The Planning Inspectorate

Appeal Decisions

Inquiry Held on 15-19 May; 5, 6, 12 June; 24-26 July 2023
Site visits made on 30 December 2022, 26, 27 July 2023

by Christina Downes BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29th August 2023

Appeal A Ref: APP/L3815/W/22/3295000
Land East of Broad Road, Nutbourne

- 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 Pallant Homes Ltd against the decision of Chichester District Council.
- The application Ref CH/20/03320/OUTEIA, dated 17 December 2020, was refused by notice dated 15 October 2021.
- The development proposed is the erection of up to 132 dwellings and provision of associated infrastructure.

Appeal B Ref: APP/L3815/W/22/3295004
Land West of Drift Lane, Chidham

- 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 Pallant Homes Ltd against the decision of Chichester District Council.
- The application Ref CH/20/03321/OUTEIA, dated 17 December 2020, was refused by notice dated 15 October 2021.
- The development proposed is the erection of up to 68 dwellings and provision of associated infrastructure.

DECISION

1. Appeal A is allowed and planning permission is granted for the erection of up to 132 dwellings and associated infrastructure on land east of Broad Road, Nutbourne, in accordance with the terms of the application, Ref CH/20/03320/OUTEIA, dated 17 December 2020, and the plans submitted with it. This is subject to the conditions in Annex Three to this decision.

2. Appeal B is allowed and planning permission is granted for the erection of up to 68 dwellings and associated infrastructure on land west of Drift Lane, Chidham, in accordance with the terms of the application, Ref CH/20/03321/OUTEIA, dated 17 December 2020, and the plans submitted with it. This is subject to the conditions in Annex Four to this decision.

PROCEDURAL MATTERS

3. The inquiry was scheduled to begin on 18 August 2022, but the venue proved unsuitable for the number of people who wished to attend. It was therefore postponed until 4 January but was again postponed due to a medical emergency. It finally opened on 15 May but was again adjourned on

12 June due to the illness of a key witness. The inquiry was finally completed on 26 July 2023. At the request of the parties, I undertook a night-time site visit on 27 July 2023.

4. The applications were made in outline form, with all matters apart from access and layout reserved for future consideration. However, prior to the Council's decision, the Appellant revised the application to include layout as a reserved matter. The layouts were provided for indicative purposes and at appeal stage that relating to Site B was revised to accommodate the internal ditches on that land. I have had regard to these layouts as illustrative of how the sites could be developed. I return to this matter later in my decision.

5. The proposals are Environmental Impact Assessment development. An Environmental Statement (ES) was submitted for each scheme and the cumulative impacts were also considered of both schemes together. Further ecological information was provided at appeal stage at the request of the Secretary of State. I am satisfied that the ES's meet the relevant statutory provisions, including publicity and are adequate in terms of their scope.

6. Planning Obligations by Agreement (the Section 106 Agreements) were submitted with each appeal. These were discussed at the inquiry, and I allowed further time for them to be completed and executed once it had closed.

7. The third reason for refusal in both appeals related to the lack of a Section 106 Agreement. The matters in question related to securing affordable housing, transport infrastructure, the provision and maintenance of open space and mitigation for recreational disturbance to the Chichester and Langstone Harbour Special Protection Area (SPA). These matters have now been resolved through the submitted Deeds, although there is an outstanding issue relating to the amount of open space for Sites A and B together. The Section 106 Agreements and their efficacy are considered later in my decision.

8. Appeals A and B are for "up to" 132 and 68 dwellings respectively and thus offer the potential for a lesser number. However, that cannot be assumed at this stage and no evidence was provided by the Appellant to support any specific reduction in quantum. The Environmental Impact Assessments are on the basis of the maximum number of dwellings. In the circumstances, my consideration will be on the basis of a development of 132 dwellings on Site A and 68 dwellings on Site B.

REASONS

PLANNING POLICY CONTEXT AND THE APPROACH TO DECISION MAKING

9. The development plan includes the Chichester Local Plan (the LP) adopted in 2015 and the Chidham and Hambrook Neighbourhood Plan (the NP) made in 2016. Policy 2 in the LP sets out the development strategy and a settlement hierarchy comprising the sub-regional centre of Chichester, several settlement hubs and a number of service villages. Hambrook and its neighbour Nutbourne East are designated together as a service village and policy 5 sets out an indicative number of 25 dwellings during the local plan period to meet community needs. Policy LP1 in the NP supports the development of windfall sites of 10 or fewer units. It also identifies 4 sites

for some 78 dwellings, all of which had planning permission when the plan was made in 2016 and have now been built.

10. A large part of the central part of the District is covered by the South Downs National Park whilst to the south is the Chichester Harbour Area of Outstanding Natural Beauty (the AONB) and a number of important European sites protected for their ecological importance. This means that the less constrained corridor along the A259 is under particular pressure for housing development. The housing requirement set out in the LP did not seek to meet the full objectively assessed housing need for the District mainly due to the limitations imposed by transport infrastructure. Although the Examining Inspector found the plan sound, this was on the basis that there would be a review within 5 years of adoption. This has not happened.

11. In any event, the LP is now more than 5 years old and so the local housing need falls to be considered against the Government's standard methodology. Whilst it is acknowledged that the Government has indicated that this will provide a starting point and will no longer be mandatory, this approach has not yet been incorporated into national planning policy. On this basis, there is no dispute that the Council is unable to demonstrate a five year supply of deliverable housing sites against the local housing need. The housing supply and distribution policies are therefore out-of-date and, regardless of whether the "basket" of most important policies for determining the application are also out-of-date, paragraph 11d) of the Framework applies by virtue of Footnote 8. The extent of the shortfall is disputed, and I consider this later in my decision.

12. The appeal sites comprise open countryside to the north of the A259 between Broad Road and Drift Lane. The western boundary of Site A abuts the settlement boundary of Nutbourne East and the eastern boundary of Site B adjoins the houses fronting the western side of Drift Lane. There would be an open area separating the two sites. LP policy 45 restricts development to that requiring a countryside location and policy 2 seeks to contain new development within the settlement boundaries.

13. The LP is currently being reviewed. The draft Chichester Local Plan 2021-2039 (the emerging LP) has reached the Regulation 19 stage and once the public responses have been considered, the emerging LP will be submitted for examination. Whilst the emerging plan is progressing it is still at a relatively early stage in the adoption process, which is anticipated to be mid-2024. At the moment there is no certainty that its provisions will not change, including the minimum of 300 dwellings to be allocated through a review of the NP for the service settlement. The emerging LP can only be given very limited weight.

14. The housing policies in the development plan clearly do not address current housing needs and policy 2, which sets out the housing provision for the plan period is out-of-date. So too are the aforementioned housing policies 4, 5 and 45 in the LP and policy LP1 in the NP. In such circumstances, Policy 1 in the LP makes statutory provision by reflecting the presumption in favour of sustainable development contained in paragraph 11 of the National Planning Policy Framework (the Framework). In this case there are policies in the Framework relating to Habitats sites and an Area of Outstanding Natural

Beauty that are engaged. It is only if these are not offended that the "tilted balance" is engaged. These matters will be considered in my Conclusions.

15. It should be said that the Council has sought a pro-active approach in seeking to address its housing shortfall through the publication of an *Interim Position Statement for Housing* (the IPS). I was told that this has been subject to consultation and was formally adopted for development management purposes in November 2020. In my opinion this is an important material consideration that should be afforded significant weight. The IPS puts forward 13 criteria for the assessment of housing proposals and will be considered later in my decision.

ISSUE ONE: THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE LANDSCAPE AND RURAL CHARACTER OF THE AREA AND THE SETTING OF THE CHICHESTER AONB

Policy context and approach

16. The appeal sites comprise relatively flat, open agricultural land. Site A is just under 5 hectares (ha) and lies to the north of the A259 and to the east of the settlement of Nutbourne East and Broad Road, from where it would take its access. Site B is of similar size and lies on the western side of Drift Lane with the main access from the A259. Both sites are bordered by the railway line and between them is an area of land of approximately 3.3 ha. There are no natural features that define the eastern boundary of Site A or the western boundary of Site B.

17. It is difficult to envisage a circumstance where housing development on greenfield land would not cause some adverse landscape and visual effect. However, the extent of such effects and whether they can be successfully mitigated in the longer term would depend on the site in question and the development being proposed. The Council's housing land supply position is very likely to require greenfield sites to be made available, especially given the constraints in this District. However, that is a matter to be considered in the planning balance and not a consideration that should affect the assessment of the landscape and visual effects.

18. The Boundary of the AONB runs along the southern kerbline of the A259. There is no dispute that the appeal sites fall within the setting of the designated area. The South Downs National Park lies to the north and its elevated landform can be clearly seen when looking across the site from various viewpoints to the south. However, the main parties agree that due to the distance and intervening vegetation, long distance views from the National Park would not be impacted and I note that the National Park Authority has not objected to the proposals on these grounds.

19. In the LP, policy 43 seeks to ensure that proposals do not detract from the distinctive character and special qualities of the AONB. This applies to development within the designated area and also its setting. The policy also seeks adherence to the policy aims of the *Chichester Harbour AONB Management Plan* (the Management Plan), amongst other things. Policy 2 in that document states that development outside but close to the AONB boundary should not detrimentally impact the character and setting of the protected landscape. LP policy 48 includes a provision that seeks to prevent adverse impacts on the openness of views around designated environmental

areas or the tranquil and rural character of the area. There is a requirement in policy EM3 of the NP that requires new housing development to conserve and enhance the landscape and natural environment and, in particular, the AONB.

20. Paragraph 178 of the Framework indicates that development within the setting of an AONB should be sensitively located to avoid or minimise adverse impacts on the designated area. Paragraph 174 recognises the intrinsic character and beauty of the countryside, but it stops short of the restrictive terms included in policy 45. Other than in that respect, the development plan policies relating to the countryside and the AONB seem to me to be generally consistent with national policy.

Coalescence of settlements

21. Coalescence is a spatial concept that seeks to maintain the character and identity of settlements. There are a number of policy references in the LP that seek to prevent actual or perceived coalescence. However, there is no designation on the Proposals Map to show specific strategic gaps. It is therefore a matter of judgement for the decision-maker. I note that a *Landscape Gap Assessment* has been undertaken as part of the evidence base to the emerging LP by the landscape consultants Terra Firma. It identifies several strategic gaps along the A259 corridor.

22. The appeal sites lie between the settlements of Hambrook and Nutbourne East and Broadridge and Bosham. The gap proposed for designation lies between Newells Lane, the A27 and Broadridge. It does not include the appeal site and neither Drift Lane nor Chidham are designated as settlements either in the adopted or emerging LP. This will be considered in connection with the Local Plan examination in due course and it is not known at this stage whether the identified gaps will be carried forward in the adopted plan. The proposed gap designations can be given little weight at the present time.

23. The appeal sites are a very small element of the overall open land between the settlements referred to above. They are located in one corner of that land. Spatially they are therefore relatively insignificant in terms of keeping the settlements separate and maintaining their identity. In the circumstances I do not consider that the proposed developments, either individually or together would result in actual or perceived coalescence or conflict with the relevant policies in the development plan in this respect. That is not to say that the gap between Nutbourne East and the houses in Drift Lane is not of value in landscape terms and I consider this below.

Landscape assessments

24. The *West Sussex Landscape Character Assessment* (2003) places the appeal sites within the Southbourne Coastal Plain Landscape Character Area (LCA). Key characteristics include a low-lying, flat and open landscape with long views to the Harbour. They also include the narrow gaps of land between settlements, including Nutbourne and Chidham, which provide visual relief to the built-up areas. In this context the reference to "settlements" does not seem to refer only to those designated in the LP and it was confirmed at the inquiry that in landscape terms the group of dwellings along Drift Lane would be included. The *Chichester Harbour Conservancy Landscape Character*

Assessment places the sites within the Havant to Chichester Coastal Plain LCA which records a flat coastal plain, open arable farmland, hedged paddocks and pockets of orchards. It also refers to linear settlements associated with the old Roman Road and the occasional views south to the Harbour. Both assessments include a small part of the AONB immediately to the south of the A259 within the same LCA as the appeal land. Overall, it seems to me that they identify a landscape that has a varied nature, including built elements.

25. The flatness of the terrain provides the opportunity for permeability at the interface of the land within the AONB and the land outside of its boundary. Visual connections to the Harbour landscape allow appreciation of the character and special qualities for which the AONB is designated, as set out in the Management Plan.

26. A *Landscape Capacity Assessment* (2019) was carried out by Terra Firma as part of the evidence base to the emerging LP. The appeal sites are within Sub-area 87, which is to the north of the A259 and also includes land north of the railway line. The sub-area is concluded to have a medium/ low potential capacity for development. Sub-area 88 is to the east of Drift Lane and includes the part of the AONB immediately to the south of the A259. It is to be noted that this has a different character, including a more enclosed, small-scale landscape and a built-up frontage along the A259.

27. There were two landscape and visual impact assessments (LVIA) before the inquiry which consider the effects at site level. The Appellant's LVIAs were submitted at application stage (The Lizard LVIAs), whereas the Council undertook its own later in the process (the HDA LVIA). Whilst they reach very different conclusions, both appear to be consistent with the methodology espoused in the Landscape Institute's *Guidelines for Landscape and Visual Impact Assessment*. Overall, there was no dispute by the main parties that some development may be able to be accommodated on the appeal sites without undue landscape harm.

Layout

28. As already mentioned, layout was not a reserved matter when the applications were submitted but has now become so. The layouts are thus indicative but are helpful in showing how the sites may be developed but not necessarily how they will be developed. As has already been said, it cannot be assumed that anything less than the maximum number of dwellings on either site would be built if permission were to be granted.

29. In the ES and DAS for both schemes there is a building heights plan. On Site A this shows the dwellings on the eastern side to be bungalows or chalet bungalows. On Site B, most of the dwellings are shown as bungalows or chalet bungalows. The indicative layout of Site A also includes two key views within the site towards the South Downs, which the ES and DAS indicates would be maintained unrestricted through careful positioning of dwellings and typologies. There was no suggestion that these vistas were no longer intended to be provided and they were discussed at some length at the inquiry.

30. There was some debate about whether there would be much scope to vary the indicative layouts. As well as the viewing corridors on Site A, the

indicative layout for Site B was revised to allow for the retention of the internal ditches. In both proposals Ecological Corridors would also need to be accommodated and the widths and locations of these features are included within the Section 106 Agreements.

31. Whilst the orientation of dwellings may change, and some adjustments could be made to their positioning I am doubtful that there would be much scope for a substantially different approach to that shown on the indicative drawings. Now that layout is a reserved matter it would not be possible at outline stage to restrict part of the sites to bungalows and chalet bungalows. A planning condition was however agreed that there would be a maximum height of two storeys. That does not mean to say that lower heights would not be forthcoming on some parts of the sites where this is necessary in order to achieve an appropriate landscape or visual response. Indeed, the Appellant did not suggest that bungalows or chalet bungalows would not be included when detailed plans were submitted.

Effect on the setting of the AONB

32. The development along the southern side of the A259 is within the AONB. However, in terms of its character it seems to me to be a bit of an anomaly in that it contributes very little to the scenic beauty or special qualities on which the designation has been based. There was clearly development along this section of the road when the AONB was designated in the 1960's. It seems reasonable to surmise that its boundary fell where it did because the A259 provided an easily identifiable edge to the designated area. However, there has been a considerable amount of new building subsequently and the historic maps suggest that the character of this edge has now changed considerably.

33. I observed that some gaps do remain between individual buildings and building groups, which allow the trees within the countryside behind to be seen. There is also an orchard on the corner with Cot Lane, which extends back along that narrow road. However, in neither of these places are there any views through to the Harbour or AONB landscape. Permeability is therefore restricted at this point. It is relevant to note that the appeal sites are not within any of the key viewpoints considered to be of importance in the Study of Views, which was undertaken on behalf of Chichester Harbour Conservancy in response to the emerging LP. This considered visual connections to and from the Harbour towards Chichester Cathedral spire and the South Downs.

34. There is an oblique view towards the South Downs from the top of Cot Lane and other long views from the footway on the southern side of the A259, especially through the gaps in the boundary vegetation of Site A. However, these views are within the context of the busy main road in the foreground and the developed context along this built-up semi-urban edge. In terms of the special qualities and distinctive character of the AONB the appeal sites seem to me to contribute relatively little. This can be compared with some other undeveloped land to the east and west. In these places there is an open frontage to the AONB allowing visual connectivity with the Harbour landscape and waterside environment. Examples are the Pottery Field site on the western side of Nutbourne East and Highgrove Farm on the eastern side of Bosham.

35. For the reasons I have given, I consider that the effect of the appeal developments on the AONB, either individually or together, would be insignificant.

Effect on landscape character

36. The appeal sites are not subject to any specific landscape designations in the LP or the emerging LP. There is also no dispute that they are not part of a "valued landscape" for the purposes of paragraph 174 of the Framework although national policy recognises the intrinsic character and beauty of the countryside.

37. In the *Landscape Capacity Assessment*, sub-area 87 extends north and south of the railway. The rural character of the area to the south of the railway line, in which the sites lie, is more affected by suburban influences. Although there are trees and hedges along parts of the wider site boundaries, development along the A259, Broad Road and Drift Lane is also evident. Nevertheless, the undeveloped nature of this land does provide a sense of openness between the settled areas. Apart from a line of 3 oak trees running into Site A from the southern boundary and the drainage ditches on Site B, there are no physical features dividing this swathe of agricultural land. Whilst it may not be particularly remarkable in landscape terms, the flat and open agricultural terrain is a key characteristic of the LCA in both of the Landscape Character Assessments.

38. Open land to the east or west would remain if one or other development were to be built. This would retain northerly views across the open fields towards the South Downs, particularly with Appeal B but also to some extent with Appeal A, although in the summer months this would be largely obscured by tree cover along the A259 boundary.

39. Planting is proposed along the eastern boundary of Site A and the western boundary of Site B in connection with the creation of the ecological corridors. For Appeal A this would be 5 metres in width and for Appeal B it would be 5 metres in width but narrowing to 2.5 metres at the southern end. These green corridors would provide some degree of mitigation in terms of providing a soft edge to the built development. Nevertheless, their restricted width would limit their effectiveness, even when well established. Overall, I consider that there would be a negative effect on the receiving landscape.

40. If both developments were to be built there would be open land between the two sites of some 3.3 ha, which would be planted as meadowland in connection with achieving nutrient neutrality, This, in all likelihood, would be fenced to prevent public access. The landscape would fundamentally change at this point and the gap between Nutbourne East and the development along Drift Lane would be relatively small.

41. The Appellant's assessment of the landscape effects appeared to be influenced by the housing land supply situation, which has led, in my opinion, to them being under stated. On the other hand, the sensitivity attributed to the various landscape receptors, including the overall character of the wider site, is too high in the HDA LVIA, in my opinion. Nutbourne East is no longer a linear rural village as development has spread considerably to the west of Broad Road resulting in a looser more suburbanised settlement pattern. The settled influences provide an important part of the context

within this part of the A259 corridor. Site A would adjoin the settlement boundary and whilst it would extend development in an easterly direction I do not consider that it would make a negative contribution in terms of the character or identity of Nutbourne East.

42. Having regard to all of the above points, I consider that there would be significant landscape harm whether one or both sites were developed. This is likely to be of a moderate adverse nature for each site individually whilst the combined effects would be likely to be of a moderate/ substantial adverse nature. The mitigation planting and landscaping would grow and mature around the site boundaries although this is likely to be less effective in the winter months. Overall, I consider that whilst the adverse effects would reduce to some degree there would still be significant harm in the longer term in all scenarios.

Effect on visual amenity

Site A

43. There is no dispute that visual effects would be restricted and localised. Those most affected would be pedestrians on the footways either side of the A259, people waiting at the bus stop, cyclists using the adjacent part of the National Cycle Network and pedestrians and cyclists along Broad Road. The views of these receptors would be tempered by the traffic, especially along the busy A259. There is also existing tree and hedge screening along these boundaries, albeit that this is less effective in the winter months. However, there are also significant gaps in the vegetation, particularly at the southern end of Broad Road and in the vicinity of the bus stop on the northern side of the A259. These gaps allow views of the flat, open landscape towards the rising land of the South Downs and Kingley Vale, which provide a prominent backdrop.

44. It is clear from many of the local representations that these northerly views with the agricultural land in the foreground are of considerable local value and some described them as "iconic". I cannot agree with the Lizard LVIA in terms of either the sensitivity attributed to these receptors, the magnitude of change or the visual effects. In my opinion there would be significant adverse impacts and for pedestrians particularly I am inclined to agree with the HDA LVIA that there would be a substantial adverse effect at year one.

45. There would also be some glimpses for train passengers. From my observations though, the through trains travel too fast for much of the site to be appreciated. The hourly services stopping at Nutbourne East travel at lower speeds and allow fleeting views into the site although this is restricted by the vegetation along the railway corridor.

46. In respect of mitigation, it is proposed to retain and reinforce the boundary planting. This would though be punctuated by the new access off Broad Road and the gaps necessary to achieve the proposed viewing corridors. The indicative layout shows how they could be achieved but, as I have already commented, they would be seen within the context of a housing development. The quality of the view would therefore be considerably reduced in comparison with what exists at present. The illustration in the DAS rather confirms the point and it therefore seems to me that the view that people value would be significantly diminished. Nonetheless, the

planting would mature both within the site and along its boundaries and would soften and screen the built development. Overall, in the longer term I consider that the visual effects would be reduced to moderate adverse.

Site B

47. The visual effects here would be more localised than in respect of Site A. This is because the development on Site B would be mainly tucked behind existing buildings on the northern side of the A259. Due to the tree screening along the A259 at this point I consider that the main view for pedestrians and cyclists would be along the proposed main access road. The revised indicative layout indicates that the ditches would remain intact, and this would be secured by a planning condition. In such circumstances the new houses would be likely to be set back from the western boundary. This would have the potential to open up a view of the South Downs at this point.

48. The other main view would be from Drift Lane which is relatively open on the western side. There are no footways, but it is a quiet county lane and for walkers or cyclists along this route the view would be of frontage housing, which would not be unexpected or uncharacteristic. Of course, the development would at depth, but due to the relatively flat nature of the site the dwellings to the rear would be less apparent. From the train I observed a more open view of this site, due to the scant boundary vegetation. As with Site A, the effects, albeit fleeting, would be most obvious to those on the hourly stopping train service. Overall, I consider that the effect would be of a moderate adverse nature.

49. In respect of mitigation, the boundary vegetation along Drift Lane would be retained and reinforced and there is considerable scope to improve the screening from the existing gappy hedgerow. Furthermore, there would be a 15 metres wide ecological corridor along the northern boundary, and this would have considerable screening potential once established. Overall, I am inclined to the view that in the longer term the overall visual effect would be of a minor nature.

Site A and Site B together

50. The two developments would be separated by the proposed meadowland. This would be crossed by a footpath secured through the Section 106 Agreement. This would afford pedestrians and cyclists views across open land towards the South Downs where none currently exists. On the other hand, these views would be seen within the context of built development. The visual impacts would be much the same as those for the sites individually because they would be experienced by the receptor in a dynamic rather than a static manner.

Overall conclusions on landscape

51. For the reasons I have given I do not consider that the appeal proposals either individually or together would result in the coalescence of settlements. Any harm to the AONB through development in its setting would be relatively insignificant. The proposals would therefore not conflict with policy 43 in the LP or policy 2 in the Management Plan in this regard.

52. The change to the landscape arising from the appeal developments would affect a relatively contained area of landscape between two infrastructure

corridors, the village of Nutbourne East and the settled development along the A259 and Drift Lane. Nevertheless, there would be significant harm to the landscape resource even in the longer term in all scenarios.

53. The visual envelope is very restricted, which means that the effects would be localised. They would mainly affect pedestrians and cyclists using the A259 and Broad Road who would experience significant adverse change in all scenarios. This would endure in the longer term, save for Appeal B, as I have explained.

54. Overall, I conclude that the proposals would have a significant adverse effect on the landscape and how people would experience it. The proposals would therefore conflict with policy 48 in the LP, policy EM3 in the NP.

ISSUE TWO: THE EFFECT OF THE PROPOSED DEVELOPMENT ON ECOLOGY, INCLUDING PROTECTED SPECIES, PROTECTED SITES AND WILDLIFE CORRIDORS

Policy context

55. Policy 49 in the LP seeks to safeguard the biodiversity value of a development site and avoid or mitigate harm to protected species or habitats. Proposals are expected to enhance biodiversity and to protect, manage and enhance designated sites, including the wildlife corridors that connect them. Policy 50 indicates that within the 5.6 km zone of influence of Chichester and Langstone Harbours Special Protection Area (SPA) any net increase in residential development is likely to have a significant effect on its integrity unless the necessary mitigation strategy has been undertaken or avoidance measures put in place. This policy does not completely accord with current caselaw because, following the *People Over Wind* judgement of the European Court[1], it was established that mitigation cannot be included as part of the screening process but should be considered as part of the Appropriate Assessment.

56. Policy EM2 in the NP requires conformity with LP policy 50 in respect of the SPA. New housing should also conserve and enhance the Special Areas of Conservation (SAC), Sites of Scientific Interest and other areas of ecological and biodiversity importance in accordance with policy 49 in the LP. Policy EM3 in the NP includes provisions to conserve trees, green corridors and streams and any habitat supporting a high level of biodiversity. It also requires proposals to show how mitigation for the loss of mature habitat would result in a net environmental gain within an appropriate timeframe. It should be demonstrated how wildlife habitat and green spaces will be provided in new housing development.

Ecological connectivity

57. The Framework seeks the protection and enhancement of biodiversity, including through the identification and safeguarding of wildlife corridors in local plans. The supporting text to policy 2 in the Chichester Harbour Management Plan encourages stakeholders to investigate opportunities for

[1] *People Over Wind & Peter Sweetman v Coillte Teoranta* Court of Justice of the European Union Case C-323/17.

new landscape-scale conservation projects, including the creation of new wildlife corridors between Chichester Harbour and the South Downs.

58. The emerging LP refers to 7 Strategic Wildlife Corridors (SWC) connecting Chichester and Pagham Harbour and the South Downs National Park. The evidence is set out in a background paper, which proposes a corridor at Chidham/ East of Nutbourne that includes site B. The objective of the draft policy is to direct development away from the SWC. However, at the present time the emerging LP is at an early stage in the adoption process and as I have mentioned previously can only be afforded very limited weight as a material consideration. Notwithstanding the draft proposal for a SWC in this location, no statutory or non-statutory ecological designations apply to the appeal sites at the present time.

59. The proposals would retain the boundary trees and hedgerows and where appropriate provide reinforcement planting. On Site B, the internal ditches would be retained and enhanced, with green buffers on either side. If Site A or Site B were to be developed individually, there would be farmland remaining to the east or west respectively. If both sites were to be developed the area of land separating them would become meadow grassland and it seems to me it could perform the function of a SWC, albeit I understand that a pumping station would be likely to be built in the south-eastern corner and the area would be fenced. There would though remain north-south connectivity for wildlife in any of the above scenarios.

60. Whilst the interior of each site would be developed, each scheme proposes to enhance connectivity through the provision of ecological corridors, which would be secured through the Section 106 Agreements. There was a great deal of discussion at the inquiry about the efficacy of these features in terms of width and the effect on them from lighting. In terms of their width, there was no convincing evidence that a corridor of 5 metres could not function satisfactorily as a safe haven for wildlife. I do though have some concerns about the narrowing of the corridor to just 2.5 metres close to the main entrance to Site B. This appears to be purely related to the alignment of the boundary and would reduce the benefit from this ecological corridor.

61. Undoubtedly residential developments of this nature cannot be built without a change to the lighting environment. This is not a designated dark sky area and my night-time site visit confirmed that there is lighting close to the boundaries along Broad Road and the A259 as well as from the houses along Drift Lane even though that road has no street lighting. The skyglow from Chichester and Havant was very clear in the night-time sky. Nevertheless, I observed that the interior of the wider site was relatively dark and that this continued northward beyond the railway line.

62. Lighting can be a particular issue, especially for light sensitive species such as some bats. As is usual in situations where such species are present, sensitive lighting solutions are available which could be installed along internal roadways and around amenity spaces. This would be secured by a planning condition. It is appreciated that it is more difficult to control the light emanating from private properties. I consider that the layouts would have to be very carefully considered in both schemes so that the main elevations were orientated away from the ecological features in order to retain relatively dark corridors along the site boundaries. However, I do not

agree with the Council's contention that it would not be possible to achieve a satisfactory outcome with the number of proposed dwellings.

63. The ecological corridors on the northern and eastern boundaries of Site A do not join up and there is no link to the boundary vegetation along the railway line. In addition, the Council was critical of the ecological corridor on the northern side of Site B, which would stop at Drift Lane. I agree that these factors would reduce functionality for some species although the evidence suggests that bats, for example, may commute across open land and Drift Lane itself is a relatively dark corridor. Furthermore, small animals can cross garden land. A planning condition secures ecological mitigation, including the provision and retention of gaps under domestic fences for small mammals such as hedgehogs to use.

64. For all the above reasons, I consider that the ecological corridors would provide an enhancement to connectivity, albeit that part of the western corridor on Site B would be less effective due to its narrow width.

Biodiversity Net Gain (BNG)

65. The Appellant's BNG assessment indicates that there would be considerable gains in habitat units and hedgerow units on both sites and river units on Site B. These are shown to be in excess of 10% although at the present time there is no requirement for anything beyond a positive outcome. In the event that both sites were to be developed, the intervening land is shown to also have a considerable gain in habitat units. Recent Government Guidance indicates that such gains can be taken into account notwithstanding that the land would also be used to provide nutrient neutrality. I am satisfied that the sites both individually and cumulatively would provide significant positive gains to biodiversity.

Protected species

66. Circular 06/2005: *Biodiversity and geological conservation – statutory obligations and their impact within the planning system* makes clear that the presence of protected species and the extent that they may be affected by the proposed development should be established prior to planning permission being granted. The Circular goes on to say that surveys should only be left for coverage by planning conditions in exceptional circumstances. No such justification has been put forward by the Appellant in this case.

67. There is no dispute that there are protected species on the site. The Ecology Statement of Common Ground between the Council and Appellant confirms that in respect of dormice, reptiles, hedgehogs and nesting birds, the appeal proposals would not give rise to significant adverse effects, subject to appropriate mitigation being secured by the Section 106 Agreement or planning conditions.

68. The Section 106 Agreements have been signed by both parties and the planning conditions were discussed in detail at the inquiry. The Council has raised no issue with the mitigation that has been secured in these documents for these species, which would include the ecological corridors. The dispute therefore relates solely to bats and Water Voles.

Effect on Water Voles

69. Water Voles are listed as a rare and threatened species by Natural England and the Sussex Wildlife Trust point to a decline in numbers of over 90% in Sussex and a rapid fall in numbers nationwide. The Chichester and Pagham Coastal Plain, in which the appeal sites are located, is shown as being one of the two core areas for Water Vole populations in West Sussex.

70. The Ecological Appraisal for Site B considered that the ditches that crossed the site have negligible suitability. This is because at the time of the survey they were dry and bordered by managed grassland. Furthermore, no connectivity to suitable habitat corridors in the wider area was identified. Further surveys undertaken in April and September 2021 reached the same conclusions. However, a joint visit with the Council in June 2022 revealed that the margins of the ditches had become unmanaged and were densely vegetated. Evidence of Water Vole activity was found, including burrows, feeding remains and droppings within the ditches. It was agreed that the whole of the ditch network has the potential to support Water Voles.

71. The Council undertook its own survey on 24 June 2022 and evidence was found of feeding remains, burrows, runways and latrines in several of the ditches on and along the edge of the site. Connections were identified to water bodies in the wider landscape, including culverts under the railway line and the A259. It was concluded that the ditches on the site and adjoining habitat provided an important corridor for wildlife, including Water Voles.

72. During the appeal process the Appellant produced a revised indicative layout to show how the proposed 68 dwellings could be accommodated whilst retaining the ditches and a buffer margin 5 metres in width. The revised layout shows several culverts and during their construction there would be the potential for adverse effects on the protected species. Once the detailed layout had been finalised a detailed survey would be undertaken to locate the burrows and either avoid them or else relocate them. It seems unlikely that more than 50 metres of bank would be affected by the culverts and so a Class licence could be used by a registered ecologist in accordance with Natural England's guidance. A Water Vole mitigation strategy, including updated surveys would be secured by a planning condition.

73. I share the Council's concerns about the Appellant's ecological work in relation to Water Voles at application stage and I note its concern that the size of the population of mammals is not known because the Appellant found no evidence of latrines. However, taking account of the evidence to the inquiry, I am satisfied that appropriate avoidance and mitigation measures could be achieved, particularly through the retention and enhancement of the Water Vole habitat. As layout is a reserved matter, it would be necessary to undertake a new survey anyway and I do not see this as contrary to the provisions of Circular 06/2005. In the circumstances I do not consider that Water Voles or their habitat would be adversely affected by the proposed development on Site B.

Effect on bats

74. The Bat Conservation Trust has produced *Good Practice Guidelines: Bat Surveys for Professional Ecologists* (the Bat Survey Guidelines). This provides guidelines for the potential suitability of habitat within development

sites for roosting, commuting and foraging of bats. It makes clear that the matter of suitability is a matter of professional judgement. The Ecological Appraisals (August 2020) for the appeal sites referred to information from the records of the Sussex Biodiversity Record Centre. These indicated a wide variety of bats species within 2 km of the sites. The Bat Survey Guidelines sets out the type of habitat that has low, medium and high suitability for foraging and commuting bats. On the whole there are not continuous hedge or tree lines around the wider site and whilst there is some habitat connectivity with the surrounding landscape, the railway line and adjoining roads do intervene. That is not to say that flighlines do not cross these features, or indeed the arable fields that comprise the majority of this land. However, from the evidence and my on-site observations I would not disagree with the judgement that the site can be considered to have low suitability for commuting and foraging.

75. The surveys were undertaken in accordance with the Bat Survey Guidelines for sites of low suitability for commuting and foraging. This comprised walking transect surveys that were conducted in the Spring, Summer and Autumn of 2021. The transect route was around the edges of the wider site and was carried out at dusk. Bat activity was identified using full spectrum audio detectors and visually by qualified ecologists experienced in such survey work. In addition, automated zero-crossing static detectors were placed in the south-western and north-eastern corners of each site for 5 consecutive nights during the 3 seasons. Detectors covered each habitat, including the arable land, one of the ditches and the boundary hedges. An additional survey was carried out in May, due to the cold weather conditions at the start of the Spring.

76. The transect surveys and static detectors recorded a range of bat species on both sites. The majority comprised Common and Soprano Pipistrelles but there were also rarer species including Nathusius' pipistrelle, Noctule, Serotine and Myotis species. In accordance with established methodology, which was not challenged, the Appellant's Bat Reports concluded that the appeal sites have a Local level of importance for foraging and commuting bats. This took account of the numbers and rarity of the bats that were recorded and the habitat types on the sites. No alternative assessment has been made with regards the on-site bat assemblage.

77. The Ecological Appraisals also concluded that the trees had negligible potential for roosting bats. This proved to be incorrect, and a later inspection revealed that two trees have moderate suitability for roosting. One of these was off-site and close to the proposed main entrance to Site B and the other was within Site B on the boundary with Drift Lane. A Bat Emergence and Return Survey was undertaken on these trees on 26 April, 4 and 12 May 2023. No emergence from or return to either tree was recorded. The Bat Survey Guidelines indicate that such surveys should be carried out between May and September and that two of them should be at least 2 weeks apart. This was not possible within the timeframe of the anticipated inquiry opening in May 2023.

78. The ecologists undertaking the transect surveys had observed that bats were foraging and commuting along the hedgerows, mainly on the western boundary of Site A and the northern and eastern boundaries of Site B. Both schemes propose that the vegetation along these boundaries would be

retained and reinforced as necessary. This would ensure that harm to the protected species would be avoided.

79. The development would include open space with a pond and village green on the south-western part of the Site A. Here a 15 metre wide ecological corridor is proposed. It is appreciated that there would be more activity within this area, including a children's playground. However, it is likely to be quieter after dark and there would be sufficient space to provide a foraging area that would be attractive to bats.

80. Some bat species are sensitive to light and prefer dark corridors within which to commute and feed. A lighting strategy is proposed that would limit light spill in accordance with the *Guidance Note 08/18: Bats and Artificial Lighting in the UK*. It is appreciated that it is more difficult to control the lighting from private dwellings but as I have already concluded, a satisfactory solution could be achieved by a careful positioning of the dwellings.

81. Insofar as the bats commute across or forage within the existing arable fields they would still be able to do so if either Site A or Site B were to be developed. If both developments were carried out there would be a reasonably sized area of open land between the two. This is proposed as meadow grassland that could provide foraging options as well as remaining open for commuting activity. The proposed ecological corridors to the east and west of Site A and Site B respectively would provide the opportunity for screen planting, which would help separate the residential environment from the undeveloped area so that the area would remain relatively dark.

82. The surveys relating to trees with roosting potential were not very satisfactory. Even when the survey was carried out there was insufficient time, and it was too late to follow the approach recommended in the Bat Guidelines. However, it is the case that the only tree with moderate suitability on the site is on the Drift Lane boundary and is intended to be retained. Whilst the road itself is dark there are houses on the eastern side at this point. It seems to me that with a similar approach to the control of lighting and by setting the houses well back from the tree, any harm to roosting could be avoided.

The Habitats Regulations Assessment

83. The appeal sites are within the 5.6km Zone of Influence for the Chichester and Langstone Harbour Special Protection Area (SPA) and Ramsar site and the Solent Marine Special Area of Conservation (SAC). This zone has been determined by visitor surveys and is referred to in policy 50 of the LP. The appeal sites are also within 12 km of the Singleton and Cocking Tunnels Special Area of Conservation (SCT SAC) where significant effects or severance of flightlines need to be considered. At the inquiry there was a great deal of evidence about the SCT SAC, and I will therefore deal with that in a separate section below.

84. The designations are protected under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations). The qualifying features of the SPA and Ramsar sites include a variety of breeding and non-breeding waterfowl. The conservation objectives include maintaining or restoring the population, distribution and habitats of the qualifying features. The qualifying features of the Solent Maritime SAC include various tidal, intertidal and

shoreline habitats and the vegetation that colonise these places. The Desmoulin's whorl snail is a qualifying species of these areas. The conservation objectives include maintaining or restoring the extent, distribution, structure and function of the qualifying habitats and species. The qualifying features of the SCT SAC are the Barbastelle and Bechstein's Bat which roost within the two disused railway tunnels of the SAC. These are amongst the UK's rarest mammals. The conservation objectives include maintaining the functionally linked habitats, which comprise flightlines and foraging habitats outside of the SAC.

Effect on the Chichester and Langstone Harbour SPA and Ramsar site and the Solent Marine SAC.

85. New residents living in the new developments would be likely to visit the coastal area for recreational activity due to its proximity and attractiveness. Overwintering bird populations inhabiting the protected sites would be particularly vulnerable to disturbance resulting from the increase in visitor numbers.

86. The sites connect to the protected marine environments through the surface water drainage system. Pollution entering the ditch network, including during the construction period, could therefore damage protected habitats due to the relatively short distances involved. During the operative period of the developments there would be an increase in impermeable surfaces and the potential for impacts on water quality through the release of sediment and pollutants from road surfaces.

87. The protected marine environments are being subjected to high levels of nutrients, particularly phosphorus and nitrogen, which encourages algal growth and damages the sensitive marine ecosystems. These nutrients come mainly from agricultural uses and wastewater and the process is known as eutrophication. The wastewater from the appeal development would be conveyed to the Thornham Wastewater Treatment Works (Thornham WwTW), Nitrate in treated sewage is the natural product of the breakdown of ammonia contained in human waste. Some nitrogen will remain in the effluent that discharges into the receiving waters, and this is controlled by the Environment Agency's permitting regime. The additional wastewater arising from the new development has the potential to contribute to increased levels of eutrophication and damage sensitive marine environments.

88. The mitigation proposed for recreational disturbance is through the *Bird Aware Solent Strategy*, which is delivered by the Solent Recreation Mitigation Partnership. This is effectively a Strategic Access Management and Monitoring Scheme to fund a package of wardening, education, green infrastructure improvements and monitoring. The contribution, which is based on the number of dwellings, would be secured through the Section 106 Agreement for each site. The respective covenants require that the development should not be commenced until the contribution has been paid. Natural England is satisfied that this would provide acceptable mitigation.

89. Mitigation for surface water pollution during the construction phase would be controlled through a Construction and Environmental Management Plan. This would include a number of requirements to safeguard the water environment including measures to control fuel storage, spillages and the prevention of

sediment entering the surface water system. During the operative phase polluted runoff would be controlled by attenuation through the use of sustainable drainage techniques, which would be secured by a suitably worded planning condition.

90. To ensure that harm would not ensue to the protected marine sites, Natural England requires all residential development to achieve nutrient neutrality. This reflects the uncertainty over wastewater treatment provision. The appeal proposals used Natural England's latest advice for calculating nitrogen budgets. It was agreed with the Council that the existing agricultural land use and the urban land use following development would be the same – 4.97 ha in the case of Appeal A and 4.98 ha in the case of Appeal B. The increase in nitrogen load in each case would be offset by taking 17.01 ha of land currently growing cereals on the Chidham Peninsular out of agricultural use. If both sites were to be developed 3.579 ha of land growing cereals between the two sites would also be taken out of agricultural production and a wildflower and grassland habitat created. The mitigation land is owned by the owner of the wider site who is also a signatory on the Section 106 Agreement. The mitigation would be secured in perpetuity.

Effect on the Singleton and Cocking Tunnels SAC

91. The *Sussex Bat Special Area of Conservation Planning and Landscape Scale Enhancement Protocol* (the Bat Protocol) is a document produced jointly by the South Downs National Park and Natural England. It provides guidance on the assessment of bats within the 3 designated bat SACs. The relevant one here is the Singleton and Cocking Tunnels SAC (the SCT SAC), which provide important roosting areas within 2 disused railway tunnels. There are a number of different species of bats using the tunnels for this purpose, but the qualifying features of the SCT SAC are the Barbastelle and Bechstein's Bat. These bat species are amongst the UK's rarest mammals.

92. The protected bat populations are sustained by land outside of the SAC. These are called functionally linked habitats and comprise flightlines along which they commute to reach foraging habitats. Beckstein's bat tends not to venture far and prefers woodland. There is no dispute that it would not be affected by the appeal developments. However, Barbastelle bats will travel longer distances and can forage 10-15 km from their roosting sites. Natural England's supplementary advice on the SCT SAC points out that the key commuting routes between its roosts and foraging grounds are not as well-known as the other 2 SACs. The appeal sites are within, but at the edge of, the 12 km zone where significant effects or severance of flightlines need to be considered.

93. No Barbastelle bats were recorded within the appeal sites either from the transect surveys or the static detectors. However, at the inquiry a local resident spoke about the fly pasts, including Barbastelles, that he had recorded at his property. This is on the southern side of the A259 close to Site A. The Sussex Biodiversity Record Centre also records Barbastelle bats within 2 km of the appeal sites.

94. The Ecological Appraisal considered that the survey effort should be above what would normally be expected for a low potential site on account of the record of Barbastelles in the vicinity. This would have involved the transect and static surveys being undertaken monthly from April to October instead

of seasonally. The transect surveys record a snapshot in time and walking the boundaries more frequently would have increased the potential for detecting the rarest species such as Barbastelles, if they were present. The static surveys record bat activity over a period of time, although there was considerable discussion at the inquiry about whether the equipment that was used gives reliable results.

95. I understand that Barbastelles can be quite difficult to detect. I was told that the Anabat Express zero-crossing static detector, which was used in this case, can miss the quieter calls of the Barbastelles due to other noises such as insect sounds and wind. The Bat Survey Guidelines do not indicate that the Anabat Express zero-crossing static detector cannot be used, but the evidence suggests that there is better technology for use in detecting species such as Barbastelles. The local resident referred to above, although not a qualified ecologist, was clearly well informed about bats and experienced in recording them. He explained that he uses an automated full spectrum recorder, which can pick up a wider range of frequencies than the zero-crossing static detector.

96. The evidence suggests to me that the surveys could have been more rigorous in respect of Barbastelles. Having said that, the ecologists who undertook the transect surveys, were experienced in bat survey work and used full spectrum recorders as well as their observational skills. I note that Natural England's *Supplementary Advice on the Singleton and Cocking Tunnels SAC* indicates that Barbastelle bats commute along linear landscape features but will cross over arable fields to reach foraging grounds. It is not unreasonable to surmise that the surveyors would have found some evidence of Barbastelle activity if the wider site provided significant flightlines or the trees and hedges around the boundaries were important foraging grounds. That is not to say of course that Barbastelles do not visit the site on occasion, but it suggests to me that it does not provide a significant resource for those connected to the SAC.

97. For the reasons I have given in relation to the wider bat assemblage, I consider that the retention of the boundary features would avoid any adverse effects on Barbastelle bats if they use the sites to forage. I understand that this species is particularly light sensitive, but I have explained why I consider that the lighting on the site would be satisfactorily controlled in order to retain the boundary features as unlit corridors. I have also explained that bats could continue to cross the wider site, whichever scenario pertains. In the circumstances I can safely conclude that there would be no likely significant effect on the special interest of the SCT SAC.

Habitats Regulations Assessment conclusions

98. Natural England was consulted and raised no objections, subject to securing the appropriate mitigation.

99. I have undertaken my own assessment and have concluded that subject to the avoidance and mitigation measures referred to above, there would be no significant impact on the integrity of the aforementioned European sites either through recreational disturbance, nutrient deficiency or the effect on the flightlines or foraging grounds of Barbastelle bats associated with the SCT SAC.

Overall conclusions on ecology

100. For all of the reasons I have given I conclude that there would be no adverse effect on ecology, including in relation to protected species, European sites or ecological connectivity. There would be a net gain to biodiversity and this would be significant. These conclusions relate to the appeal developments both individually and together. The proposed developments would therefore be in accordance with policies 49 and 50 in the LP and policies EM2 and EM3 in the NP in these respects and there would be no conflict with the Framework in this regard.

ISSUE THREE: WHETHER THERE IS SATISFACTORY PROVISION FOR THE TREATMENT OF THE SEWAGE ARISING FROM THE PROPOSED DEVELOPMENTS

101. The proposal for both appeal schemes is to connect to the public sewer. Southern Water, the statutory undertaker, has raised no objections but has pointed out that network improvement and reinforcement may be necessary. This work would be undertaken by Southern Water at the expense of the developer.

102. The sewage arising from the appeal developments would be treated at the Thornham WwTW. This is operated by Southern Water and its capacity is determined by the Environmental Permit that restricts discharges into Chichester Harbour. The Environment Agency regulates the permitting regime and has made clear that the permitted level of discharge cannot be increased because the best available technology is being used for nitrogen removal at a rate of 10 mg/litre. Any increase in the nutrient load would be harmful to the protected water environment of Chichester Harbour.

103. A *Statement of Common Ground* relating to wastewater treatment in the District was signed by the Council, Southern Water and the Environment Agency in November 2021 and constitutes a background document to the emerging LP. The provision of new housing and the protection of water quality are strategic issues that relate to the provision of suitable wastewater treatment capacity. Southern Water has a statutory duty to serve new development but also to meet the environmental standards set by the Environment Agency.

104. A *Position Statement* was also agreed by the aforementioned statutory authorities, which sets out how development within the catchment of the Thornham WwTW will be managed until Southern Water puts forward a funded solution to show how growth can be accommodated in its next five year business plan covering 2025-2030. The Environmental Permit constrains the volume of flows that can be processed through the Thornham WwTW during dry weather, which is known as the Dry Weather Flow (DWF). The available headroom for new housing, which is based on DWF, is published annually by Southern Water. This is also influenced by development commitments within the catchment and this information is updated monthly. It is to be noted that Thornham WwTW also treats sewage from part of Havant District. The capacity is allocated on a first come first served basis. In the absence of headroom, a development proposal would have to demonstrate that there would be no net increase in flows to the Thornham WwTW.

105. In order to maximise the use of the remaining available headroom the Position Statement makes clear that no surface water from new development should be discharged to the sewer system. Sustainable drainage systems and water efficiency measures should be used to minimise the flow to the treatment works. In addition, development within this catchment needs to be nutrient neutral in line with Natural England guidance.

106. It is clear from the evidence that the headroom capacity at the Thornham WwTW can change significantly from one year to the next. This is partly due to the level of commitments but more importantly to variations in the DWF, which depends on the extent of rainfall and its distribution. There was a great deal of concern from local objectors about the use of DWF as a means of assessing headroom capacity. One reason related to the high volumes of rainfall in the winter months and the likely increase in more extreme weather events as a result of climate change. The Government recognises that the calculation of sewage capacity accurately from new housing may be difficult. However, there is no standard way to assess wet weather flow, which is the reason that the Environment Agency introduced DWF in 2018.

107. Government guidance suggests two alternative ways of measuring existing DWF. The first uses a DWF formula and the second uses a calculation based on the daily volume exceeded by 80% of the measured daily volumes (the Q80). The latter is used by the statutory bodies in this case. I am not convinced by the assertion of an objector that if the formula method of calculating DWF were used there would be no headroom capacity. In any event, Government guidance does not indicate that the use of the Q80 methodology is incorrect in this case.

108. If flows are recorded on each day of the year, the Q80 would be the flow recorded on the 73rd driest day of the year. Although Southern Water would normally calculate over a 3 year period it has agreed to use a longer 5 year period at the request of the Council. I do not diminish the genuine concerns that local people have about the foul drainage issue and the effect that discharges are having on the protected marine environment of Chichester Harbour and its use for recreational purposes. I was urged by objectors to have regard to wet weather flows but even if I had that information, it would not be in accordance with the Government's guidance and it also would not accord with the way that the statutory authority operates its permitting regime.

109. I note that Southern Water has recently published its *Drainage and Wastewater Management Plan*, which indicates that it is intended to increase the capacity of Thornham WwTW and reduce storm sewage overflows in two phases, 2025-2030 and 2035-2040. However, this will depend on funding and investment. That is no doubt a matter that will be considered through the emerging LP process when a strategic approach to housing provision in the District will be considered. Objectors have also asked me to find the appeal developments premature in advance of the improvements to sewerage infrastructure that are intended to be made. However, I have no justification for adopting such an approach when the statutory provider has confirmed specifically that it can accommodate the generated flows from the appeal developments at Thornham WwTW.

Further, this is not disputed by either the Council or the Environment Agency.

110. The developer would have to liaise with Southern Water to ensure that the various network improvements were in place before occupation of the developments. In the event that there was a timing issue temporary arrangements would be required. I understand that tankering of the sewage to other WWTW with capacity is a solution that is sometimes adopted. Whilst not ideal, there is no evidence that satisfies me that this would not be viable as a temporary measure. The Appellant has also suggested a Package Treatment Plant as a contingency until the improvements to Thornham WWTW are carried out. It was contended that this would be more efficient in terms of nutrient removal. The Environment Agency says that it would be unlikely to grant an Environmental Permit for such a solution. However, the Appellant has indicated that this sort of arrangement is not uncommon and can be acceptable to the Environment Agency once a detailed design has been worked up.

111. Bearing all of these points in mind, I conclude that satisfactory provision can be made for the treatment of sewage arising from the proposed developments and that there would be no conflict with development plan policy or the Framework in this respect.

OTHER MATTERS

The housing land supply shortfall

112. There is no dispute that the Council cannot demonstrate a 5 year supply of deliverable housing sites as set out in paragraph 8 above. There is though disagreement about the size of the shortfall, The Council's position is that there is 4.72 year's supply, and the Appellant's position is that there is a 4.09 year's supply. Several objectors pointed out that the Government is proposing to remove the requirement for councils to demonstrate a 5 year housing land supply in accordance with its standard methodology. That may be the case in the future, but at the present time Government policy is established in the 2021 version of the Framework, which has been adhered to in this case. The Council do not demure from the use of the standard methodology as the means of assessing local housing need.

Lapsed permissions

113. The first issue relates to a matter of principle that may seem counterintuitive. After all, if a permission has lapsed it is not deliverable. Furthermore, it is not something on which the Council and Appellant disagree, although the parties were able to give their views at the round table discussion. There are 17 dwellings on small sites that have lapsed since the agreed base date of 31 March 2022. These have been removed from the supply. However, the purpose of a base date is to provide the point at which the 5 year assessment begins. It is at the end of the year for which the Council holds the most recent full record, including completions.

114. The *Planning Practice Guidance* indicates that the most up-to-date evidence should be used. However, if lapsed permissions beyond that date are added it gives an unbalanced record unless planning permissions are also included. That then begs the question as to the point when this exercise

should stop. The answer is that it should stop at the base date of 31 March 2022. For these reasons I do not agree with my colleague in the Church Road decision, and I shall add 17 dwellings to the supply.

Major windfall allowance

115. Paragraph 71 of the Framework indicates that where a windfall allowance is to be made, there should be compelling evidence that such sites will provide a reliable source of supply. Any allowance should be realistic and have regard to the Strategic Housing Land Availability Assessment, historic rates and expected future trends. There is no dispute that an allowance is justifiable for minor windfalls or that an allowance for major windfalls, if justified, should just be applied in years 4 and 5 to avoid double counting.

116. The Council has done a lot of work relating to this matter to see whether there is a historic correlation between major greenfield sites coming forward and either the lack of a five year housing supply or the absence of a Local Plan in place. The *Critical Friend Review* by Lambert Smith Hampton analysed planning permissions over an 11 year period for different sizes of development and found that whilst most were provided on agricultural land, previously developed land also made a contribution. It recommended a major windfall allowance of 112 dwellings a year, which reflected the average figure. The evidence suggests that historically major windfalls were an important and relatively consistent element in the Council's housing supply.

117. However, the Framework cautions that expected future trends should also be taken into account. It does not seem to me that the *Critical Friend Review* adequately considers likely future scenarios and I disagree with the Clappers Lane Inspector on this point[2]. The 2021 *Housing and Economic Land Availability Assessment* indicates a potential theoretical capacity of about 23,000 dwellings up to 2037, but there appears to be no assessment of the contribution expected to be made by major windfalls.

118. The Appellant made a valid point that greenfield sites are a finite resource and that there are constraints, including matters such as the foul drainage situation and the nitrate neutrality issue that are likely to continue to be a problem for many sites. Furthermore, it highlighted the considerable economic uncertainties, with increases in inflation and interest rates contributing to higher levels of risk. There is little indication that this will be a short-term issue and there are already signs that the housing market is slowing down.

119. Whilst I appreciate that Chichester is a high value housing authority, there is insufficient evidence to demonstrate that it will be immune to these external challenges. I appreciate that there are draft policies in the emerging LP that would allow homes to be brought forward on unallocated land, for example under draft policy H7, which relates to rural and First Homes exception sites. However, the Framework defines windfalls as those not specifically identified in the development plan. The draft policies depend on an identified need and so I am not convinced that they can be classified in this way.

[2] Land south of Clappers Lane, Earnley, West Sussex (APP/L3815/W/22/3291160).

120. Having considered the issue carefully and notwithstanding the conclusion by some Inspectors that a major windfall allowance could be included, I prefer the reasoning of the Appellant in this case. For these reasons I do not consider that a major windfall allowance is justified and therefore 224 dwellings should be removed from the housing land supply.

The disputed sites

Land west of Centurion Way

121. This site is part of the West of Chichester strategic development location for 591 dwellings. There is no dispute that the site is deliverable. There are 2 outlets and the build-out rate of 118 dwellings per annum (dpa) is challenged by the Appellant who supports a rate of 98 dpa and the removal of 100 dwellings from the supply.

122. The development commenced in March 2021 and so there is limited historic data to rely on. However, the Council's evidence indicates that on 1 April 2022 there had been 159 completions. Furthermore, by December 2022, Council Tax records indicated 263 occupations, which would amount to a further 104 dwellings. Extrapolating forwards this would result in some 124 occupations by the end of year 2. Furthermore, it is not unreasonable to surmise that delivery is likely to have been higher although there is no evidence as to how much. In addition, there are 8 show homes that have been included in the occupations.

123. The *Start to Finish* report by Lichfields (February 2020) indicated an average delivery of 51 dpa for sites with 2 outlets. It also indicated that for sites between 500 and 999 dwellings the range was between 25 and 150 dpa with a mean of 68 dpa, although this did not take account of the number of outlets. The report pointed out that in less affordable areas build-out rates were higher and that greenfield sites were quicker to develop than brownfield sites. These factors would support that a higher build rate could be justified, although caution is needed in extracting specific rates from a document relating to the national context.

124. Drawing the above points together, I consider that the build-out rate suggested by the Council is reasonable and supported by evidence. I acknowledge that the Westhampnett Inspector supported a rate of 80 dpa, but I note that that inquiry was completed in September 2021[3]. The more up to date evidence that I have been given was not therefore available. For these reasons, 100 dwellings should remain in the supply.

Land east of Manor Road, Selsey

125. This was a hybrid planning permission with full planning permission granted for 119 dwellings, and outline planning permission granted for 74 dwellings. Reserved matters for the latter have been submitted but not approved. The Council's trajectory anticipates delivery in years 4 and 5. The Appellant considers that the 74 dwellings do not pass the test of deliverability and should be removed from the supply.

[3] Land within the Westhampnett/ North East Chichester Strategic Development Location, Madgwick Lane, Chichester (APP/L3815/W/21/3270721).

126. The development is being undertaken by Persimmon in two phases, the 74 dwellings being phase 2. The evidence indicates that the intention would be to complete phase 1 and then continue to phase 2. Development commenced in January 2022 and 38 dwellings have been delivered. This is below the trajectory, which anticipated 50 dwellings in year one, but the recent evidence submitted at my request indicates that all remaining phase 1 dwellings are under construction. There is no indication as to when they will be completed because the developer indicates that the intention is to build out as one site once phase 2 has been approved.

127. There appear to be various outstanding issues with phase 2 relating to its relationship with the ASDA service yard, the provision of a pedestrian/ cycle link and the provision of usable open space. However, the developer is clearly keen to progress the development and there is no evidence that these matters would be insurmountable, especially as phase 2 is not programmed to come forwards until 2025. It seems to me very unlikely that the outstanding matters will not be resolved before then, especially as a major housebuilder such as Persimmon has considerable expert and technical resources to hand. In the circumstances, the evidence is sufficient to demonstrate that the site is deliverable and that the 74 dwellings should remain in the supply.

Land east of Glenmore Business Park

128. This site is adjacent to a site with planning permission for an 80-bed care home and has outline planning permission for 23 assisted living units. I understand that it is intended that the two sites will be operated by the same care provider. A so-called "Statement of Common Ground" was signed by the Council and developer in March 2022, but it actually comprises a series of questions and answers about the progress of the development.

129. From the aforementioned document it is confirmed that the site has been sold to the operator of the adjacent care home but that the type of care that the proposed apartments would provide has not yet been decided. The 23 units are indicated as to be delivered in 2024/5 and construction is anticipated to begin in mid-2023. This seems very optimistic given that no reserved matters application has yet been made. Furthermore, the document indicates that viability has yet to be confirmed and that the site could not proceed until the access road to the care home has been constructed. In the circumstances the site does not meet the Framework's definition of deliverable. The 23 units should therefore be removed from the supply.

Conclusions

130. Making the above adjustments, there would be some 2,937 deliverable dwellings over the 5 year assessment period. The local housing need using the standard methodology and taking account of the area falling within the South Downs National Park, is 3,195 dwellings. This is raised to 3,355 dwellings with the 5% buffer, which is brought forward from later in the trajectory to allow choice and competition in the market for land.

131. The Council can therefore demonstrate a deliverable housing land supply of some 4.4 years, which amounts to a deficit of around 418 dwellings.

Compliance with the IPS

132. The IPS is a response to the housing land supply shortfall. It includes 13 criteria against which the Council will assess additional opportunities for development. Not all will be applicable to every site and it does make clear that the acceptability of a proposal will need to be determined on a case-by-case basis. The IPS does not comprise statutory policy but for the reasons I have given it is a material consideration of significant weight.

133. Whilst Appeal A adjoins Nutbourne East, Appeal B is not contiguous with an identified settlement boundary and would not be so even if both developments were to be built, in my opinion. The Appellant refers to the *Housing and Economic Land Availability Assessment*, which identifies the site as a whole with an indicative capacity of 300 dwellings. However, this is a technical exercise to inform the emerging LP and, in any event, the Appellant made clear the two sites are being promoted separately and not as a single identity. Criterion 5 includes a requirement for no adverse impact on landscape character and this would be contravened for the reasons I have given. I do not consider that the other criteria would be significantly breached either because they would not apply to the outline proposals or for the reasons I have given elsewhere in my reasoning.

Highway matters

134. Transport Assessments were submitted with both applications to address highway safety and accessibility issues. West Sussex County Council is the local highway authority responsible for the local road network, including the A259. National Highways is the strategic highway authority and is responsible for higher tier roads, the most relevant being the A27. Neither statutory authority objects to the appeal schemes although National Highways requires financial contributions to the A27 improvement scheme. This would be secured through the Section 106 Agreements and is considered later in my decision. The Council as decision-making authority did not refuse either scheme on highway grounds. However, there is considerable local objection on highway related issues.

Accessibility

135. The Parish Council and other residents object to Hambrook and Nutbourne East being designated as a service village. They refer to a poor level of facilities, services and infrastructure. However, the designation followed background studies that were subject to public scrutiny before the LP was adopted. In the settlement hierarchy the service villages are defined as those that either provide a reasonable range of basic facilities to meet everyday needs, or those that provide fewer of these facilities but have access to them in nearby settlements.

136. In Hambrook and Nutbourne East local facilities include the rail station and bus services as well as the shop/ post office, place of worship and public house. The background study ranked the combined settlement as 5th out of the 16 service villages in terms of the number of facilities it provides. As part of the Scant Road development[4], allowed on appeal in November 2021, a new shop and community facility was included and has now been

[4] Land adjoining A27 and Scant Road West, Hambrook (APP/L3815/W/21/3274502).

built. This has the potential to significantly improve the retail offer from the existing store, which is understood to open erratically and offer a limited retail range.

137. Both sites would be within walking and cycling distance of the village facilities, including the railway station. Trains stop hourly and provide services to Chichester, Southbourne and Emsworth with connections to London, Brighton, Portsmouth and Southampton. There are footways along Broad Road and the A259 and there are bus stops on that road close to the Broad Road and Drift Lane junctions. The 700 bus runs along this corridor and there is an hourly service between Portsmouth and Chichester and beyond. The No 56 service is infrequent but it provides a service to and from Bourne Community College. Both Section 106 Agreements would secure a financial contribution for real time information boards at the nearest east and west bound bus stops. The provision of such information would make bus travel a more attractive option for some people.

138. The Local Highway Authority is seeking to provide a shared cycleway along the eastern side of Broad Road between the railway and the A259. The Appellant has agreed to offer the Highway Authority a strip of land for this purpose, although I understand that the project is on hold at the present time. If it were to be implemented it would link to the National Cycle Network 2, which runs along the A259 between Chichester and Emsworth. There is a current joint project by National Highways and West Sussex County Council to improve the safety of this route for both cyclists and pedestrians. The access proposals for Site B include a section of the new footway and cycleway along the site frontage. These improvements offer the potential for greater use of sustainable travel options. In any event, both sites are close to the National Cycle Network 2 and are a reasonable cycling distance of the settlement hub of Southbourne, with its higher order facilities.

139. Both proposals would include a Travel Plan Statement. This would be secured by the Section 106 Agreement along with an Audit Fee for the County Council to monitor it. It would seek to encourage people to undertake journeys more sustainably with an overall target to reduce vehicle trips by 10% to encourage travel by more sustainable modes. If both appeals are allowed there would be a 3 metres wide shared link for pedestrians and cyclists. This would considerably enhance the accessibility credentials of Site B and would also be available for the use of existing residents, for example those living in Drift Lane.

140. It is of course accepted that many journeys would be undertaken by car as happens with the existing population. This is not a large urban area and it is unreasonable to expect that the new residents would be able to meet all their needs by public transport, cycling or on foot. The Framework itself points out that opportunities to maximise sustainable travel solutions will vary between urban and rural areas. In this case the sites are reasonably accessible and new occupiers would have the choice to undertake some journeys sustainably.

Highway safety

141. The trip generation using the TRICS database is a standard approach in transport work and has been agreed by the Local Highway Authority along

with the trip distribution. The assessment of junction capacity took account of the impact of traffic flows as a result of the COVID-19 pandemic, and future growth was factored in using methodology agreed with the Local Highway Authority. Nearby development commitments were also taken into account. The conclusion was that all the modelled junctions would continue to operate within capacity in the future year's scenario without significant increases in queueing. In terms of road safety, the data on recorded accidents within the vicinity of the 2 sites was considered by the Local Highway Authority but it concluded that these incidents did not indicate that the road layout is defective.

142. Access to site A would be from Broad Road in the form of a T-junction. Visibility splays would be provided in accordance with the design guidance in *Manual for Streets* for roads with a 30 mph speed restriction. It is appreciated that Broad Road is busy at certain times of the day and that queues occur due to parked vehicles restricting the carriageway width and the frequently closed railway crossing. Broad Road is also a minerals route, and the Transport Assessment did make an allowance for heavy goods traffic. The proposed access has been subject to a Stage 1 Road Safety Audit and there were no outstanding concerns in this respect. Whilst clearly the proposal would result in additional traffic movements onto Broad Road, the Local Highway Authority has not flagged this as an issue in terms of safety or capacity.

143. The Parish Council raised concerns about the effect on the parking area along the eastern side of Broad Road, which is used by those living in Broad Meadow with no on-site parking. In order to provide the access and keep the required visibility splays clear it was estimated that there would be a loss of about 10 spaces. Whilst provision would be reduced there would still be off-site parking space along this side of the road.

144. The main access to site B would be from the A259 in the form of a T-junction. Visibility splays would be provided in accordance with the design guidance in *Manual for Streets* and *Design Manual for Roads and Bridges* following a traffic speed survey. The proposed access has been subject to a Stage 1 Road Safety Audit and there were no outstanding concerns in this respect. There would be 3 access points from Drift Lane, which would serve a total of 9 houses nearest to that road. These would have visibility splays in accordance with the design guidance in *Manual for Streets* for roads with a 30 mph speed restriction. I note local concerns about these access points. However, this is a small road with limited traffic flows and there is no evidence that the limited additional use would cause issues of highway safety or capacity.

145. There was local criticism about the traffic modelling, including that the traffic flows along the A259 had been underestimated. It was pointed out that traffic diverts onto this route if the A27 is affected by accidents or closures, and I have no doubt that this is the case. However, the Framework makes it clear that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety or the cumulative impacts on the road network would be severe. Existing commitments and future traffic growth have been taken into account and I have insufficient evidence to convince me that the high bar extolled in the Framework would be reached. West Sussex County Council

is the statutory authority responsible for the safety of road users on the local highway network. There is no reason to surmise that it has exercised its duties other than in a responsible manner when assessing the highway impact that would arise from the proposed appeal developments.

Agricultural land

146. All of site A, the majority of site B and the nitrate mitigation land are classified as Grade 2, which is described in the *Agricultural Land Classification* as very good quality agricultural land. A semi-circular section at the southern end of site B is classified as Grade 3b, which is described as moderate quality. Paragraph 174 of the Framework indicates that the economic and other benefits of best and most versatile agricultural land should be recognised. This is land classified as Grades 1, 2 and 3a. One of the criteria for new development to meet through policy 48 in the LP is that poorer quality agricultural land should be fully considered in preference to the best and most versatile land.

147. In this case, the development of either site would result in the loss of very good quality agricultural land. If both sites were permitted the area between them would similarly be taken out of production. The current use has been for cereal crops and the importance of securing homegrown food production is important for reasons of sustainability and resilience. However, this needs to be considered in the context of the shortfall of market and affordable housing within this District and the constraints arising from the South Downs National Park and the Chichester Harbour AONB. Much of the land between these two designations comprises high quality agricultural land. There is also the need to achieve nutrient neutrality in order to protect the fragile marine environments of Chichester Harbour. Agriculture is a big contributor in this respect and Natural England has approved the approach of removing land from agricultural production to compensate for the nutrient production arising from new housing.

148. Taking account of the above points, I am satisfied that the loss of high-quality agricultural land in this case would be justified having regard to the social and economic benefits arising from the new housing. There is no evidence that the housing shortfall could be adequately addressed on lower quality agricultural land and so policy 48 would not be offended in this respect. For similar reasons there would be no conflict with the Framework in this regard.

PLANNING CONDITIONS

149. A list of planning conditions was drawn up by the Council and Appellant, with input from the Rule 6 Party, and these were discussed at the inquiry. My consideration has taken account of paragraph 56 of the Framework and advice in the Planning Practice Guidance. I have changed the suggested wording in some cases to reflect the round table discussion at the inquiry and also to ensure that the conditions are precise, enforceable and not unduly repetitive. Most of the conditions are applicable to both sites, but on Site B there are additional requirements that relate to the protection of Water Voles and the secondary accesses to Drift Lane.

150. The Appellant has agreed to a shorter implementation period in order that development can get underway expediently and make a meaningful

contribution to the housing shortfall. It is necessary to specify the approved plans for the avoidance of doubt and in the interests of proper planning.

151. The construction period will inevitably cause disruption and inconvenience to road users and those living nearby. It is therefore necessary to restrict the hours of working and deliveries and prepare a Construction Management Plan, that sets out various measures to mitigate adverse effects as far as possible. I have changed the title of the requisite plan in order to better reflect its provisions.

152. The sites are of ecological interest and home to a number of protected species as discussed under Issue Two. Measures are required to ensure that appropriate mitigation is provided during the construction period. I have reworded the early part of the proposed condition to make it easier to understand. Many of the trees, boundary hedgerows and vegetation are proposed for retention and fencing is required to protect these features whilst building works are underway.

153. Conditions are also necessary once the development becomes operational to ensure that existing wildlife habitats, including those of protected species are safeguarded and enhanced. In particular there are provisions for new tree planting, grassland and hedgerows as well as the establishment of dark corridors to benefit bats. In the case of Appeal B there is a specific condition relating to Water Voles. External lighting can have a deleterious effect, especially on some species of bat. A requirement is therefore necessary for lower levels of luminance to be achieved along roadways and other public areas.

154. The sites are generally flat at present and in order to ensure that the developments integrate satisfactorily with their surroundings it is necessary to ensure that ground levels are not raised unnecessarily. As considered under Issue One, Site A affords views in a northerly direction to the South Downs. I was told that viewing corridors would be maintained through the development and these are shown indicatively on the indicative layouts. These views are important in terms of the landscape impact for the reasons I have already given. For Site A it is therefore necessary to control the levels of additional features such as drives, paths and parking areas. These items are not required for Appeal B.

155. The sites comprise agricultural land but nevertheless contamination can occur through the historic use of chemical fertilisers, pesticides and so forth. In such circumstances the potential risks need to be considered and if necessary remediated. Unexpected contamination that occurs during the course of development also needs to be addressed. The conditions have been reworded to make them more focused and relevant.

156. The Council's Archaeology Officer indicates that the site may be of archaeological interest and that trial trenching would be justified. There is no suggestion that the archaeology would be of other than local importance or would need to be preserved in situ. In such circumstances a scheme of investigation, recording and publication would be sufficient.

157. The proposed development would employ sustainable drainage techniques and the details are required to be submitted to ensure a satisfactory drainage solution. Sustainable drainage systems only operate satisfactorily

if they are properly managed and maintained and these details will need to be secured so that the surface water drainage system operates satisfactorily in perpetuity. The boundary ditches on both sites and the internal ditches within Site B need to be kept clear to maintain water flow. Access to them needs to be kept available to allow maintenance works to be carried out.

158. Foul water drainage is considered under Issue Three. The conditions relating to it are required in order to ensure that sewage from the sites is properly dealt with. The condition relating to the Thornham WwTW offers alternative scenarios to reflect the headroom capacity, which is subject to fluctuation as already explained. The condition relating to off-site improvement works concerns the infrastructure between the sites and the WwTW, which will require upgrading.

159. An Environmental Noise Assessment was submitted for each site bearing in mind the location close to the A259 and the railway line. This took account of recommendations in BS8233: 2014 *Guidance on Sound Insulation and Noise Reduction for Buildings* and the World Health Organisation *Guidelines for Community Noise* which makes recommendations for external amenity areas. The noise predictions were made on the basis of a 2 metre close boarded fence along the boundaries, including the eastern boundary of Appeal A and the western boundary of Appeal B. However, the assessment was seemingly based on the layouts, which are now only indicative. The noise environment in the private gardens will depend on the orientation of the dwellings and the noise environment within the dwellings will depend on the nature of the construction. There is no evidence that a satisfactory outcome could not be achieved without the need for boundary fencing. Further noise assessments are therefore necessary once the layouts have been determined.

160. Policy 40 in the LP includes a number of criteria to ensure that new development is designed and constructed sustainably. There are also provisions for good quality development in the IPS. A Sustainable Design and Construction Statement is necessary to ensure that there is a minimisation of carbon emissions and a maximisation of energy from renewable sources. West Sussex County Council sets out in its parking standards the proportion of dwellings that should have electric charging points. The Government is encouraging the use of electric vehicles and therefore home charging facilities are reasonable and necessary. Another sustainable measure is to control household water consumption, which should not exceed 110 litres per person. This is also a criterion of policy 40 but is an optional requirement in the Building Regulations.

161. In order to ensure safety in the event of fire, fire hydrants are required to be installed and thereafter retained. The construction accesses are controlled through the CMP. However, in the interests of highway safety it is necessary to ensure that the permanent main accesses from Broad Road in the case of Appeal A and the A259 in the case of Appeal B, are satisfactory and ready for use prior to first occupation. In the case of Appeal B a separate condition is required for the Drift Lane accesses for similar reasons.

162. The layouts proposed bungalows or chalet bungalows on the eastern side of

Site A and on much of Site B. However, as this is now a reserved matter the indicative layouts may change. In such circumstances it is necessary to impose a maximum height of two storeys to ensure the developments reflect their surroundings, However, that does not mean that two-storey development would be acceptable across the whole of the sites, and that is a matter that will be considered at reserved matters stage.

SECTION 106 AGREEMENT

163. The draft Section 106 Agreements were discussed at the inquiry and the executed documents are dated 10 August 2023. The covenants are essentially the same for both developments and will be considered together unless I refer specifically to differences.

164. I have considered the various obligations with regards to the statutory requirements in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and the policy tests in paragraph 57 of the Framework. It should be noted that the Deed contains a **"blue pencil" clause in the event** that I do not consider a particular obligation would be justified in these terms. In reaching my conclusions I have had regard to the supplementary planning document: *Planning Obligations and Affordable Housing* (2016) (the SPD).

165. The First Schedule includes the obligations that bind the land. The Second Schedule includes the obligations that bind the nitrate neutrality land. The Third Schedule **includes the Council's obligations in relation to** the payment of the Recreation Disturbance Mitigation Contribution to the Solent Recreation Mitigation Partnership Project Board. The Fourth Schedule **includes the County Council's obligations and the provisions to pay back** the Bus Stop contribution in the event it is not used for the intended purpose.

Affordable housing

166. Provision is made for 30% affordable housing on both sites, which will result in 40 affordable homes in Appeal A and 21 in Appeal B. The obligations will secure a mix of 1-4 bedroom homes and tenures that include shared ownership, affordable rent, social rent and First Homes. The obligations make provision for the delivery of the affordable housing in 3 stages linked to the occupation of the open market housing. The final trigger will be prior to the occupation of the 80th open market unit in the case of Appeal A and the 41st open market unit in the case of Appeal B. This means that sufficient value will remain in the land to be confident that all of the affordable dwellings will be delivered. Provision is made to reduce the number of affordable units and to vary the timetable for delivery on a pro rata basis in the event that the total number of units is less than the 132 or 68 referred to above.

167. There is an acute need for affordable housing in the District and annual needs are far greater than what is being provided. This means that the situation is getting worse year on year. The obligations are necessary to meet these needs and are in accordance with policy 34 in the LP. The housing mix and tenures are agreed with the Council to be acceptable.

168. There is a separate set of obligations for the First Homes, which will account for 10 of the affordable units in Appeal A and 6 in Appeal B. This

complies with the *Planning Practice Guidance* that seeks 25% of affordable units to be First Homes, in accordance with the Government's priority. There are obligations to ensure that the First Homes are not visually distinguishable from market dwellings and equivalent in terms of specification. There is also a delivery and disposal mechanism and obligations regarding the use. These are all necessary to ensure that the First Homes are to the standard of market housing and as far as possible are retained for their intended purpose in perpetuity.

Recreational Disturbance Mitigation Contribution

169. This contribution is necessary to mitigate the impact of recreational disturbance on the protected European sites of importance to nature conservation. The contribution is justified for the reasons explained in my Habitats Regulation Assessment under Issue Two. The payment varies depending on the size of the dwelling unit in accordance with the *Solent Recreation Mitigation Strategy* which has been agreed by Natural England.

170. As these are outline applications, the final payment cannot be specified until the final housing mix has been determined at reserved matters stage. The Deed requires the payments to be made before development is commenced, which is necessary to ensure that the mitigation is in place by the time that the developments are operational.

Open space, play area, shared cycle/ pedestrian link and ecological corridors

171. The Council's evidence, which has not been disputed, is that there is a shortfall of all types of open space in the District. The appeal developments individually are agreed to provide a sufficient quantum of open space and play space in accordance with the standards set out in the SPD.

172. In the event both appeals are allowed there is to be a shared cycle/ pedestrian link between the two developments across the nitrate mitigation land. This will be 3 metres in width and its location is shown indicatively on Plan 9 in Appeal A and Plan 7 in Appeal B. This will improve the accessibility credentials of Site B and also be available for existing residents in Drift Lane to use as noted in paragraph 139 above.

173. The ecological corridors are to be a belt of landscaping to provide high quality habitat for foraging bats and Water Voles. Their position and width on each site are shown on Plan 6A for Appeal A and 6B for Appeal B. I have considered the ecological corridors under Issue Two and their contributions to the enhancement of biodiversity and connectivity.

174. The trigger for provision of the open space, play area, link and ecological corridors is prior to the occupation of 100 dwellings in the case of Appeal A and 52 dwellings in the case of Appeal B. These triggers are reasonable.

175. A Landscape Management Plan relating to the open space land and Ecological Corridors will set out the long-term design objectives, management responsibilities and maintenance arrangements. The play area is subject to a separate specification for its details, provision, future management and maintenance. The plan and specifications are to be approved by the Council before development commences. When the works have been completed these facilities are to be offered to the Management

Company for a nominal sum. This will be funded by the householders and the arrangements whereby this will continue in perpetuity are set out.

176. There is a dispute about whether an increased level of open space should be provided in the event that both developments are permitted. This is because the SPD states that for developments of 200 dwellings or more there should also be allotments, playing pitches and natural greenspace. This would result in a shortfall of 1.2 ha. However, these are two separate proposals submitted as two individual applications and two appeals. It is the case that the Appellant is the same and they lie in proximity to each other. There are also some shared aspects, including the cycle/ pedestrian link and the nutrient neutrality land. However, those elements will not be provided if only one appeal is successful. There is no policy provision for the approach being suggested by the Council and I do not agree that it can be supported.

177. The various obligations are necessary in order to ensure that the development meets the needs of its residents, provides gains to biodiversity and enhances green infrastructure. They comply with the relevant LP policies, including policy 54 and the provisions in the SPD.

Safeguarded land

178. This solely relates to Appeal A and concerns a strip of land required to secure the Chidham Shared Cycle Lane as indicated on Plan 8. It is not known when or whether the County Council will undertake this project, but it would improve accessibility and benefit cyclists, including those from the new development. The safeguarding period is for a 10 year period and is reasonable in the circumstances.

Financial Contributions

A27 improvements contribution

179. This comprises £1,803 per dwelling and is required by Highways England to mitigate the additional traffic onto the strategic highway network. Policy 8 in the LP aims to provide improvements to junctions on the A27 Chichester Bypass to reduce congestion and improve safety. The contribution has been worked out in accordance with a formula in the SPD and includes the number of trips expected to use the bypass and the cost per trip.

180. I have some difficulty with this contribution because the SPD indicates that it is specifically directed towards allocations in the LP. The sites are not allocated and are not part of the strategic development location on which the contribution has been based. However, the evidence suggests that the A27 junction mitigation work is far from complete. The Transport Assessments indicate that significant trips would use the A27. In such circumstances it can be seen as reasonable and necessary that traffic generators such as the appeal developments play their part. National Highways would otherwise have raised objections on the grounds of adverse impact on the strategic road network. Bearing all of these points in mind, on balance I consider that the contribution is acceptable.

Bus stop contribution

181. This comprises £20,000 to be paid to the County Council before

development commences for the provision of real-time information at the bus stops close to the junction with Broad Road (Site A) and those close to the junction with Drift Lane (Site B). This is necessary to improve the accessibility credentials of the proposed developments. West Sussex County Council indicates that the cost is £10,000 per bus stop to provide these facilities.

Monitoring fee

182. This comprises £6,638 for Appeal A and £5,106 for Appeal B. It is to be paid before development commences and there is a provision that if this is after 31 March 2023 the sum will be increased by an amount equal to the proportionate increase in the All Items index. Such fees may be charged provided they are fairly and reasonably related in scale and kind to the development and do not exceed the Council's estimate of the cost of monitoring the obligations relevant to the development. The Council has formally adopted the use of monitoring fees and has worked out a methodology that takes into account the costs involved in the monitoring process. This is determined by the size of the development and reflects the Council's historic costs over a 3 year period.

183. I note that for 2023/4 the monitoring fee for over 50 dwellings is £6,638. I suspect that the lower sum for Appeal B is a drafting error. However, this will be rectified by the indexation clause referred to above. I consider that the monitoring fee meets the two requirements in the CIL Regulations mentioned above.

County Council Monitoring Contribution

184. In the case of Appeal A it is £1,440 and comprises the fee for monitoring the safeguarded land and bus stop provisions. In the case of Appeal B it is £720 and relates solely to the bus stop provision. It is to be paid prior to the commencement of development. The justification is set out in the County Council's document on monitoring fees for Section 106 obligations and is similar in terms of methodology to that of the Council.

Nitrates neutrality scheme

185. This is necessary to provide mitigation to the protected European sites as explained in my Habitats Regulations Assessment under Issue Two. There are two triggers. The land, which is identified on Plans 3, 4A and 5 in the case of Appeal A and Plans 3, 4B and 5 in the case of Appeal B, must cease agricultural use prior to the commencement of development. All works in accordance with the nitrate neutrality scheme must have been carried out prior to first occupation. The covenants are set out in the Second Schedule.

Travel Plan

186. The Travel Plan Statement, which is annexed to the Deed, is to be submitted to the County Council for approval prior to the commencement of development and implemented prior to first occupation. These provisions are necessary to encourage modes of travel other than the car in accordance with national and local planning policy.

187. An Audit Fee is to be paid of £3,500 for each development. Whilst some kind of monitoring fee is not unreasonable, there is no explanation in the

consultation responses from the Highway Authority as to how the sums requested have been worked out. Furthermore, Appeal B is a smaller scheme and yet the Audit Fee is the same as for Appeal A. This may be another drafting error but even if it is I do not consider that the payments have been adequately justified. The approved Travel Plan Statement is to be implemented prior to first occupation.

Conclusions on compliance with Regulation 122

188. For the reasons given above, I am satisfied that the planning obligations in the Section 106 Agreement are necessary and proportionate and meet the requirements of Regulation 122 in the CIL Regulations. The exception is the Travel Plan Audit Fee, which I do not consider has been adequately justified in either case to be satisfied that it would be fairly and reasonably related in scale or kind to the developments.

CONCLUSIONS AND PLANNING BALANCE

189. The appeal proposal is Environmental Impact Assessment development. I have taken the ES and all other environmental information provided before and during the inquiry into account. I have undertaken a Habitats Regulation Assessment and concluded that in this case the scheme would have no significant effect on the integrity of the European sites, having regard to their conservation objectives. The necessary mitigation associated with this conclusion would be secured by the planning conditions and planning obligations in the Section 106 Agreements.

Benefits

190. On a general point, I do not agree with the proposition that a benefit should be ascribed lower weight if it is policy compliant. It is difficult to understand why it should be downgraded just because it is delivering an objective that the development plan considers to be important and in the public interest. That approach would not allow the exercise of judgement by the decision-maker that some policy-compliant benefits are more important than others on account of the circumstances of the case.

191. The appeal developments would deliver 132 dwellings in the case of Appeal A and 68 dwellings in the case of Appeal B. The Council cannot demonstrate a 5 year supply of deliverable housing sites in accordance with the requirements of national policy. For the reasons I have given, I consider that it has a 4.4 year supply and therefore a deficit of 418 dwellings. The proposed developments are in outline form and there would need to be time for reserved matters to be approved and pre-commencement conditions discharged. The Appellant is a housebuilder and from the evidence it seems likely that there would be at least two years of housebuilding towards the latter part of the housing trajectory. It is considered that each scheme would make a valuable contribution towards reducing the housing shortfall. I afford this benefit substantial weight.

192. Chichester District has a very serious affordable housing need. The Council does not have a good record of affordable housing provision and so the position deteriorates year on year. The situation is compounded by the fact that house prices are very high, and many people cannot afford to enter the private housing market. Whether or not the Parish itself has a need for