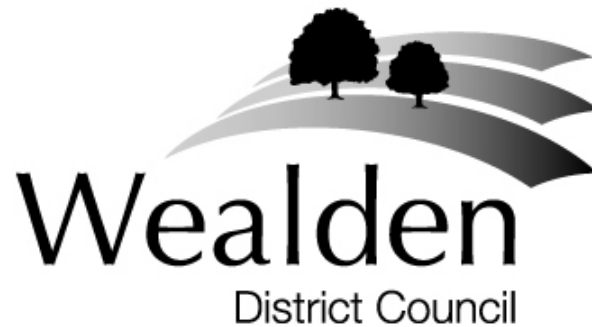




Town and Country Planning Act 1990

Appeal by Croudace Homes Ltd

**Land at Bird in Eye Farm,
South of Bird in Eye Hill
Framfield TN22 5HA**

Wealden District Council Ref:
WD/2024/1799/MAO

Planning Inspectorate Ref:
APP/C1435/W/24/3356658

STATEMENT OF CASE

RULE 6

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Attachments –

1. Previous Appeal Decision at the site from 2009
2. Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681
3. R. v Newbury District Council ex parte Chieveley Parish Council [1999] P.L.C.R. 51
4. East Sussex County Council Road Safety Audit Policy for Developments, Transport Development Control October 2017
5. Development Plan extracts including Local Plan extract map (three sections)

1.0 Introduction

- 1.1. Wealden District Council ('the Council') submits this Statement of Case ('SoC') in respect of the forthcoming Inquiry into the appeal ref APP/C1435/W/24/3356658 by Croudace Homes Ltd ('the Appellants') pursuant to section 78 of the Town and Country Planning Act 1990 ('the 1990 Act').
- 1.2. The appeal is against the Council's non determination of the application for outline permission given Council reference WD/2024/1799/MAO with all matters reserved, except for the means of access from Bird in Eye Hill. The scheme proposes the erection of up to 190 dwellings, associated landscaping, informal open space and a Suitable Alternative Greenspace ('SANG') with access from the B2101 on Land at Bird in Eye Farm, South of Bird in Eye Hill, Framfield, East Sussex, TN22 5HA.
- 1.3. This SoC sets out the case to be presented by the Council at the Inquiry. It is confirmed that had the Council made a determination, it would have Declined to Determine the application under s70A of the Town and Country Planning Act 1990 (as amended). This was on the basis that within two years of the date of the application the Secretary of State had refused a similar application at the Appeal Site. Now that the appeal has been made, this SoC sets out why, in the Council's view, planning permission should not be granted and the appeal be dismissed.
- 1.4. The Appellants have drafted a Statement of Common Ground ('SoCG'). The agreed document will be submitted to PINS by the 24 January 2025. This SoCG is planning focussed and agrees a series of matters that are uncontested in this appeal. The parties agree, if it would assist the Inspector, to endeavor to prepare topic specific SoCG following the submission of this main SoCG. The Council will update the Inspector at the Casework Management Conference (CMC).
- 1.5. The appeal site has detailed planning history. This includes a recent appeal decision relating to the Site (dismissed by decision dated 12 October 2023 (PINS Ref: APP/C1435/W/22/3307820) (LPA Ref: WD/2021/2198/MAO). The parties agree and the SoCG refers to this appeal as a material consideration.

2.0 The Application

- 2.1. This is largely covered in the SoCG and need not be repeated in any significant detail here.
- 2.2. The appeal scheme is for outline planning permission with all matters reserved for future consideration with the exception of access. The application was received in August 2024.
- 2.3. The proposal was not registered. The Council was minded to Decline to Determine the submission ("DtD") under s70A of the Town and Country Planning Act 1990. The Appellants were placed on notice of this, and were invited to comment. They sought legal advice and sent it to the Council. Discussions took place between officers at the Council and the Appellants team. The Council was minded to DtD the application but before the Council could DtD, this non-determination appeal was lodged.
- 2.4. The appeal scheme proposes the construction of up to 190 dwellings including open space, landscaping and an on site SANG¹.
- 2.5. The Illustrative Site Layout and Landscape Strategy and SANG Design Plan seeks to demonstrate the extent, scale and distribution of development for which outline planning permission is sought.
- 2.6. In addition to the plans, form and certificates, the application was accompanied by the various supplementary reports for consideration. These are listed in the SoCG and are not repeated here.

Planning History

- 2.7. The Appellant sought permission for up to 290 homes and a strategic SANG (LPA Ref: WD/2021/2198/MAO) and this was dismissed at appeal following Inquiry (dismissed by decision dated 12 October 2023 (PINS Ref: APP/C1435/W/22/3307820)).
- 2.8. The Inspector dismissed the appeal on the basis of: harm to ancient woodland, highway safety, flood risk and heritage. We return to that below. However, the Inspector did comment 'favourably' on some matters and as a result, the Council agrees these are not matters to be pursued here. Primarily, the Inspector determined that, subject to mitigation secured by legal agreement and planning conditions, the Site is locationally sustainable for housing having regard to accessibility and local planning policy. It was also determined that the development would cause no harm in terms of drainage (distinct from the flood risk arising from lack of Sequential Test).
- 2.9. With regards to the impact upon ancient woodland the Inspector found that a path through a narrow belt of ancient woodland between the application site and the

¹ SANG is a Suitable Alternative Natural Greenspace and is a mitigation device for avoiding in combination impacts on the nearby Ashdown Forest.

proposed SANG would lead to 'loss' of ancient woodland (see para.19) and interrupt habitat connectivity (paras 21-2). The Inspector went on to find that the proposal had allowed for a minimum 15m buffer zone to the ancient woodland which could be exceeded in places. She went on to find:

'Nevertheless, because this area of ancient woodland is of itself narrow with a high proportion of its boundary adjoining the area indicated for housing (it borders the whole of the southern boundary of the housing site and around half of its western side) it is, in my view, more susceptible to increased opportunities for deleterious impacts from development such as increased noise and disturbance to wildlife from additional people and traffic, fly-tipping, and the impacts of domestic pets from predation, even with the introduction of defensive planting and a post and rail fence. All of these impacts are identified by NE in their standing advice on Ancient Woodlands as effects of development which can cause loss or deterioration of ancient woodland.' (para.25)

2.10. Overall, on the issue of ancient woodland the Inspector concluded:

'Taking all of these points together I find that the development would result in some loss and deterioration of ancient woodland. This is not outweighed by any facilitation of recreation, health or wellbeing benefits to be gained by opening up access to the public.' (para.26)

2.11. With regards to highway safety the Inspector held that the access arrangement would have an 'unacceptable impact on highway safety' (para.39).

2.12. With regards to flood risk, the sequential test was limited to a search area 7km from the Ashdown Forest SPA and SAC and therefore did not adequately satisfy the terms of the NPPF and PPG (para.45).

2.13. With regards to heritage, the Inspector found:

'The setting to the oasthouse contributes to its significance insofar as its historic use for drying hops and functional relationship with the surrounding fields which grew the hops can still be appreciated today. These fields remain open, undeveloped, and in use as pasture. Consequently, they enable the oasthouse to be appreciated in broadly its historic rural scene. These fields also provide for a qualitative understanding of the significance of the oasthouse derived from its setting as they provide a degree of quiet and tranquillity which you would reasonably associate with such a rural, historic scene. Furthermore, the lack of development in these fields along with its elevated position above the town gives it a local landmark quality.' (para.57)

'The proposed development seeks to site up to 290 houses, access roads, and an attenuation basin within the setting of the oasthouse. Consequently, any remaining ability to appreciate the significance of the oasthouse in its historic rural setting would be largely lost. The level of development proposed would also visually compete with and distract from its local landmark quality. Furthermore, the relatively quiet and tranquil character of the setting of the oasthouse would be significantly diminished by the large-scale residential development proposed.' (para.58)

'The appellant suggests that area(s) of open land could be designed in the final layout of the development, as shown on the Illustrative Site layout, in order to provide an element of the rural setting of the oasthouse. However, given the scale of development proposed any such land would be relatively modest in size, flanked by development, likely landscaped, and would not provide any meaningful historic views of the oasthouse that I have been made aware of. This would therefore reduce the harm I have found to setting by a very minimal degree as its setting as currently experienced is far wider, more extensive, and rural in character. An information board could also be provided as part of the development providing interpretation as to the significance of the oasthouse in terms of its technical rarity and this would better reveal its significance. However, it would not minimise the specific harm to its setting that I have identified.' (para.59)

- 2.14. The Inspector went on to find that: *'[G]iven that the proposal would result in the loss of such a large area of the immediate setting of the oasthouse and therefore severely reduce the contribution this currently makes to the significance of this heritage asset I find that this harm is not outweighed by the public benefits in this case.'* (para.59)

Consultation Responses

- 2.15. As the application was not registered prior to non-determination, no formal responses were sought to the application. PINS are aware of this and directed that consultation be undertaken as part of the appeal process.
- 2.16. The Council has complied with the direction of the PINS case officer and requirements set out in the Start Letter.
- 2.17. The Council has begun an online web resource and document library for the Inquiry and it can be accessed here:

<https://www.wealden.gov.uk/planning-and-building-control/major-application-appeals/>

- 2.18. The Inspector will be updated at the CMC.

3.0 Planning Policy Context

The Development Plan

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

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

The development Plan also includes several neighbourhood plans, but they are not affected by the appeal scheme and so not listed here.

CSLP – changes to WCS 12

- 3.2 On 28 March 2013 an application was made to the High Court under Section 113 of the Planning and Compulsory Purchase Act 2004 challenging the validity of the CSLP on the grounds that it failed to comply with the requirements of Directive 2001/43/EC on the Assessment and Effect of Certain Plans and Programmes on the Environment and the implementing Environmental Assessment of Plans and Programmes Regulations 2004. This was dismissed by Order dated 21 February 2014. However, an appeal on 3 grounds was made to the Court of Appeal. On 7 October 2014, the Court of Appeal dismissed Grounds 1 and 2 relating to the housing numbers in the Core Strategy (original ruling was upheld) but allowed the appeal on Ground 3².
- 3.3 Ground 3 related to whether the Council had considered reasonable alternatives to the use of a 7km zone in relation to the provision of mitigation in relation to Ashdown Forest Special Protection Area (SPA). On 9 July 2015 in response to the Court of Appeal decision, the Council published changes to CSLP Policy WCS12 as directed by the Court of Appeal relating to Ashdown Forest SPA.
- 3.4 Prior to the Court of Appeal Judgment, Policy WCS12 provided that any net increase in residential development between 400m and 7km of the SPA would be required to mitigate its recreational impact through the provision of Suitable Alternative Natural Green Space (SANGS) and on-site visitor management measures. The reference to the 7km zone and the specific mitigation identified in this policy was removed. However, all relevant planning applications continue to be subject to the Habitat Regulations which protect the Ashdown Forest SPA.

² Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681

- 3.5 The rest of the CSLP was unaffected therefore remains intact as part of the adopted development plan for the purposes of this application.

WLP Saved Policies

- 3.6 Certain policies of the WLP (1998) were 'saved' via Direction of the Secretary of State dated 25 September 2007, under the provisions of Paragraph 1(3), Schedule 8 of the Planning & Compulsory Purchase Act 2004.
- 3.7 Under 'saved' policies EN1 (sustainable development) and EN27 (layout and design) of the WLP 1998, the Council has also formally adopted the Wealden Design Guide, November 2008, as a Supplementary Planning Document. The Council considers that the weight to be given to 'saved' policies and the Design Guide is dependent on the degree to which they are consistent with the NPPF (having regard to NPPF paragraph 232).

Relevant Development Plan Policies

- 3.8 The SoCG deals with this and as such, we only briefly comment in relevant development plan policies include:
- Saved Policies GD2, EN1, EN2, EN8, EN12, EN14, EN15, EN27, EN29, DC17, HG5, HG6, HG7, TR3, TR13, TR16, LR1, LR3, LR5, CS1, CS2, CS3, CS4 of the adopted Wealden Local Plan 1998 (WLP).
 - Policies WCS1, WCS2, WCS3, WCS4, WCS5, WCS7, WCS12, WCS13 and WCS14 of the adopted Wealden Core Strategy Local Plan 2013 (CSLP).
 - Policy AFH1 Affordable Housing Delivery Local Plan 2016 (AHDLP)

Wealden Design Guide

- 3.9 The Wealden Design Guide is a supplementary planning document created by the Wealden District Council. Its main purpose is to maintain and enhance the rural character and distinctiveness of the district. The guide provides detailed advice on design principles, materials, landscape, and sustainability for new developments.

It aims to ensure that new developments are in harmony with the local landscape and architectural styles, preserving the unique character of the area. The guide is an important consideration in the planning application process, and developers are expected to demonstrate how their proposals align with its guidelines.

These can all be seen in the attachments divided into documents sections.

National Planning Policy Framework (NPPF)

- 3.10 The latest iteration of the National Planning Policy Framework (NPPF) came into force in December 2024 and is a material consideration in assessing and determining planning applications. Due regard has been had to any relevant national policy guidance and the parties have sought to agree these in the SoCG.

Draft Wealden Plan

- 3.11 The Council has produced a new draft Wealden Local Plan which was the subject of Regulation 18 consultation which closed 10 May 2024. This Plan looks ahead to 2040; and provides a vision for the district, a long-term spatial strategy for growth, including the locations where development will take place. It will provide a range of both strategic and non-strategic policies that will guide development across the district contributing to social, environmental and economic (sustainability) goals.
- 3.12 Whilst the current Local Development Scheme sets out the timetable for work, the latest housing numbers and revisions to the NPPF do need to be taken into account. An update on the emerging Local Plan can be provided at the CMC and or Inquiry if helpful. However, to be clear, it is unlikely the new Plan will have fully progressed to Regulation 19 stage by the sitting days of the Inquiry. It is also the case the Council does not and will not be relying on this emerging strategy for the purposes of the appeal. As agreed in the SoCG, there is no up to date development plan strategy to deal with the housing requirements which are the result of the new standard method and the Council does not have a five year housing land supply.

4.0 Council's Position on the Appeal

Confirming objections and that planning permission should be refused.

- 4.1 Section 70 of the Town and Country Planning Act 1990 requires a planning authority (and any decision maker) to have regard the provisions of the development plan, so far as material to the application as well as any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that determination must be made in accordance with the development plan unless material considerations indicate otherwise.
- 4.2 This appeal is made against the non-determination of the outline planning application lodged to the Council.
- 4.3 In relation to the merits of the case, then the Council considers that the appeal should be dismissed for the following reasons:
- The appellant has not demonstrated that the Appeal Site can be safely accessed.
 - The scheme would cause less than substantial harm to the designated heritage asset on site through inappropriate development within its setting and this less than substantial harm is not outweighed by the public benefits of the proposal.
- and
- Overall, the scheme fails to accord with the development plan and material considerations do not indicate that permission should be granted.

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

5.0 Case for the Local Planning Authority

Highway safety

- 5.1 East Sussex County Council ("ESCC") is the highway authority, it is the statutory consultee for the purposes of highways within its control and is responsible for all aspects of highway operation, including safety, on roads within its control. It is the 'overseeing organisation' for the purposes of assessing the suitability and acceptability of Road Safety Audits and Designer's Responses as defined in the Design Manual for Roads and Bridges ('DMRB') document GG119 Rev 2 (Road Safety Audit). ESCC will be called and will give evidence to the Inquiry.
- 5.2 ESCC has confirmed it raises objections to the scheme proposals based both on a lack of information and that the access proposals have not been demonstrated to be safe. The Putative Reasons for Refusal is:

'The Appellant has not demonstrated that its proposal can be accessed safely, in particular:

Putative Reason for Refusal 1(a):

The proposed extension of the 30mph limit from the foot of Bird in Eye Hill eastwards to the entrance to Lantern House is contrary to policy for setting local speed limits (PS5-02 Local Speed Limits and 20mph Zones) based on the local characteristics of this part of B2102 Bird in Eye Hill and the existing vehicle speeds, and would not be supported or promoted by ESCC on the grounds that it could not be safely implemented and be self-enforcing.

Putative Reason for Refusal 1(b):

The proposed roundabout means of vehicular access from B2102 has been designed to comply with standards applicable to a major road with speeds consistent with a 30mph speed limit. Even so, the design is not fully compliant and has not been demonstrated as being safe for all road users (including cyclists). Further, the design has not been demonstrated to be compliant or acceptable at higher main road speed limits and traffic speeds.

Putative Reason for Refusal 1(c):

Sufficient details have not been provided to demonstrate that the proposed roundabout is capable of safely providing for all users during hours of darkness. ESCC consider that lighting of the proposed new roundabout is required as it is a significant junction on a rural road. An unlit roundabout may have implications for highway safety regardless of the speed limit and may need to be a part of a more comprehensive lighting scheme for Bird in Eye Hill. It is unclear whether such a lighting scheme can be delivered within the available highway land.

As the Appellant has not demonstrated that its appeal proposals can be accessed safely, the proposal would conflict with Policies TR3 of the 1998 Local Plan and Spatial Planning Objective SPO12 of the Core Strategy which requires that new development does not create unacceptable traffic conditions, and provides a satisfactory means of access. The proposals also conflict with the relevant

provisions in the Framework in that it has not been demonstrated that the proposal would provide safe and suitable access for all users (para 115(b)); that any significant impacts on highway safety can be cost effectively mitigated to an acceptable degree (para 115(d); and that there would not be an unacceptable impact on highway safety (para.116).'

- 5.3 The Inspector must decide the issue not only whether it is in principle possible for the access to be provided, and whether the scheme designs are safe and suitable in relation to the volume of persons using them and also wider issues on the road network. It is not open to the decision-maker to reserve matters of detail relating to access (see *R. v Newbury District Council ex parte Chieveley Parish Council* [1999] P.L.C.R. 51 copy attached)
- 5.4. The Site is shown accessed via a new roundabout from Bird in Eye Hill. This is shown on drawing 23138/001 Revision A submitted with the application and appended to the Transport Assessment ("TA") at Appendix 7 of that document. The proposed access would serve not only residents of the development and visitors to the SANG, but also vehicles associated with the existing light industrial uses at Bird in Eye Farm.
- 5.5. One of the grounds on which the previous appeal was dismissed was the issue of highway safety. The submitted TA recognises this and states at paragraph 5.45 that *"A key consideration of the 'Vehicular Access Strategy' is to address the concerns raised by the Inspector in dismissing the Appeal and concerns raised by ESCC in response to the scheme design / Road Safety Audit that accompanied the previous planning application"*.
- 5.6. However, the scheme now proposed does not adequately address design compliance and its consequences and no Road Safety Audit ("RSA") was submitted with the planning application, nor with the appeal.
- 5.7. It is understood the required and necessary RSA was only undertaken on Monday 13 January 2025. The report was submitted to the highway authority on 20 January. The PINS deadline requires the submission of full SoC and SoCG by Friday the 24 January 2025. As such, this Statement of Case is prepared on the basis of the information currently available to the Council and to ESCC and on the basis of the limited review which ESCC has been able to conduct of the information provided in such a short space of time. The Council and ESCC therefore preserve their position as they continue to review the information provided by the Appellant.
- 5.8. On the evidence currently available, the expert view of ESCC is that (a) insufficient information has been provided to enable a proper analysis of the safety and workings of the new access junction and (b) in any event, the proposals have not been demonstrated to be safe. This is addressed further below.
- 5.9. Before considering those concerns, it is worth briefly addressing the lack of pre-application engagement which has been undertaken by the Appellant on this issue. The Appellant's highway team initially sought to engage with the ESCC Highway Authority at pre-application stage. Correspondence exists from as early as December 2023 when the current consultant appears to have been instructed.

However, the Appellant did not pay the necessary fee and pre-application work with ESCC Highway Authority was abandoned. When the Local Planning Authority had discussions with the Appellant in June 2024, it was told that separate pre-application engagement with ESCC highways was underway. Engagement with ESCC highways recommenced in August 2024 when the formal outline planning application was submitted and there were matters of highway safety identified and further information including a Road Safety Audit (RSA) requested. A RSA brief was provided to ESCC highways and a response provided to appellant highway team on 11 September and no further correspondence until 6 January when the appellant's highway team announced the appeal to ESCC highways. The RSA audit was not provided to ESCC until 20 January 2025.

- 5.10. ESCC have significant concerns regarding the safety audit information which has been provided for the access proposal which are based on subsequent revisions of drawings to those in appeal suite of documents.
- 5.11. ESCC indicate in their highway guidance 'Road Safety Audit Policy for new Development' that a Road Safety Audit (RSA) should be provided with a designer's response. The proposed vehicle access would be serving a major housing development alongside the existing operations on Bird in Eye Farm and the proposed SANG. This would need to support many vehicle types and sizes including cyclists and business/farm vehicles from a rural road (the principal non-motorised access, which would support most active travel users to and from the site, is to be located on the northwest of the site where it meets Bird in Eye Hill). An RSA is essential to ensure that what is being proposed at the site access is safe, deliverable and can support its demand. The need for safety information and independent audit in relation to this scale of development and proposed highway intervention is clear. This is especially the case where one of the grounds on which the previous appeal was refused was highway safety. The expert view of ESCC, which the Local Planning Authority agrees with, is that this information is key and necessary for an application which includes access at this stage.
- 5.12. Given the guidance, and the planning history of the site, it is remiss that the Appellant did not submit a Road Safety Audit with its planning application or its appeal.
- 5.13. Whilst a safety audit has been provided to ESCC highways the District were unaware of this until 20 January 2025. It is understood the Appellants are attempting to negotiate highway matters during the course of the appeal, but the timing of critical information submission is considered poor. In the absence of a RSA until very recently, the ESCC highway team has not been able to fully consult with its Road Safety and technical teams, nor with Sussex Police (required as the scheme suggests a proposed speed limit reduction). As such, this Statement of Case has been prepared without the benefit of full comments from those bodies.
- 5.14. Together with its review of the submitted roundabout junction design, the information which has been provided in the form of the RSA submitted to ESCC on 20 January 2025 raises the following issues – to be clear this list is not exhaustive as the time available for review of the RSA has prevented detailed comment. It should be noted that the RSA considered different, later, Revisions to the proposed scheme drawings than were part of the submitted application or

the appeal submission. The junction design drawing considered in the RSA was Drawing No. 23138/001 Revision B which differs from the submitted Revision A only in the addition of the existing highway boundary and proposed highway boundary for internal roads. Drawing No. 23138/005 Revision A, which was considered in the RSA, shows a proposed 30mph speed limit extension from the existing position on Bird in Eye Hill near the hospital eastwards to the entrance to Lantern House, to the east of the proposed site access roundabout junction. 23138/005 Revision A differs from the application drawing 23138/005 in that the application drawing showed a further proposed speed limit 'transition' of 40mph east of the entrance to Lantern House.

- PS5-02 Local Speed Limits and 20 Zones policy document stipulates that a 30mph speed limit reduction proposal may be considered where criteria includes mean speeds below 33mph and the road and environment characteristics. ESCC as highway authority do not support the proposed 30mph speed limit extension shown on drawing 23138/001 Revision B (and also on Revision A) and could not due to the existing mean average vehicle speeds on the B2102 significantly exceeding 33mph (EB 36mph/WB 38mph west of access and EB 41mph/WB 39mph east of access) on a road with incompatible existing local characteristics and without sufficient urbanising changes to the visual environment that would influence driver behaviour to reduce speeds to at or below the required 33mph. Traffic calming features to support the speed limit (which are not proposed) cannot, in any case, be supported on this B class road which is a bus route, HGV route, emergency vehicle route to the hospital and ambulance service depot, and which has no street lighting.
- The roundabout has been designed based on a 30mph speed limit. The forward visibility distance indicated is one step below DMRB standards on the eastbound approach to the roundabout (western arm) where average mean speeds are currently higher than 33mph and where forward visibility would rely heavily on the opposing, lane being free of traffic. This is not considered to be sufficiently safe. The forward visibility sightline on the westbound approach (eastern arm) is shown as 90m which complies with the standard for 30mph though existing mean average speeds are again higher than 33mph. This forward visibility sightline relies entirely on the ability to see through a raised bank and wooded area. It is not established how this sightline can be achieved in both vertical and horizontal planes. The RSA did not pick up these issues which are regarded as fundamental highway safety issues relating to access design.
- The ESCC road safety team have raised concerns at the roundabout design principles – see through issue, deflection, lack of lane detail, no lighting scheme. The implications of all this are not settled (and should be in a scheme where access is not reserved). The impact of lighting may create associated impacts on heritage matters (see putative reason for refusal 2 below).
- With regards to a lighting scheme, ESCC consider that this is required as it is a significant junction on a rural road. An unlit roundabout may have implications

for highway safety. It is unclear from the submitted information whether a lighting scheme can be delivered.

- A 30mph speed limit extension cannot be supported, though a 40mph limit could be considered (it may meet the policy requirements) though this would require a redesign of the proposed roundabout so that the deflection and visibility envelopes reflect anticipated approach speeds. Moreover, it also requires Sussex Police to agree formally (for this they require plans of speed limit extent proposals and design of roundabout/access).
- From the information available neither the roundabout proposal shown in Drawing No. 23138/001 Revision B nor the speed limit extension proposals shown in Drawing No. 23138/005 Revision A are considered to be acceptable or demonstrated to be safe.

- 5.15. If the Inspector decides to accept late submissions to advance the access scheme, then the parties will respond. However, this is likely to cause delays and does not appear to assist transparent decision making. Moreover, it ought to have been avoidable bearing in mind the history at this Site.

Impact on designated listed building – Bird in Eye Oast

Putative Reason for Refusal 2 -

The development would result in harm to and the loss of the traditional rural open and undeveloped setting of the Grade II listed Bird in Eye Oast by virtue of the proposed indicative areas of development to the northwest, west and southwest of the designated heritage asset. The proposed development would visually compete with and distract from this local historic landmark and would not safeguard the existing relatively tranquil and quiet setting through the introduction of housing within the undeveloped area and the infrastructure to serve the proposed SANG leading to a detrimental cumulative impact of change. This in combination with the inappropriate urbanisation of the character of the access road with the introduction of the roundabout infrastructure would result in the proposals leading to less than substantial harm to the significance of the designated heritage asset through inappropriate development within its setting and this harm would not be outweighed by the public benefits resulting from this proposal.

The proposal would be contrary to Section 66 of the Planning (Listed Buildings and Conservation Area) Act 1990, Policy EN1 and EN27 of the Wealden Local Plan 1998, Policy SPO2 of the Core Strategy and paragraphs 212 – 217 of the National Planning Policy Framework and Chapter 5, 7 and 12 of the Wealden Design Guide.

- 5.16 At the centre of the Site is a Grade II listed oasthouse. It sits broadly at the centre of Bird in Eye Farm, which forms its setting, along with the fields surrounding it which were historically used for a mixture of arable, hop garden and pasture uses in connection with the farm. The Appellant's current position is that it does not accept that the proposed development would affect the setting of the listed oasthouse. Consequently, as set out in Section 66(1) of the Planning (Listed

Buildings and Conservation Areas) Act 1990 in considering whether to grant planning permission for development which affects the setting of a listed building, the decision maker must have special regard to the desirability of preserving the building's setting.

- 5.17 Previously, the effect of development on the setting of the oasthouse was determined at appeal to cause less than substantial harm to the significance of the listed building. Paragraph 55 of the appeal decision sets out the circumstances in which this matter was aired. Paragraph 57 is clear on the significance of the setting and the functional relationship between the fields which grew hops could still be appreciated. This traditional rural open setting was considered to be compromised by the proposed development and to cause less than substantial harm to the significance of the heritage asset.
- 5.18 The current scheme has reduced the proposed quantum of growth from 290 to 190 homes. The area shown for development is configured differently from the dismissed appeal. The current scheme also proposes changes to the immediate setting of the oast house with the removal of an area of hardstanding to the west and inclusion in the redline boundary of the site for landscaping purposes. This latter element of the current scheme is a positive change and reintroduces the historic boundary to the farmyard area where this has been eroded in the later part of the 20th century.
- 5.19 Notwithstanding, the expert view of the Council's Senior Heritage Officer is that there will still be harm to the setting of the oast through the proposed built development forward of the westerly farmyard line and the works to create a designed SANG with associated infrastructure. Both of the westerly elements of built development will be apparent in views of the oast from the hospital side, housing, public areas etc, and also in views from the oast itself, particularly that to the south-southwest. There is also a failure to understand the elevated views from the external stair of the oast and the upper element of the building. In relation to the proposed built development to the northwest, whilst there is currently a length of leylandii screening around the riding area, the longevity of this planting has to be questioned. Without this, the isolated island of linear development at the back of existing development on Bird in Eye Hill would be prominent. The Council is firmly of the view that the Appellants have still not looked at the site in the 'round', being very myopic in predominantly considering setting from the oast only, not how it is perceived within the wider rural landscape and how the farmstead is perceived on the ridge. The tranquil rural setting would not be safeguarded. In addition to areas of built development outlined above, the scheme introduces a designed SANG with infrastructure (furniture, bins, formal pathways, 3m wide shared footway/cycleway, lighting and planting, together with several areas of surface water attenuation and engineering works to create appropriate levels for the footway/cycleway) in the western part of the site would add to the cumulative impact of change and artificiality of the landscape character created.
- 5.20 The current scheme also proposes a new roundabout on the Bird in Eye Hill road with a new route south to replace the existing farm access road. It is acknowledged that part of the historic farm access (the northernmost part) was originally to the west of the current farm access which was moved to the east in the mid 20th century, however the experience at arrival to the farm retains a rural character,

along a narrow route, moving between fenced paddocks, with the oast building visible to the south. The proposed roundabout will introduce an overly urbanising effect on the approach to the farm with all the resulting infrastructure, including signage and lighting and will also necessitate artificial changes to levels to create the road design proposed. This will permanently remove the rural character of the farmstead entrance and result in loss of the wider rural setting of the oasthouse.

- 5.21 Although it is acknowledged that there will be a larger open area to the west of the oast, the remaining ability to appreciate the significance of the oasthouse in its historic rural setting would be substantially impacted for the reasons set out above. The level of development proposed would also visually compete with and distract from its local landmark quality. Furthermore, the relatively quiet and tranquil character of the setting of the oasthouse would be significantly diminished by the large-scale residential development proposed, highways infrastructure and associated SANGs/recreational usage of the land to the west with its associated infrastructure.
- 5.22 As a result, the setting of the oasthouse would not be preserved by the development thereby conflicting with the requirements of Section 66(1) of the Planning (Listed Building and Conservation Areas Act) 1990 where special regard must be had to the desirability of preserving the building's setting. It follows therefore that the proposal would conflict with Spatial Planning Objective SPO2 of the CS which requires protection of the historic environment. The Framework is also clear that in determining planning applications account should be taken of the desirability of sustaining and enhancing the significance of heritage assets.
- 5.23 In terms of paragraph 215 of the NPPF the harm identified to the significance of the oasthouse through development in its setting would be 'less than substantial', at the moderate level, given that the significance of the building in terms of its technical rarity would be unharmed by the development.
- 5.24 As set out in paragraph 215 pf the NPPF, where a development proposal would lead to 'less than substantial harm' to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

Heritage Balance

- 5.25 In this case the public benefits would include economic benefits derived from the provision of up to 190 homes of which 35% would be affordable housing and 5% custom and self-build homes, in an area where there is an agreed and long-standing shortfall of housing land supply, the current figure being 3.68 years. These homes would drive economic growth in the area through the associated expenditure and job creation that new housing provides. Appropriate conditions also mean this development could come forward relatively quickly. The provision of housing, including affordable housing is afforded substantial weight in the current context.
- 5.26 The development would provide a SANG primarily to mitigate impacts to the Ashdown Forest SPA and SAC which would likely occur from increased recreational disturbance from the proposed housing as set out in Policy WCS12 of the Core Strategy. The mitigation the SANG would provide is a neutral factor in the

planning balance. However, provision is also made for other visitors to the SANG also which is a public benefit. This additional benefit of the SANG, over and above its primary requirement to mitigate impacts on the Ashdown Forest, is afforded limited positive weight on the basis it meets no policy requirement or identified local need but would be of some value to local residents

- 5.27 The size of SANG proposed in this appeal is necessary to provide a circular walking route of c. 2.7km for future occupiers of the development.
- 5.28 The proposals would secure a biodiversity net gain of +159.11% net gain in habitat units within the SANGS area and in a +13.02% net gain in habitat units and a +35.87% net gain in linear features in the development area. Sustainable homes in terms of their environmental credentials and proximity to local services would be created, along with recreational space and landscaping. Some minor public benefit would also be derived from the provision of a heritage information board regarding the oasthouse and the parties have agreed that an information board about the Ancient Woodland and nearby Veteran Trees.
- 5.29 An absence of harm to the amenity of neighbouring occupiers or landscape harm carries neutral weight. Generally, neutral weight is also afforded to any contributions through CIL planning obligations to mitigate pressure on local services, although some wider public benefits may occur as a result. An absence of harm from loss of Best and Most Versatile agricultural land is also a neutral factor in the planning balance.
- 5.30 Paragraph 212 of the NPPF advises that great weight should be given to the conservation of designated heritage assets irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm. Furthermore, any harm must be given considerable importance and weight. Given that the proposal would result in less than substantial harm at the moderate level to the significance of the oasthouse due to the harm to such a large area of its immediate setting and would therefore severely reduce the contribution this currently makes to the significance of this heritage asset, in line with the recent appeal decision, the Council is of the view that this harm is not outweighed by the public benefits in this case.

Overall Planning Balance

- 5.31 The Council considers that the proposal conflicts with the following policies of the Development Plan: Saved Policies EN1, EN27 and TR3 of the Wealden Local Plan 1998; and Policy WCS14 and Spatial Planning Objectives SPO2 and SPO12 of the Core Strategy Local Plan. Therefore, the proposal conflicts with the development plan taken as a whole.
- 5.32 Turning to material considerations, there are benefits that the proposal will provide. These are as set out in the 'heritage balance' section directly above.
- 5.33 As the Council cannot demonstrate a five year supply of housing paragraph 11(d) of the NPPF applies. This provides that:

(d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.'

5.34 As set out above, it is considered that the public benefits do not outweigh the heritage harm. It is considered that this provides a strong reason for refusing the proposed development and therefore permission should not be granted in accordance with paragraph 11(d)(i).

5.35 Further, it is considered that whether considered individually or cumulatively the adverse impacts on highway safety and heritage are such that they significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF when taken as a whole having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

6.0 Conditions and Legal Agreement

- 6.1 At the time of writing, there is a suggestion in the SoCG that a list of conditions to be attached in the event of the appeal being allowed will be drawn up. These will include measures relating to issues upon which there is common ground that there is no objection subject to appropriate conditions. The main parties will also identify any difference between them on the conditions to be attached.
- 6.2 Prior to the Inquiry the Appellants have indicated they will submit Legal Agreement to provide on-site and off-site infrastructure under the provisions of s106 of the 1990 Act in the event of the appeal being allowed. The Council will instruct lawyers and an update will be provided at the CMC.

7.0 Conclusion

- 7.1. In conclusion, the Council will contend that for the reasons set out above, planning permission should be refused and the appeal dismissed. It is considered that these grounds are sound and clear cut having given the matter full and proper consideration in the light of Government advice, the provisions of the development plan, and other material considerations. That includes a recent previous appeal, which was dismissed.
- 7.2 The Council considers the proposal does not accord with the current development plan, and that material considerations (including paragraph 11(d)NPPF) do not indicate that permission should be granted.