



## Appeal Decision

Hearing held on 19 July 2022

Site visit made on 19 July 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2022

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Appeal Ref: APP/U1430/W/21/3283287

Land **east of Waites Lane at Wakeham's Farm, Pett Level Road , Fairlight Cove**, East Sussex

- 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 Mr Damon Turner of Welbeck Strategic Land III against the decision of Rother District Council.
  - The application Ref RR/2020/151/P, dated 17 January 2020, was refused by notice dated 22 March 2021.
  - The development proposed is **described as** 'Outline: Development of up to 43 residential units (including 40% affordable), including new vehicular access from Pett Level Road'.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for an award of costs was made by Welbeck Strategic Land III against Rother District Council. This application will be the subject of a separate Decision.

### Preliminary Matters

3. The planning application was submitted in outline with all matters of detail reserved for future consideration save for the access into the site<sup>1</sup>. I have assessed the proposal on this basis. I was advised at the hearing that although not marked as such, drawings SK12 Revision E and SK14 Revision C should be treated as illustrative. As such, I have considered the drawings on this basis and treated them as simply being an illustration of how the proposal could ultimately be configured.
4. **A revised version of the National Planning Policy Framework (the 'Framework')** has been published since the Council issued its decision. All parties had an opportunity to address this in their submissions. As a result, no party would be prejudiced by me having regard to the new version of the Framework.
5. A screening direction was issued on the 20 April 2022 that confirmed the proposal is not Environmental Impact Assessment development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

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<sup>1</sup> But not accessibility within the site or internal circulation routes

## Background and Main Issues

6. Through its statement of case, the Council withdrew several of its objections to the proposal. These being the effect of the appeal scheme on healthcare/community facilities and the adequacy of the foul drainage system. I appreciate that interested parties have maintained their objections in respect of these matters, but I have not addressed them as discrete main issues because the appeal has failed for other reasons.
7. That said, and despite the lack of objection from the Council, interested parties have raised concerns about the appropriateness of the appeal scheme given the groundwater conditions at the appeal site. Accordingly, I raised this point with the Council and appellant before the hearing was opened. In so doing, I advised them that I wished to discuss whether a sequential test is required and if Policy FAC2 of the Development and Site Allocations Local Plan 2019 (DaSA) is consistent with the Framework, and its requirement for a sequential approach to development on land at risk of flooding from any source. I have addressed this matter as a main issue given the evidence I heard.
8. Thus, the main issues in this appeal are:
  - Whether the proposed development would be in a suitable location, with reference to the spatial strategy in the development plan;
  - Whether the appeal site is a suitable location for the proposal, having regard to policies relating to development in areas at risk of flooding;
  - Whether the proposal would conserve and enhance the natural beauty of the High Weald Area of Outstanding Natural Beauty (AONB);
  - The effect of the proposed development on the character and appearance of Fairlight Cove; and
  - The effect of the proposal on social and community cohesion.

## Reasons

### *The suitability of the location with reference to the spatial strategy*

9. To maintain the existing settlement pattern and the role of main service centres and permit the sensitive evolution of smaller settlements, Policy OSS1 of the Rother Core Strategy 2014 (CS) sets out a strategy for the overall spatial distribution of residential development in the district in a hierarchy. The intention is to (a) focus most new development at Bexhill, (b) provide for some development in the market towns of Battle and Rye, (c) facilitate the limited growth of villages that contain a range of services and then (d) allow small scale infill and redevelopment in other villages.
10. Unlike other settlements in the district<sup>2</sup>, Fairlight Cove is not listed in the CS as a Rural Service Centre or Local Service Village. That said, the Council confirmed at the hearing that Fairlight Cove should be treated as a Category C village where Policy OSS1 states limited growth is to be facilitated. This is because it is a relatively sizeable village that has a settlement boundary and some services, albeit of a limited range, which includes a village hall, church,

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<sup>2</sup> See Figure 9 of the CS

recreation ground, farm shop, country park and bus service. Moreover, the village is also very close to Hastings.

11. What constitutes limited growth is not defined and can be nuanced. The term should be read in the context of Policy RA1 of the CS. This policy explains that to meet housing needs and ensure the continued vitality and viability of villages, 1,670 homes will be delivered in villages over the plan period. To achieve this, the homes will be located in accordance with Figure 12 of the CS, subject to refinement in the DaSA. Fairlight Cove was distributed 37 homes comprising an extant allocation remaining from the 2006 Local Plan and potential new sites identified from the SHLAA<sup>3</sup>. This was revised up in the DaSA to approximately 46 homes across allocations FAC1 (16 homes) and FAC2 (approximately 30 homes).
12. Policy FAC2 allocates the appeal site for approximately 30 homes with at least 50% being age restricted. It is not entirely clear how the figure of 30 was arrived at, but it seemed to be a judgment based on the landscape impacts of developing the site, a point I will return to. What is clearer is that the flexibility in numbers **provided by the term 'approximately'** was because a serviced plot **for a doctor's surgery** may not be required, and therefore some housing could be provided in lieu of this. The area identified for the doctor's surgery and its parking could accommodate around 4-5 modest homes<sup>4</sup> so it would be reasonable to interpret 'approximately 30 homes' as potentially meaning up to 35 homes or thereabouts.
13. The appeal scheme **would not include the doctor's surgery as the** Clinical Commissioning Group (CCG) have confirmed that it is not necessary. As a result, there would be no conflict with Policy FAC2 on this account. This is because the provision **of the doctor's surgery** was only a requirement if confirmed by the CCG through a business case. However, the provision of 43 homes would exceed what is allocated, even when accounting for the non-**provision of the doctor's surgery**. It would also result in the number of homes residually distributed to Fairlight Cove in Policy RA1, and subsequently allocated in the DaSA, being exceeded. Accordingly, there would be a conflict with Policies RA1 and FAC2 as a whole.
14. However, the provision of 43 homes and the exceedance of the allocation needs to be considered in the context of the spatial strategy as a whole, with Fairlight Cove being a Category C village where limited growth is permitted under Policy OSS1. I have not seen substantive evidence to demonstrate the additional homes proposed would take the level of growth outside what could be considered 'limited' **in the context of** what is already allocated, the size of the village and the availability of services. Moreover, by way of comparison, the number of homes would not be excessive when compared to the '**limited**' level of growth planned through Figure 12 at other Category C villages. There may be reasons for the higher housing distribution at other villages, but I have seen no rationale for limiting the distribution at Fairlight Cove to 46 homes. Moreover, the appeal site is within the settlement boundary of the village, where Policy OSS2 of the CS supports most forms of development.

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<sup>3</sup> Strategic Housing Land Availability Assessment

<sup>4</sup> When comparing superseded drawing PL-01 Rev D with SK12 Rev E. The Council suggested that perhaps eight homes could be accommodated but this would be a stretch given the scheme density overall.

15. In conclusion, the appeal scheme would conflict with Policies RA1 and FAC2 because it would exceed the number of homes distributed and allocated. However, the scale of development would not conflict with other aspects of the spatial strategy, including those Policies in the CS from which Policies RA1 and FAC2 flow. Thus, the evidence before me suggests the conflict with Policies RA1 and FAC2 should carry only limited weight against the appeal scheme.

*The suitability of the appeal site for the proposal with reference to flood policies*

16. **The appellant's Flood Risk Assessment (FRA) explains that** the appeal site is situated on loamy and clayey soils with naturally high groundwater. It goes on to explain that ground investigations, including groundwater monitoring, found that the resting groundwater level varied across the site from 1.50m below ground level (bgl) to 2.10m bgl. The FRA concludes that the risk of groundwater flooding may be moderate in areas across the site with Figure 3.3 indicating that around 50% is at risk. This is consistent with the findings of the Lead Local Flood Authority (LLFA).
17. Paragraph 161 of the Framework explains that to avoid flood risk to people and property, development plans should apply a sequential, risk-based approach to the location of development when taking account of all sources of flooding. This should be done by applying the sequential test. Paragraph 162 of the Framework explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Paragraph 162 also includes an instructional policy that development should not be allocated or approved if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
18. Substantive evidence is not before me to demonstrate groundwater flooding is not a source/form of flooding for the purposes of Paragraphs 161 and 162 of the Framework. At the hearing, the appellant seemed to accept it was. Thus, it seems to me that for the purposes of applying the policies in the Framework relating to flooding, areas at risk from all sources of flooding should be included, that groundwater flooding is a source of flood risk and that sources of flooding other than from rivers and the sea need to be considered when applying the sequential approach to the location of development. I am mindful that the application was submitted in 2020 and therefore before the Framework was revised. However, the appeal was submitted after the Framework was amended and I must make my decision in the context of the most up to date planning policy.
19. The appeal scheme is not supported by a sequential test that has listed other sites in a robustly defined sequential test area (STA), and then considered if they are of a lower flood risk and reasonably available. Accordingly, the appellant has failed to establish that there are no sequentially preferable sites that are reasonably available. As the sequential test has not been undertaken, the exception test in Paragraph 163 of the Framework is not relevant at this stage. This would have considered, amongst other matters, whether the site could be made safe for its lifetime by, for example, conditions being imposed that required the homes to be raised out of the ground. The proposal would therefore be at odds with the Framework.
20. In reaching this view I am mindful that there are environmental constraints to the expansion of Fairlight Cove, including the cliff edge, a Strategic Gap and the High Weald AONB. This may limit the availability of other suitable sites in

and around the village. However, this would need to be investigated as part of the sequential test. Moreover, I cannot assume at this stage that the sequential test area should be limited to Fairlight Cove and its immediate environs. This is because Policy RA1 of the CS seeks to provide 1,670 homes in the villages across the district. Some of these homes are distributed to Fairlight Cove, but the appeal scheme would exceed that number. Moreover, it is unclear whether Fairlight Cove/the appeal site would have been distributed the same number of homes when applying the current flood policies in the Framework. Thus, I am not satisfied a sequential test would be a mere paper exercise that the appeal site would inevitably address satisfactorily.

21. Paragraph 166 of the Framework states that the sequential test does not need to be applied for development on sites which have been allocated. However, that would only apply if the site was allocated following a sequential test at the plan making stage which considered flooding from all sources, including ground water in this instance. There is nothing before me to suggest the allocation at the appeal site was sequentially tested in this way. As a result, Policy FAC2 is inconsistent with the Framework as it is predicated on a Strategic Flood Risk Assessment dating from 2008 that undertook some sequential testing but not in relation to groundwater.
22. Neither the Environment Agency nor the Lead Local Flood Authority have objected to the proposal. They would have been notified of the appeal, but they have not been asked to specifically comment on the scheme in light of the amendments to the Framework. As a result, the absence of an objection is not determinative in this instance.
23. I therefore conclude that the proposal would be at risk of flooding and this risk has not been adequately justified through an absence of sequentially preferable sites in a logical and robustly identified STA. The proposal would therefore be contrary to the Framework, which aims to sequentially direct development away from areas at risk of flooding to avoid flood risk to people and property. In this respect **it's difficult to see how the** proposal could adhere to Policies EN7 and PC1 of the CS.

*Whether the proposal would conserve and enhance the AONB*

24. The High Weald AONB Management Plan sets out the defining components of character that make the High Weald distinct and homogenous. This includes a deeply incised, ridged and faulted landform of clays and sandstone with numerous ghyll streams, historic settlements and routeways, an abundance of ancient woodland and small, irregular and productive fields bounded by hedgerows and woods. The High Wealden Coast Character Area<sup>5</sup> exhibits many of these features and is generally unspoilt and tranquil. However, there has been some hedge loss around Fairlight, which has an urban fringe in places.
25. The appeal site encompasses a reasonably small field currently given over to grass the eastern boundary of which is marked by a mature hedgerow. The land within the field falls to the south towards a ghyll stream flanked by woodland. As a result, the appeal site exhibits some of the landscape features listed in the management plan. That said, it is unlike the irregular fields to the north of Fairlight Cove because it has a generally rectangular shape and a more modern structure and appearance. It is also flanked on three sides by

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<sup>5</sup> See the East Sussex County Landscape Character Assessment, which defines this landscape character area.

- residential development that presents a stark urban fringe interface due to the boundary treatment and visibility of housing. This reduces the landscape sensitivity and value of the appeal site.
26. The above analysis is consistent with a report (LAWF)<sup>6</sup> prepared by East Sussex County Council in 2018. It concluded that the appeal site (Sub Area B1) does not have strong evidence of the key components of natural beauty identified in the High Weald AONB Management Plan. This finding was mainly down to the modern shape of the field, its intensive agricultural use and the proximity of surrounding residential development, which is also generally modern in character. Sub Area B1 was therefore found to be of low to medium landscape and visual sensitivity and medium to high value. The overall judgement was that there would be medium capacity for some well-designed, high-quality development of an appropriate density and scale within the field. The report does not provide a suggested quantum of development.
27. Being a green field site of some value, it would be difficult to conclude there would be no harm to the AONB from developing it for housing. The LVIA (in Para 5.5) acknowledges this to an extent by explaining that the appeal site would be perceived as part of the residential area of the village once developed, as opposed to the countryside, which is the case now. However, given that the AONB covers a large part of the district the Council has had to balance the benefits of housing delivery set out in the Framework with the conservation of the High Weald. In this respect, the appeal site is likely to be one of the least-worse options for providing housing in a protected landscape. Accordingly, it was allocated for approximately 30 homes. The Council took the view that this level of development could be accommodated whilst leaving space for a well-designed, high-quality scheme of an appropriate density and scale in accordance with the LAWF.
28. The appeal scheme, at up to 43 homes, would exceed the allocation. Although not major development within the meaning of Paragraph 177 of the Framework for the reasons set out by the Council, the proposal would still be denser and more compact than a scheme in line with the allocation. This would have some noticeable consequences including a narrower eastern buffer than if fewer homes were proposed and a tighter overall configuration. This in turn would reduce space for landscaping and likely require more two storey buildings. The latter would result in a more dominant roof scape with less scope for feature trees to break it up. As a result, the proposed development would appear as a compact and stark housing estate from Viewpoints 10a and 10b identified in the LVIA and Viewpoints 3 and 8 in the LAWF, in addition to views from nearby properties. It would also mean the transition from village to countryside would not be as soft as a scheme proposing 30-35 homes.
29. The density of the appeal scheme would be around 25 dwellings per hectare, **which is not high. It's also important to note that a** balance needs to be struck between making an efficient use of land whilst responding to local character, especially as a large proportion of the district is in the High Weald AONB so the availability of suitable land for development is likely to be more constrained. However, great weight is to be afforded to the conservation of the AONB and this outweighs the need to make an efficient use of land when doing so would result in harm to this nationally protected landscape.

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<sup>6</sup> Landscape Assessment of Wakeham's Farm, Fairlight Cove

30. Strengthening the existing gappy hedgerow on the eastern boundary of the appeal site and providing a 24m landscaped buffer would provide mitigation over time and the access, which would be located in land parcel B2, could also be successfully screened and softened by additional planting. Moreover, the illustrative layout demonstrates some positive qualities. For example, there would be space for some tree planting, cars could be subtly placed, properties could face the eastern boundary and the roof scape would not appear discordantly jumbled if the properties were arranged in discernible building lines. There would also be scope for carefully composed street scene, a high proportion of single storey properties and the dwellings could be finished in locally distinctive materials and designs appropriate to the High Weald. The latter would be especially important to ensure the development would not appear as a generic estate. It was also confirmed at the hearing that street lighting would not be necessary, and the proposal would not urbanise Pett Level Road and Battery Hill any more than is envisaged in Policy FAC2.
31. I therefore share the view in the LVIA that the effect on the landscape character of the AONB and the High Weald Coast would be moderately adverse at Year 1 with the impact on the site being substantially adverse. This would reduce over time if the mitigation set out in the preceding paragraph is secured. However, the planting along the eastern boundary would take time to mature, the effectiveness in the winter has not been demonstrated and some of the viewpoints identified above are from elevated locations. As a result, there would still be some minor negative residual visual effects at Year 15 because a compact housing estate would still be a visible feature of the site. Moreover, I am not entirely satisfied the edge of the village would be softer with the proposal, especially in the short to medium term, as the site in its current state provides an undeveloped buffer between the village edge and Land Parcel B2.
32. However, the scheme would be seen in the context of existing built development and in a reasonably narrow visual envelope. It is therefore understandable that the High Weald AONB Joint Advisory Unit and East Sussex County Council did not raise objections to the proposal. Nevertheless, I find that the proposal, which would be a more compact and intense form of development than allocated, would result in some minor residual harm to the landscape character and visual amenity of the AONB. These impacts would be inherent in a scheme of this size. Although minor, the adverse impacts of the proposal would not conserve and enhance the AONB contrary to the expectations of s85 of the Countryside and Rights of Way Act. Accordingly, the appeal scheme would be at odds with the requirements in Policies EN1, EN3, OSS3 and OSS4 of the CS and DEN1 and DEN2 of the DsSA aimed at conserving the character and quality of the landscape of the AONB.

*The effect on the character and appearance of Fairlight Cove*

33. Much of Fairlight Cove dates from the 20<sup>th</sup> Century. Some streets, such as Meadow Way and Knowle Road, exhibit an estate type character due to the repeated house types, reasonably uniform plots and standard road widths and pavements. Others, such as Farley Way and Lower Waites Lane have a more rural and organic character due to a mixture of house types, the provision of verdant front gardens and narrow lanes. Most areas of the settlement incorporate high levels of planting that provide a verdant character. The settlement therefore has areas of both suburban and semi-rural character.

34. The scale of properties varies throughout the settlement, but there is a high proportion of bungalows and properties with the first floor in the roof. Most tend to face the road in discernible building lines set behind generous front gardens that often includes landscaping.
35. It is fair to say that the illustrative sketch layout shows properties set within smaller plots than those around the appeal site. This is mainly due to the use of semidetached forms. The smaller plots would be particularly noticeable due to the absence of generous front gardens. As a result, the proposal would likely have a more compact character and appearance when compared to other streets and areas in the village.
36. However, aspects of the illustrative layout have some promise because it reflects some of the characteristics in the village. For example, the narrow roads and extent of planting in the front gardens could provide a similar feel to streets such as Farley Way. The arrangement of the houses in discernible building lines is also characteristic of the village's **form** and structure. The mixture of one and two storey properties would give an organic feel and would not appear out of place, although the ultimate height would need to be carefully considered to prevent stridently tall additions like those on the corner of Battery Hill and Waites Lane<sup>7</sup>. Some of the plot widths could also be comparable to those to the immediate west of the site and the rear gardens could be large enough for some tree planting. The entrance into the site would also have a verdant character.
37. It is also important to note that the sketch scheme has some potential to incorporate place making. For example, Plots 28-30 could address the site entrance and punctuate a vista into the site. This could be a pleasing element if the buildings were designed well with appropriate forms and detailing that flow from the relevant design guide<sup>8</sup>. Furthermore, car parking would be behind the building lines creating the space for the soft landscaped front gardens as well as a planting node. All of which could create an attractive street scene. The layout would also allow for street trees, which is now a requirement of the Framework and the use of a perimeter block structure with active edges would create a vibrant and sociable street<sup>9</sup>. Overall, whilst the proposal would not conserve the landscape, it would be sympathetic to the character, form and appearance of Fairlight Cove. As a result, there would be no conflict, in respect of this matter, with Policies EN3 and OSS4 of the CS.

*The effect of the proposal on social and community cohesion*

38. The Council would have carefully considered whether approximately 30 homes would be severed from the settlement when allocating the site. It is therefore surprising that the Council has taken issue with the location of the proposal relative to the settlement, services and the existing community. Nevertheless, the proposed homes would be surrounded on three sides by existing development and would be a short walk from local facilities. The walk to the village hall may be longer for some than others but it would not be excessive, being around 15 minutes for the future residents furthest from the site access.

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<sup>7</sup> All the more so if the houses would be built out of the ground due to the risk of groundwater flooding

<sup>8</sup> High Weald Housing Design Guide

<sup>9</sup> Although the properties in Plots 17 and 20 would probably need to be reoriented to ensure their backs did not address the street as currently indicated

39. The walk from the appeal site to the village hall and other facilities would involve occupants of the appeal scheme having to negotiate the route along Battery Hill. The road is subject to a 40mph speed limit and pedestrians would need to cross twice. Moreover, the pavement narrows in sections due, in part, to overhanging vegetation. However, the proposal would provide crossing points and visibility is generally good along Battery Hill. Cutting back the vegetation would provide a footpath of adequate width against relevant standards. Thus, the Local Highway Authority has understandably not objected to the proposal due to inadequate or unsafe pedestrian accessibility. As a result, the route is not such that it would discourage most residents from walking into the village.
40. The supporting text to Policy FAC2 indicates that a western link would improve the permeability of the scheme, but this is not a requirement of Policy FAC2 and is therefore not a justifiable reason to refuse the appeal scheme. In conclusion, the proposal would provide safe pedestrian access into the village, and this would support social and community cohesion. As a result, there would be no conflict with Policies CO6 or TR3 of the CS.

#### Other Considerations

41. The proposal would deliver 43 homes on an allocated site at a point in time when the housing supply deficit in the district is acute at only 2.89 years, which is about half of where it needs to be. In this context the delivery of housing carries considerable weight in favour of the proposal. Similarly, there is a clear need for affordable housing and the proposal would deliver 40% of the homes as such through the planning obligation. Likewise, the provision of needed housing for older persons, accessible homes and two custom and self-build plots, would also be a significant benefit to housing choice.
42. Future occupants of the appeal scheme would support the vitality of the village by providing community/social capital. They could also support the retention of services and facilities by spending locally. However, evidence has not been submitted that outlines the practical local effect of this, for example there is nothing to suggest nearby services are failing for lack of patronage. The proposal would also provide moderate support to the construction industry.
43. The appeal scheme would provide amenity space, but it would be quite small and unlikely to be a destination. Its main purpose is to soften and buffer the development from the open landscape to the east. In recreational terms it would therefore benefit future residents of the appeal scheme rather than providing a notable facility for the wider village. It would be a benefit of limited weight as a result.
44. The proposal would provide payments under the Community Infrastructure Levy and towards healthcare services, but substantive evidence is not before me to demonstrate these funds would be used to deliver wider public benefits, as opposed to simply mitigating the impacts on infrastructure arising from the scheme. The same would apply to Council tax receipts. I was advised at the hearing that in the circumstances there would be no New Homes Bonus.
45. The proposal would provide housing in a location where services could be accessed by sustainable transport, especially if the travel plan is successful. The improvements to bus facilities and the walking route along Battery Hill would benefit the village more generally. There would also be a net

enhancement to biodiversity and the surface water drainage system would manage runoff in a consistent way. These are benefits of moderate weight.

#### Other Matters

46. Southern Water (SW) has confirmed that there would be capacity within the existing system for the foul drainage flows associated with the proposed development. There is some debate regarding whether the flows calculated by the appellant are accurate, but SW had previously stated there would be capacity for a much larger development than that now proposed.
47. However, the comprehensive evidence presented by interested parties demonstrates that there is an existing issue with the foul drainage system at times of heavy rain when surface water gets into the foul drainage system and pollutes flood water. Correspondence between SW and local residents acknowledges this problem and seems to imply that it needs to be remedied. This is an existing problem, so it is not for the appellant to put it right. However, the appeal scheme should not make matters worse. The appeal scheme would be designed to ensure surface water runoff is retained at current green field rates, but it is unclear whether foul water discharge from the development could ultimately end up in the adjoining stream in times of rainfall and contribute to pollution and flooding.
48. **Appendix 4 of the Council's appeal statement includes correspondence with SW** in response to two questions. The first question asks what is being done by SW to improve the existing system to ensure it can take the proposed development. In response, SW explains that modelling and surveys shows that the system can become overloaded in rainfall and the modelling will be used to determine the extent of sewer upsizing to allow the additional flows to be accommodated. SW are also investigating opportunities to remove surface water connections from the foul system to relieve flows. It is further confirmed that the upgrades required will move to a detailed design stage ready for delivery to allow the new flows to be accommodated. SW also explains that funds would be available for this through the infrastructure charge to allow the necessary upgrades to be delivered, with the trigger point being the planning application being received.
49. As a result, the evidence before me would suggest that upgrades to the system are required for the foul water flows from the development to be accommodated. Had the scheme been otherwise acceptable then a condition could have been imposed along the lines advocated in the PPG<sup>10</sup>. This would likely have required the completion of the upgrades referred to by SW prior to the occupation of the development. As a result, there would be no conflict with Policy SRM2 of the CS.
50. Given my overall conclusion, the appeal scheme would have no effect on any European Site/Special Protection Area and therefore I have not considered this matter further. Similarly, I am aware of the concerns raised by interested parties, including highway safety and the effect on living conditions, but I have not addressed these as the appeal has failed on the main issues.
51. There is a dispute between the Council and appellant as to the appropriateness of Paragraph 14 in the Planning Obligation. It seems to me that the definition

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<sup>10</sup> Paragraph: 020 Reference ID: 34-020-20140306

of affordable housing for rent set out in the Framework should be used unless an alternative can be justified with clear evidence. The Council did not provide substantive evidence at the hearing to justify its preferred approach.

Therefore, I prefer the **appellant's wording** on the balance of the submissions.

### Planning Balance

52. The proposal could be compatible with the general character of the settlement and would not harm community cohesion. However, it would be at odds with aspects of the spatial strategy, result in some residual harm to the AONB and fail to follow a sequential approach to flood risk. Accordingly, the proposal would be at odds with the development plan taken as a whole. A scheme should be determined in accordance with the development plan unless material considerations indicate otherwise.
53. The Council are currently unable to demonstrate a five-year housing land supply and the shortfall is serious at around only 2.89 years. In such circumstances Paragraph 11 of the Framework states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposal. In this respect, Footnote 7 of the Framework lists the relevant policies, including those relating to flooding.
54. I have already explained that the policies of the Framework are, in this instance, instructive and state that a sequential approach/test should be followed, and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The appellant has not completed a sequential test and therefore the policies of the Framework provide a clear reason for refusal. As a result, the 'tilted' balance in Paragraph 11d)ii of the Framework is not relevant on this occasion. It is therefore necessary to undertake the normal balance.
55. The appeal scheme would result in a limited conflict with Policies RA1 and FAC2 and some limited residual harm to the AONB contrary to Policies EN1, EN3, OSS3 and OSS4 of the CS and DEN1 and DEN2 of the DsSA. The latter is a matter of great weight against the proposal. In the circumstances, the benefits of the appeal scheme would carry weight of a high order that may well have been sufficient to outweigh these adverse impacts. However, the proposal would also be at risk of groundwater flooding, and this has not been justified through a sequential test contrary to the Framework. This alone is a matter of sufficient force to outweigh the benefits of the proposal given the strictness with which flooding is addressed in national policy. It therefore follows that the benefits of the scheme would not outweigh the totality of harm I have identified. Accordingly, the appeal has failed.

### Conclusion

56. For the reasons set out above, the appeal is dismissed.

*Graham Chamberlain*  
INSPECTOR

## APPEARANCES

### FOR THE APPELLANT

Mary Cook  
Craig Noel  
Tom Hydes  
Catherine Ritson  
James Turner  
Paul Cranley  
Jordan Johnson

Town Legal  
Strutt and Parker  
Stantec  
Allen Pyke Associates  
Welbeck Strategic Land III  
Pell Frischmann  
Pell Frischmann

### FOR THE LOCAL PLANNING AUTHORITY

Myles Joyce  
Mrs Sarah Sheppard

Rother District Council  
Rother District Council

### INTERESTED PARTIES

Issy Horsley  
Mr C Smart  
Carol Sharpe  
Cllr Andrew Mier  
Maggie Sullivan  
Chris Bunch  
Cllr Chris Saint  
Paul White  
Lorne Smith  
Geoffrey Smith  
Kevin Wilkinson  
Andrew Steading

### DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

1. Missing photographs from the LVIA taken from VPs 10a and 10b
2. Extract from the AONB Management Plan
3. Photographs taken from VPs 3 and 8 of the LAWF
4. Suggested route for my site visit
5. List of suggested conditions agreed by the Council and appellant
6. Note relating to whether a Habitat Regulations Assessment is necessary
7. Photographs of localised flooding



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## Costs Decision

Site visit made on 19 July 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2022

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Costs application in relation to Appeal Ref: APP/U1430/W/21/3283287

**Land East of Waites Lane at Wakeham's Farm, Pett Level Road , Fairlight Cove, East Sussex**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Damon Turner of Welbeck Strategic Land III for a full award of costs against Rother District Council.
  - The appeal was against the refusal of planning permission for a development described as 'Outline: Development of up to 43 residential units (including 40% affordable), including new vehicular access from Pett level Road'.
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### Decision

1. The application for an award of costs is allowed in the terms set out below.

### Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also states that a Council is at risk of an award of costs if it: prevents or delays development which should clearly be permitted; fails to provide evidence to substantiate each reason for refusal; relies on vague, generalised or inaccurate assertions about **a proposal's impact**; or persists in objecting to a proposal which an Inspector has previously indicated to be acceptable, this being the Inspector that examined the Development and Site Allocations Local Plan 2019 (DaSA).
3. **The Council's planning committee refused** the proposal against the advice of Officers. It was entitled to do so as it is not bound to follow the recommendation of its Officers. Such an approach would render the committee superfluous. Nevertheless, the committee must be able to clearly articulate and substantiate its decision, especially when departing from professional advice.
4. The reasons for refusal are multifaceted and could have been clearer. The first concern relates to the effect on the character and appearance of the village and landscape of the High Weald Area of Outstanding Natural Beauty. This may seem curious at first because the appeal site is allocated for development. However, the allocation under Policy FAC2 of the DaSA is for approximately 30 homes whereas the proposal is for 43. As a result, the appeal scheme pushes the boundaries of the allocation.
5. This uplift in the number of homes would not be insignificant. It can also be considered in the context that the original scheme was for 48 homes but

received Officer support only when revised down to 43. Therefore, a comparably small change in the number of homes at the appeal site can make a notable difference. A scheme for 43 homes would inevitably be denser than a proposal for approximately 30, even when allowing for a small uplift in lieu of a **plot for a doctor's surgery. The planning committee applied its planning judgment and found this to be harmful.**

6. This conclusion followed a site visit and committee presentation and was therefore informed. The concerns have also been properly articulated and substantiated. Accordingly, this aspect of the **Council's decision** was not unreasonable, as were the concerns that the uplift in housing numbers would be at odds with the spatial strategy for Fairlight Cove given the availability of services and facilities. I do not share the view of the Council for the reason set out in my decision, but the point was not unreasonable.
7. Similarly, the uplift in the number of homes beyond that allocated would also have implications for foul drainage, the local problems with which are set out in the DaSA. The **Council's** concerns in respect of this matter are nuanced and were not advanced without evidence when considering the submissions of local residents, who clearly have detailed knowledge. Neither the Lead Local Flood Authority nor Southern Water objected to the proposal, but the latter has also informed residents that there is a problem with the foul drainage system that needs to be resolved.
8. As a result, there is reasonable doubt whether an increase in foul water discharge into the current system can be achieved adequately and prior to an **upgrade. Southern Water's** position was described at the hearing as being contradictory and unhelpful and I can see why. I therefore have some sympathy with the **Council's position** on this point. It was also a matter discussed in detail at the hearing, including whether the impact could be adequately mitigated. Southern Water also provided further comments during the appeal process. Thus, this aspect of the reason for refusal was reasonable.
9. The Council are concerned that the proposal would insufficiently integrate with the existing community. However, it would not be sited any further from the village than the allocation and future residents would access services along the route envisaged in Policy FAC2. The Council has not provided any substantive reason why it is now seeking to row back from the allocation on this point. I have not been referred to any alteration in circumstances, such as new policy or changes on the ground. Thus, this aspect of the reason for refusal was unreasonable and the appellant was put to wasted expense in addressing it.
10. This was compounded by the suggestion that the footway on Pett Level Road would harm the character and appearance of the area and would be unsafe, even though this is a specific requirement of Policy FAC2. The Council did not provide substantive technical evidence to suggest the route would fall below any recognised standard, which may have changed since the allocation, which could have justified departing from the views of the Local Highway Authority **and the applicant's highways consultant.** The Council subsequently removed its objections in respect of this matter, but the evidence before me suggests it should not have factored into the reason for refusal in the first place. The appellant was put to wasted expense in addressing this unreasonable point.
11. The Council also raised concerns that the non-provision of a serviced plot for a **doctor's surgery was premature. However, evidence was before the Council**

from the Care Commissioning Group in October 2020, which was prior to the decision being made, that the serviced plot was not required. This also needs to be **considered in the context that the plot is not a 'hard' requirement of the allocation**, it was subject to a business case. Moreover, I have not been directed to any other policy that specifically required alternative community uses to be considered in lieu of a **serviced plot for a doctor's surgery**, which the reason for refusal infers. Consequently, this was an unreasonable point, and the appellant was put to wasted expense in addressing it, even though the Council ultimately withdrew its objection.

12. The Council's second reason for refusal also refers to an absence of information to ascertain the impacts on the Dungeness, Romney Marsh and Rye Bay Ramsar. The Council subsequently confirmed through the Statement of Common Ground that there would be no adverse impacts in this respect. It is therefore unclear why this formed part of the reason for refusal. The advice from technical consultees did not support this stance. Again, it was an unreasonable point the appellant had to address.
13. In conclusion, it was legitimate of the Council to raise concerns regarding whether the uplift in numbers beyond that allocated would sit comfortably with the spatial strategy and harm the character and appearance of the settlement, the landscape and drainage capacity. However, it has failed to substantiate its concerns regarding social and community integration, highway safety along, and urbanisation of, Pett Level Road, the absence of the serviced plot for a **doctor's surgery and the inadequacy of information relating to the impact on the Dungeness, Romney Marsh and Rye Bay Ramsar**. This was unreasonable behaviour that resulted in unnecessary and wasted expense for the appellant in addressing these matters in the appeal process. Thus, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred. A partial award of costs is therefore justified.

#### Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rother District Council shall pay to Mr Damon Turner of Welbeck Strategic Land III the costs of the appeal proceedings described in the heading of this decision, but only in so far as they relate to the matters of social and community integration, highway safety along, and urbanisation of, Pett Level **Road, the absence of the serviced plot for a doctor's surgery and the inadequacy of information relating to the impact on the Dungeness, Romney Marsh and Rye Bay Ramsar**; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Rother District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*Graham Chamberlain*  
INSPECTOR