development.

3. Has the relevant sewage treatment works experienced operational issues in the last year (i.e. unconsented discharge or other issues). If yes, please provide information and details of how the matter was resolved. As discussed in the meeting with Wealden on the 26th September 2022, the Future Growth Planning team are unable to respond to enquiries relating to operational issues at our WWTW's and this information would need to be obtained via our Environmental Information Request team. This is the correct process for internal and external contacts, however, to facilitate this process we are willing, and have passed details of your consultation directly to the EIR team on your behalf and they will respond directly within 20 days from the date the request was received. This will ensure that your enquiry for environmental information is logged and managed effectively and we assure you that this is simply our process for this type of request.

4. Confirm that the capacity is inclusive of all committed developments that would also use the same treatment works. To respond to this question, it is important to clarify how we apply the Water Industry's standard methodology for predicting population growth in wastewater catchments in accordance with Ofwat requirements.

   For the seventh Asset Management Plan (AMP7), Southern Water prepared growth forecasts for each WWTW in the period 2020 to 2025 and any investment required to meet demand will be carried out in this period. The forecasts were prepared based on;

   (a) housing trajectories provided by planning authorities,
   (b) published five-year supplies of housing land, and

(c) an Experian population forecast, which is derived from the Office for National Statistics (ONS) for each wastewater catchment.

Planning is now underway for the AMP8 business plan, for investments in the period 2025 to 2030 which will also incorporate the forecasts of WWTW catchment growth based on (a) and (b) above, as well as a new population forecast from Edge Analytics which is also based on ONS data.

In addition to the above, within each AMP, we annually update housing projections based on local authority published data to check whether this is consistent with the forecasts prepared for the business plan. Where we observe significant increase, this is fed back to the asset planners for inclusion in their design horizon calculations.

Current and future planning applications (i.e. 'committed developments') are inherently incorporated within these projections.

Kind regards,

[redacted]
Senior Future Growth Planner

M. [redacted]
southernwater.co.uk

‘New’ way of working with Southern Water (“SW”)

Why?

2022 Wealden District Council (“WDC”) Full Council motion to seeking better quality information from SW.

Planning team asked to seek following information from SW, on major application case work:

Part of the July Full Council motion was:

Ask SW, from this date onwards, in its planning consultation responses for major development, to clarify which treatment works will be managing the sewage; whether it has the information available to assess the impact on the number or duration of sewage discharges into local rivers or seas, and if it does have this information to share it (noting that this can only be requested not required).

Request that planning officers, from now onwards, include in all relevant reports relating to major development a specific section on the impact on watercourses, including the potential for the development to affect sewage outflow into watercourses.

How?

These have resulted in direct liaison with SW and an example is attached (pdf. 22.1927 Southern Water 01.11.2022). SW have been generally helpful but on occasion have been slow to respond due to resource issue in the Growth Team. In other instances, they have been insistent that some of the question be redirected to their EIR team. We have done this but is inefficient to double handle the ask by writing to the growth team and EIR team.

Power or not?

The National Planning Policy Framework (NPPF) recognises the importance, in order to ensure that a sufficient supply of homes is delivered and that land with permission is developed without unnecessary delay (paragraph 60).

National planning policy guidance permits the imposition of negative conditions (Grampian conditions) prohibiting development or other aspects linked to the permission (eg occupation) until a specified action has been taken such as the provision of supporting infrastructure. It states that “such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission”. Where there are prospects of performance, Grampian conditions can be lawfully imposed.

Under the Water Industry Act 1991, Southern Water is obliged to accept foul drainage connections and to provide necessary capacity to drain properties in their area.

The NPPF confirms that the focus of planning decisions should be whether proposed development is an acceptable use of land, as opposed to the control of processes or

emissions (which are subject to separate regimes). It requires decision makers to assume that those regimes will operate effectively (paragraph 188).

Southern Water is regulated by Ofwat which has powers under the Water Industry Act 1991 to take enforcement action where companies fail to meet their obligations.

What sort of outcomes? Controlling Conditions

Since last Summer, we have been imposing controlling planning conditions. This is in consultation with SW.

For each phase of development:

(1) No development shall commence until a scheme for the provision and implementation of foul drainage works for that phase has been submitted to and approved in writing by the Local Planning Authority. The foul drainage works shall be implemented in accordance with the approved details.

(2) There shall be no occupation of that phase of development until it has either been confirmed that there is capacity for that Phase of the development within the relevant sewerage system or where an upgrade to the infrastructure is required that the necessary upgrades have been implemented to the satisfaction of the Local Planning Authority (following consultation with the relevant statutory undertaker).

REASON: To protect water quality and to secure a satisfactory standard of development, having regard to Policy WCS14 to the Wealden Core Strategy Local Plan 2013.

Note: Under (2) of condition 18 the developer is strongly encouraged to supply details of upgrades and the relevant statutory undertaker (Southern Water, Icosa etc), prior to commencement on site, in order to ensure that occupations can occur without delay.

Any Tests at Appeal?

In a recent Planning Appeal decision outside Wealden, (reference APP/L3815/W/22/3291160) concerns were raised by Chichester District Council regarding the impact of a development for up to 100 homes and its effect on pollution in the area, with regard to flooding due to foul sewage. In considering the issue relating to foul sewage treatment, the Inspector's decision letter clearly states:

"44. Southern Water (SW), as the statutory undertaker, has an obligation to provide the necessary network reinforcements and upgrades downstream of the practical point of connection to the foul sewer network imposed under section 94 of the Water Industry Act 1991. Should SW fail to meet its obligations under the Act, the industry regulator, OFWAT, is obliged to take appropriate action.

47. ….. SW is required to provide any necessary upgrades to ensure that the foul sewer network would cope otherwise it would be in breach of its statutory duties. This position is supported in paragraph 188 of the Framework, which states that planning decisions should assume that the pollution control regimes will operate effectively.

....

50. Based on the above, I find no valid reason to refuse planning permission for the proposed development due to pollution or foul sewage drainage issues."

A copy of this appeal is attached.

In an appeal within Wealden, Morning Mill Farm Lower Willingdon (APP/C1435/W/22/3297419): In this decision, flood risk and drainage was identified as one of the main issues. The Inspector noted that it was likely that foul drainage capacity would need to be increased to accommodate the development and Southern Water had confirmed that it would undertake any necessary upgrades to the network, should planning permission be granted. A condition was imposed on the facts of that case preventing occupation of any phase until such time as capacity was available for that phase. On that basis, the Inspector determined that there would be no negative impact on the Pevensey Levels with regard to waste water disposal. A copy of the appeal is attached.