APPEAL BY FAIRFAX ACQUISITIONS LTD AND

THE NORRIS FAMILY

LAND EAST OF ANSTY WAY, CUCKFIELD BYPASS, CUCKFIELD

WEST WUSSEX R17 5AG

PINS REF: 6002030

CLOSING STATEMENT ON BEHALF OF MID-SUSSEX DISTRICT COUNCIL

Appearances for MSDC:

Paul Brown KC (instructed by Mr Solomon Agutu)

Called:

(1) Ms Chloe Salisbury, MA (Cantab), MSc, MRTPI

(2) Mr Josh Peacock BA (Hons) MA CMLI

(3) Ms Philippa Jarvis, BSc(Hons), DipTP, MRTPI

(4) Mr Steve Ashdown BA (Hons) DIP TP MRTPI

(5) Mr Mark McLaughlin (Section 106 & Infrastructure Manager)

Appearances for West Sussex County Council:

Ms Leigh Hunnikin (Strategic Development Manager Organisation & Planning , Education and Skills)

Preliminary Comments: Mythbusting

1. Before turning to the main issues in this case, it is necessary to set the record straight on a number of the allegations made by the Appellant in opening, and on which Mr Steven Brown has doubled down in his evidence.

2. In opening[1], Mr Simons contended that "time and again, the professional officers of the Council have recommended … that [the appeal site] can and should be brought forward for residential-led development", and that "time and again, the elected members have ignored that advice"[2]. "For many years", he alleged, "this Council is nowhere close to meeting its real housing needs – including needs for market … housing"[3] and that the "scale of shortfalls in delivery of housing of all kinds in Mid-Sussex" was "disastrous".[4] The picture he sought to paint was of an authority whose elected members had gone rogue, where the only way to address the District's need for housing was through the grant of planning permission on appeal, because no reliance could be placed on the ability or willingness of the Council to deal with the issue responsibly through the plan-making process.

3. The problem is that none of this is true. Indeed, nothing could be <u>further</u> from the truth.

4. As regards members overriding their officers' recommendations in relation to Ansty, the fact of the matter is that officers have only ever twice advocated Ansty as a site which was suitable for development (first, in the first Reg 18 Draft of the new District Plan, and then again when this application was reported to Committee). However, members' reasons for not pursuing the first Reg 18 Draft had nothing to do with Ansty, but were rooted in a much more wide-reaching concern about the lack of clarity in the then-Government's intentions in relation to housing targets generally.[5] Significantly, the reason why Ansty was not included in the subsequent Reg 18 Draft was due to concerns about its impact on highways, which were raised by officers themselves, and agreed by members.

[1] ID01
[2] ID01 paras 2-3
[3] ID01 para 25
[4] ID01 para 34
[5] See CD8.1 paras 4.99-4.100; CD5.16

5. The truth, therefore, is that members have only once rejected officer advice in relation to Ansty, and that was when this application was presented to them for determination. Contrary to what Mr Simons would have you believe, that is not a record of persistent pig-headedness. The planning system confers the responsibility for making decisions on the elected members of a local planning authority for a reason: officers do not have a monopoly on common sense, and sometimes they get things wrong. It is the purpose of this Inquiry to ascertain whether this is one of those occasions, but it would be entirely wrong to start from any kind of presumption that "officers know best".

6. Second, as to taking its responsibilities to meet housing need seriously, Mid-Sussex is an authority with an outstanding record:

    a. The District Plan adopted in 2018 not only met the entirety of MSDC's own need, but contributed approximately 1500 dwellings to meeting the needs of neighbours.[6] This included the release of a site for 600 homes in the National Landscape at Pease Pottage,[7] which was selected specifically because of its suitability for helping to meet the unmet needs of Crawley[8].

    b. The District Plan was followed promptly by adoption of the Site Allocations DPD, which provided the additional sites needed to ensure a continuing 5YHLS through to the end of the plan period.

    c. As a result of the District Plan and the SADPD, throughout the period 2018 to December 2024 the Council not only consistently maintained a 5YHLS, but also significantly exceeded its housing delivery targets, as reflected in the HDT results for 2021 (124%), 2022 (148%) and 2023 (142%).[9] Those figures make the Council's track record on 5YHLS all the more impressive, because they demonstrate that the Council was burning through its housing supply at a far faster rate than would have been expected when either the District Plan or the SADPD were adopted.

[6] CD5.1 para 3.17, Policy DP4
[7] CD5.1 Policy DP10
[8] Salisbury evidence in chief
[9] CD14.1 para 3.7 and Table 9 (pdf p.16)

d. The only reason why the Council became unable to demonstrate a 5YHLS in December 2024 was due to changes in the NPPF and in particular the higher housing numbers generated by the new standard methodology.[10] That is not a matter which the Council could have predicted or foreseen. However, by that stage the Council had already submitted the new District Plan for examination. That Plan not only met the entirety of the District's own needs (something which none of MSDC's neighbours had been able to do for their areas) but also provided a surplus of just under 1000 homes, which the Reg 19 Draft indicated could be used either for resilience or to help meet the unmet needs of neighbours. Had that Plan proceeded as originally intended, the shortfall in the 5YHLS would have been short-lived.

e. In the period following Inspector Nurser's provisional conclusion that the emerging Plan had failed to Duty to Cooperate, the Council proactively adopted Position Statement 1[11] to help facilitate a continuing flow of permissions while the future of the new Plan was resolved.

f. Since Mr Bore has taken over the examination of the new Plan, the Council has risen to the (not inconsiderable) challenge of meeting his request to identify sites for an additional c. 4000 homes to help meet the unmet needs of Crawley and Brighton & Hove, and is current testing a long list of sites for inclusion in the Plan.

7. Third, while it is true that the need for particular types of housing accommodation have been increasing for a longer period, that is not a "failure" which can be laid at the door of the Council in its capacity as local planning authority. For many years now, the combination of Right to Buy and the changes to the ability of local authorities to provide affordable housing themselves have meant that the planning system is heavily dependent on the private sector, and market housing in particular, to deliver affordable housing. MSDC has policies in place which seek to support and encourage 100% affordable housing schemes but – like most planning authorities – the main lever available to it is the percentage contribution on market housing developments. That is

[10] See the Scamps Hill Appeal decision CD11.5 para 3
[11] CD15.2 paras 5.15-5.18

not something the Council can simply set at a level which is equivalent to the actual need: it is necessarily tied to viability, and the 30% requirement set out in Policy DP31 has been the subject of viability testing through the plan-making process. Critically, as Ms Salisbury indicated, the Council has been successful in securing that contribution wherever appropriate. Self-evidently, this does not undermine the growing need for affordable housing, but it is relevant to the Appellant's suggestion that MSDC is simply burying its head in the sand: it is difficult to see what more the Council could be doing.

8. Against this backdrop, it is unsurprising that Inspectors have repeatedly recognised that MSDC is not an authority which is shirking its responsibilities. Hence:

    a. In October 2023, the Albourne Inspector concluded[12] that:

> "95. From the Council's evidence it is clear that Mid Sussex has a history of housing delivery and it is not an area with a record of persistent under delivery of housing. I am confident that the Council understands and acknowledges its obligations under the HLS and HDT. The Site Allocations DPD has allocated more land for housing than the DP required, and the Council approaches the issue of housing in a positive and proactive manner.
>
> 96. Overall, I find that the Council has taken and continues to take a proactive approach to housing delivery at both plan making and decision making. From the evidence to this Inquiry and in particular the summary contained within the Housing Land Supply Position including 5-year Housing Land Supply Statement (CDD.5), the Council is effectively using a variety of tools and mechanisms to ensure housing can be delivered in a timely manner. Plan making progress as acknowledged by the Appellant is commendable and is positive and continuing to progress. The use of dedicated planning officer resources for the Northern Arc, the use of both statements of common ground and Planning Performance Agreements and also planning conditions to reduce the timescales for submission of some applications is all positive.

[12] CD11.4

There is a methodical and robust analysis of lead in times and build out rates and therefore in my opinion, the Council has a good understanding of housing and infrastructure delivery within their administrative area."

b. The Scamps Hill Inspector observed[13] that:

"The Council has a good record of maintaining land supply, which was acknowledged by the Inspector determining the recent Aldbourne appeal. Similarly, the Council scored 142% in the recent Housing Delivery Test, which is notable. Moreover, the Emerging Local Plan will be allocating new sites and additional staff have been appointed to work on large strategic applications. I therefore find that there are good prospects for the shortfall being remedied in the future."

c. In his Post-Hearing Letter of 24 March 2026[14] Inspector Bore noted that:

"The Council have a good record of delivery".

9. In summary, and contrary what the Appellant would have you believe, Mid-Sussex is not a persistent or serial offender in failing to meet housing needs. It is not an authority whose members have buried their heads in the sand and can only be brought round by the appeal process. Rather, it is demonstrably an authority which has taken, and continues to take the housing crisis extremely seriously. It has a commendable track history of planning to meet its own needs, and to help with the unmet needs of its neighbours. It has an exemplary record of delivering on those plans. These are not just things the Council asserts: they have consistently been the conclusion of the Planning Inspectorate. And while this may not have any bearing on Mains Issues 1-4 at this Inquiry, it is directly relevant to the overall planning balance. We return to it later in these submissions in that context.

[13] CD11.5 para 97
[14] CD5.35 p.3

Main Issues 1 and 3: Whether the proposal would be in a suitable location, with particular regard to national and local planning policy and access to services and facilities; whether the proposal would make appropriate provision for infrastructure

10. As we observed in opening, Main Issue 1 is defined by reference to "access to services and facilities". On that basis, Council considers it is inextricably bound up with Main Issue 3. In simple terms the Council's position is that, while the Appeal Site is not currently sustainable, it could be made so, provided the infrastructure proposed as part of the appeal scheme is provided, and is provided in a timely fashion.

11. In opening, we expanded on the reasons for this as follows:

    a. Within the MSDP settlement hierarchy, Ansty is classified as a category 4 settlement, i.e. it is a small village with limited services. As such, it does not provide anything like the level of facilities required for a development of 1450 new homes to be regarded as sustainable.

    b. However, national policy directs that development should be focused on "locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes"[15]. Para 77 of the NPPF advises that:

> "The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport mode."

    c. The appeal scheme proposes a range of on-site services, including a primary school, and community and retail facilities, together with a package of transport measures aimed at supporting modal shift and reducing reliance on private car use, including a range of on-site services and facilities to support sustainable

[15] NPPF para 110

travel, and improvements to the cycleway and PRoW network and local bus services. Provided these things are secured, the scheme will accord with national policy.

12. The conditions and s.106 obligations considered necessary have now been agreed, and the Council is satisfied that this will address its concerns in relation to Main Issues 1 and 3. It is aware that the Rule 6 party takes a different view, which the Secretary of State will obviously need to consider.

Main Issue 2: The effect of the proposal on the character and appearance of the area, with particular regard to coalescence, trees, and the High Weald National Landscape

13. There are four parts to Main Issue 2:

    a. The effect of the appeal proposal on the character and appearance of the area generally;

    b. The loss of trees;

    c. The effect on coalescence and the separate identities of Ansty and Cuckfield

    d. The effect on the National Landscape.

The Effect on the Character and Appearance of the Area Generally

14. This part of the Council's reason for refusal is rooted in:

    a. Policy DP12 of the District Plan[16], which seeks to protect the countryside "in recognition of its intrinsic character and beauty" and to "maintain or where possible enhance the quality of the rural and landscape character";

[16] CD5.1

b. Policy CNP5 of the Cuckfield Neighbourhood Plan,[17] which gives priority to protecting and enhancing the countryside from inappropriate development and requires development not to have an adverse impact on the landscape setting of Cuckfield.

c. Policy AS1 of the Ansty, Staplefield and Brook Street Neighbourhood Plan.[18]

15. It is common ground that the appeal scheme conflicts with these policies. However, this is not just a technical conflict which arises merely because the appeal site is beyond the built-up area boundaries of Cuckfield and Ansty: although the appeal site is not designated, it is nevertheless an intact and attractive combination of woodland, ghyll streams and agricultural fields enclosed by hedgerows.[19] There are views of it from the Public Rights of Way which cross the site, from the A272 and from Prow outside the site. It falls within View 10 as identified in the Cuckfield Neighbourhood Plan,[20] which refers to the "value and sensitivity of the landscape, the setting of the village and the distinctive views of the landscape from public vantage points" which "are distinctive qualities of Cuckfield". Similarly, the Ansty, Staplefield and Brook Street Neighbourhood Plan refers to Ansty's "role as a rural settlement which does not encroach unduly on the open countryside that surrounds it".[21]

16. Notwithstanding Ms Brockhurst's position that new housing is not necessarily harmful in the countryside,[22] and her view[23] that this is a "settled area", it is common ground that the immediate, local effect of the appeal scheme on this landscape would be significant adverse.[24] That is unsurprising: there may be settlements in the area, but they sit within a solidly rural landscape, where even Mrs Brockhurst accepts[25] the rural qualities will be lost. The conflict with Policies DP12, CN5 and AS1 is therefore clear, as is the level of harm which would flow from this.

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[17] CD5.6 p.38
[18] CD5.7 p. 18
[19] In this regard, it is part if what the Ansty Neighbourhood Plan describes as "a patchwork of ghyll woodlands, streams and ponds against an agricultural backdrop": CD5.7 para 2.21
[20] CD5.7 p. 33
[21] CD5.7 para 4.2
[22] CD8.3A para 1.37
[23] CD8.3A paras 3.18, 6.5, 6.6
[24] CD8.3A para 4.13
[25] CD8.3A para 6.3

Trees

17. Although the application is in outline, it is common ground that the appeal scheme is likely to result in the loss of around 116 trees. As such, there is a clear conflict with MSDP Policy DP37. Having regard to the need for housing, the likelihood that any housing scheme would necessitate some tree loss and proposed mitigation, the Council does not suggest that this is a freestanding reason for refusal in its own right. Nonetheless, it is both a conflict with policy and a substantive harm which needs to be placed on the scales.

Coalescence

18. This aspect of the reason for refusal is rooted in Policies DP13 of the District Plan, and AS2 of the Ansty, Brook Street and Staplefield Neighbourhood Plan. The latter of these specifically identifies the gap between Ansty and Cuckfield as a "Local Gap" for the purposes of Policy DP13. Together, the policies identify a number of different ways in which development can offend against their purpose, namely:

    a. Development should maintain the separate identity, unique characteristics and amenity of the individual settlements;[26]

    b. When travelling between settlements people should have a sense of having left one before arriving at the next;[27]

    c. Development should not have an unacceptably urbanising effect on the area between settlements;[28]

    d. Development should not result in coalescence with any neighbouring settlement, individually or cumulatively; [29]t

    e. Development should not result in the perception of openness being unacceptably eroded;

[26] Policy DP13, first and third sentences
[27] Policy DP13, second sentence
[28] Policy DP13, third sentence
[29] Policy AS2 first sentence

f. Development should not result in ad hoc or isolated development of dwellings outside the built up area.[30]

19. It will be immediately apparent that, although it would undoubtedly result in a breach of both policies, complete physical coalescence is not necessary for a breach of either. It is enough that development detracts from the unique characteristics that give a settlement its identity. It is enough that there is an unacceptable urbanising between settlements. It is enough that there is an unacceptable erosion in the perception of openness. Even isolated development, which could not possibly lead to complete physical coalescence, can breach Policy AS2.

20. This is important, because almost the entirety of the Appellant's case on coalescence hangs on the argument that there will still be a gap between Cuckfield and Ansty. It is said that this is relevant to both actual and perceived coalescence. However, this overlooks the facts that:

a. It is a key part of the historic character of both Ansty and Cuckfield that they are ridge-top settlements.[31] The mere fact that the appeal scheme would extend Ansty down into the valley is itself a change in character;

b. The appeal scheme would undoubtedly have an urbanising effect on the area between the two settlements, replacing the distinctive assarted fields set within woodland belts and incised ghylls with built form and highway infrastructure. As noted above, the local impact of that is agreed to be "significant adverse";

c. For precisely the same reasons, the appeal scheme will inevitably reduce the perception of openness in any view from which it can be seen. In this regard, the cyan arrows on Neighbourhood Plan Proposals Map helpfully indicate the general area of the gap which is important[32]. In the area indicated by the arrow

[30] Policy AS2, last sentence
[31] See e.g. CD5.6 (Cuckfield Neighbourhood Plan) p 14 "Cuckfield is situated on a ridge within the attractive undulating landscape setting of the High Weald Fringes"; p. 32 "Cuckfield occupies an elevated position on the southern slopes of the Weald; CD5.7 (Ansty Neighbourhood Plan) para 2.2 "the centre of the village is set on the top of a hill"
[32] CD5.7 Section 12, pp37-38

identifying the gap between Ansty and Cuckfield, the appeal scheme would introduce the new site access, school buildings varying in height from 6 to 10 m in height[33], and areas of housing (on the plots numbered 3, 4, 6 and 7 on the Concept Masterplan[34]) ranging from 10 to 15m in height.[35]

d. The Appellant's contention that there will be no impact on the perception of coalescence was contingent on the person doing the perceiving making the journey all the way from Ansty to Cuckfield, and thus encountering the gap between the two. However, not everyone will make that journey, but they will still perceive the extent of the new development and the way in which it would extend Ansty out towards Cuckfield.

21. Ultimately, these are matters to be seen and assessed on site. Individually, any one of them is sufficient to give rise to a conflict with Policy DP13 and/or Policy AS2. Collectively, in our submission, the effect is clear: we invite the Secretary of State to agree with Mr Peacock that there would be a significant and major adverse effect on the sense of separation between Cuckfield and Ansty, which is in direct conflict with the development plan.

Impact on the HWNL

22. The policy framework for this issue can be found in:

a. District Plan Policy DP16,[36] which states that "development on land which contributes to the setting of the AONB will only be permitted where it does not detract from the visual qualities and essential characteristics of the AONB, and in particular should not adversely affect the views into and out of the AONB by virtue of its location or design"

[33] See Building Heights Parameter Plan at CD2.22
[34] CD2.53
[35] See Building Heights Parameter Plan at CD2.22
[36] CD5.1 p. 62

b. Para 189 of the NPPF, which requires development within the setting of the HWNL to be "sensitively located and designed to avoid or minimise adverse impacts" on the designated area.

23. Before turning to the application of these policies, we note the following points about them:

a. Both DP16 and para 189 recognise that development in the setting of a National Landscape can be harmful, even though – by definition – it will not involve physical changes to the condition of the NL.

b. In cross-examination of Mr Peacock, Mr Simons suggested that para 189 should be read so that the requirement that development be "sensitively located" was linked to the words "to avoid or minimise adverse impacts". In the Council's submission, that is simply wrong: on a proper reading, para 189 requires development to be:

i. sensitively located and

ii. designed to avoid or minimise harm.

c. Mr Simons also sought to argue that, because the opening words of the last sentence of para 189 ("The scale and extent of development within all these designated areas should be limited") was directed at development <u>within</u> National Landscapes, it was clear that scale and extent were irrelevant when deciding whether development within the setting was sensitively located or designed to avoid or minimise impacts. That is a complete *non sequitur*. The first part of the last sentence is guidance which applies irrespective of the impact (in that regard it is akin to the requirement in para 190 that major development should only be permitted in exceptional circumstances). That is no reason for excluding considerations of scale when asking whether development within the setting has an adverse effect.

d. This point was confirmed by Mrs Brockhurst, who accepted that the questions whether development was sensitively located and whether harm was minimised could not be answered simply by taking the scale of development proposed and asking whether the scheme had done its best to direct built form to the least sensitive parts of the site: sensitive location includes consideration of whether this is the right site for development, and both it and minimising harm require consideration to be given to the quantum of development proposed.

24. Against that backdrop, the Council submits it is clear that the Appellant's claims to have minimised harm are only correct in so far as the starting point is the assumption that the appeal site has to accommodate a development of 1450 new homes. Viewed in that way, Mr Peacock readily accepted that harm was (or could be) minimised. In the context of an outline application, where many details are yet to be resolved, that was not surprising. However, as Mrs Brockhurst agreed (and as Chapter 4, Volume 2 of the Environmental Statement[37] demonstrates) the Appellant's whole approach to this application has been premised on the assumption that the scheme needs to be of a scale which is on par with the other significant sites in the emerging Local Plan. The quantum of development under consideration has never dipped below 1450 units, and documents such as the Lighting Strategy and the Technical Appendix produced by Urban Design[38] are directed at considering how development at that scale could be minimised, rather than whether this was a sensitive location in the first place or whether impacts could be further minimised by reducing scale.

25. None of this would matter if, as the Appellant contends, there was no adverse impact on the National Landscape. But in the Council's submission, there plainly is:

a. Notwithstanding the fact that (as Mr Peacock unsurprisingly agreed) the appeal scheme would not have a <u>direct</u> effect on many of the core characteristics of the National Landscape, there are locations – such as the views from along the A272 – where the National Landscape is seen alongside and in the same context as the appeal site. In those views, in the Council's submission, the continuity across those views of the core characteristics which Mr Peacock has identified

[37] CD1.32 para 4.3.1
[38] CD8.3B p. 16

(in particular in relation to features such as the deeply incised ghylls, the abundance of woodland and the small, irregular fieldscapes bound by hedgerows and woods) is relevant to the way in which those things are read and appreciated in the National Landscape. Indeed, this is one of the reasons why the High Weald Management Plan states[39] that "due to the high synergy in character between the National Landscape boundary and the wider High Weald National Character Area (NCA), land within the NCA should be considered as falling within the setting of the National Landscape. That "synergy" is important. It is one of the reasons why the High Weald Joint Advisory Committee objected that the appeal scheme would "introduce an abrupt change of landscape character in close proximity to the HWNL".[40] As the JAC went on to observe[41] (emphasis added):

> "poorly located or designed development on land within the setting of the NL can do harm, and … this is especially the case where the landscape character of land within and adjoining the designated area is complementary."

The Secretary of State can test that by asking whether one would "read" the National Landscape in the same way if the other side of the A272 was built up. The answer to that question does not lie in Mrs Brockhurst's observation that there are already places where the NL abuts settlements, because the experience of the NL in those locations may be completely different to that in locations where the adjoining landscape complements and thus reinforces the awareness and understanding of the core characteristics.

b. One of the core characteristics of the NL is the dispersed historic settlement pattern.[42] Of particular relevance to Cuckfield and Ansty, under the heading "local distinctiveness" the High Weald Fringes LCA[43] notes that "Apart from Cuckfield, Lindfield and the ridge line settlements, the villages are few and small: Ansty, Bolney, Scaynes Hill and Warninglid". Whether or not the appeal site is in the NL, it contributes to the understanding of the NL as a landscape

[39] CD5.8 p. 11
[40] CD4.7 p. 1
[41] CD4.7 p. 2
[42] CD5.8 p. 17
[43] CD17.9 para 13.17

with a dispersed historic settlement pattern which, in the area around Cuckfield, comprises ridge line settlements. In the Council's submission, the appeal scheme will subsume and overwhelm the existing small village of Ansty, significantly altering its landscape and setting by creating a large new urban area adjacent to and abutting the HWNL, undermining the dispersed nature of the settlement pattern in which the NL is viewed, contrary to Objective S1 of the HWMP.

c. Dark skies are also a core characteristic of the NL.[44] The darkness of the appeal site is currently the same as that of the part of the National Landscape which it abuts.[45] The appeal scheme will introduce additional light sources into that dark landscape in the form of streetlighting, internal lighting from the new dwellings, floodlighting for the all-weather sports pitches. Although no decision has yet been reached as to the need for lighting on the roundabout which provides access into the site from the stretch of the A272 which abuts the NL, that is a decision which will be taken in highway safety grounds and so at present the possibility cannot be discounted. Fabrik assess that there will be a moderate adverse effect within the appeal site itself. That being so, as Mr Peacock observes, it is difficult to understand how there could not be a similar adverse effect on the adjoining NL, contrary to Objective DS1;

d. Rurality and tranquillity are important components of the core characteristic of "aesthetic and perceptual qualities"[46]. Although the A272 already detracts from the rurality and tranquillity of the NL in this area, the introduction of a further 1450 homes can only exacerbate that. The Secretary of State will note that this was also the view of the High Weald JAC.[47]

e. The site will be visible in views out across the NL from Mr Peacock's Viewpoint 05.[48] As the JAC observed:[49]

[44] CD5.8 p. 17
[45] See Fig LP%.1 at p. 44 of CD8.3A
[46] CD5.8 p. 17
[47] CD4.7 p. 1
[48] CD9.2 Appendix B6
[49] CD4.7 p. 3

> "There is a clear intervisibility between the site and the HWNL, and therefore, the site makes a positive contribution to the setting of the HWNL. The scale of development proposed would result in a significant and discernible extension of built development into the surrounding countryside and would introduce an abrupt change of landscape character in close proximity to the HWNL, and a loss of natural landscape contiguous with, and of similar character to, the HWNL, thereby causing harm to the character of the setting of the HWNL."

26. These impacts give rise to a clear conflict with Policy 16 and para 189 of the NPPF. The magnitude of the harms is a matter of judgment, best assessed on site. However, in circumstances where national policy attaches "great weight" to conserving and enhancing the landscape and scenic beauty of National Landscapes, which have the "highest status of protection in relation to these issues"[50] even minor harms are not to be lightly ignored.

Prematurity

27. Since the opening of this Inquiry, the parties have been notified of the Secretary of State's decision to recover jurisdiction. Given the timescales which are likely to be involved in this, it is entirely possible that the Council will either have received Inspector Bore's Report on the emerging Local Plan, or even got as far as adoption before the date by which the Secretary of State is able to make a decision. Should either of those things happen, it will clearly be necessary for the Secretary of State to seek the parties' views on the implications for the determination of this appeal, at which point much of what follows is likely to become irrelevant. However, on the basis that matters might proceed more quickly, the Council's case is as follows.

28. National policy on prematurity is set out in paragraphs 50-51 of the NPPF,[51] which state that:

[50] CD6.1 para 189
[51] CD6.1

"50. … in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

51. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process."

29. Before turning to the application of this in this case, we draw attention to the following points:

a. Para 50 is explicitly written "in the context of … the presumption in favour of sustainable development". It is therefore clear that, although the circumstances in which prematurity can be a reason for refusal are limited, if sub-paras (a) and (b) are both satisfied, prematurity is capable of amounting to a freestanding reason for refusal <u>even when para 11(d) is engaged</u>.

b. As Mr S Brown agreed,[52] there is a clear and obvious connection between the para 51 requirement not to "prejudice outcome of the plan making process" and the para 50 concern not to "predetermine questions about the scale, location or phasing of new development that are central to an emerging plan". It is the act of predetermination which gives rise to the prejudice referred to in para 51.

[52] X-exam

c. It is inherent in the word "predetermine" that what para 50 is seeking to guard against is reaching conclusions on matters which will need to be addressed as part of the local plan process, but where the conclusion to which the local plan process might come is not yet known: if the outcome was already known, there would be no risk of "predetermining it".

d. The focus of both paras 50 and 51 is "the plan making process". That process includes decisions which are taken as to the overall level of housing need and the extent to which it is possible, appropriate or necessary for an authority to assist in meeting the unmet needs of neighbouring authorities. It includes the professional and political judgments which are made in relation to where that need should be met, which are concerned not only with which sites should be allocated, but also which sites should not. It includes the right of third parties to make representations as to the soundness of the Plan and to have those considered by the Local Plan Inspector. It includes the making of material modifications which are necessary to make the Plan sound. The "outcome" of that process is not simply the new plan: it is the content of the plan which emerges from that process, and it is that outcome which should not be predetermined (para 50) or prejudiced (para 51).

e. Paras 50 and 51 are concerned with a fundamentally different issue to the guidance in NPPF para 49 on the circumstances in which weight can be placed on the policies of an emerging plan.[53] In particular, in order to place weight on a policy, there needs to be a degree of confidence that it is likely to end up being part of the development plan. That is why para 49 references the extent to which there are unresolved objections to relevant policies, and the degree of consistency of the relevant policies with the NPPF itself. In contrast, there is no mention of the factors listed in sub-paras 49(b) and (c) in para 50: as Mr S Brown accepted,[54] they form no part of the para 50 test. In the Council's submission, that is not an accident. Paras 49 and 50 are not similar concepts,

[53] See, in this regard, para 40 of the Wirral Inspector's decision CD11.17 (noting that paras 48 and 49 of the NPPF have now become paras 49 and 50). While the facts of those appeals were very different to the present case, those facts play no part in the Inspector's reasoning in para 40, which turns solely on the differences between paras 48 and 49 (now 49 and 50).
[54] S Brown x-exam

they are polar opposites: weight is something you can place on an emerging plan when you can be reasonably sure what it will say; prematurity arises precisely because the outcome of the plan making process is still unknown (because there are choices and decisions which have yet to be made and yet to be found sound) and it is important not to prejudge that. If you knew that the plan was going to say, there would be no need to worry about prematurity: you would simply place weight on the emerging plan.

30. Turning to the application of paras 50 and 51 in this case, in the Council's submission it is clear that both sub-para 50(a) and (b) are satisfied. The Appellant expressly accepts that the emerging plan is "at an advanced stage", so it is common ground that sub-para (b) is met. The dispute relates to sub-para (a). As to this, the Council's submissions are as follows:

    a. At the level of 1450 dwellings, the appeal scheme is plainly "substantial". By way of comparison, the adopted District Plan[55] had four "strategic allocations", of which three (East of Burgess Hill, Policy DP8; East of Pease Pottage, Policy DP10 and Clayton Mills, Policy DP11) were less than half the size of the appeal site. Similarly, if Ansty had been included in the emerging plan as an allocation, it would have been one of only four "significant sites"[56], and the third largest of those. On any analysis, the scale of development proposed is strategic. Indeed, that is precisely the way in which it is categorised in the Environmental Statement.[57]

    b. One of the key issues which has been argued out through the Local Plan process is the overall quantum of housing need which the Plan should seek to meet, and in particular the extent to which it is reasonable or appropriate to expect MSDC to address the unmet needs of neighbouring authorities. Indeed, the Appellant itself has been at the forefront of that debate throughout the hearing sessions. Although Inspector Bore still has to come to a final judgment on that issue, we

[55] CD5.1
[56] Defined as sites providing over 1000 homes: see CD5.54 para 14; CD5.18 p.160; Salisbury Proof (CD5.3) para5.7
[57] See e.g. CD1.32 para 4.3.1

are now in the latter stages of that process, following his indication that we should be seeking c.4000 more homes, leading to an eventual requirement in the range 1200-1300 homes. The Council has now produced a long list of sites which achieves that. Unless sits are removed from that list, the grant of permission for Ansty will necessarily result in an additional 1450 homes over and above that 4000 and will therefore predetermine issues about the scale of development in the District.

c. It is no answer to this to say that the Council could keep the housing numbers at the level indicated by Inspector Bore by removing other sites, because that would prejudice decisions about the location and phasing of development in the District. Both these are important in circumstances where:

    i. Sites such as Pease Pottage have been selected specifically because of their particular suitability for meeting needs close to where they arise (in this case, close to Crawley);

    ii. A major objection to the Reg 19 Submission Draft was its over-reliance on large sites. A key consideration in the selection of sites for the long list has been the need to identify a wider range of small sites which can be brought forward quickly, so as to ensure a 5YHLS in the early years of the new Plan.

d. The concern at (c) is exacerbated in this case by the fact that it is known that the highway network in the District is under pressure, with the result that all the long-list sites are currently the subject of in-combination testing to ensure that their cumulative impact can be accommodated. If permission is granted for Ansty, it would have to be included in the in-combination testing as a commitment, with the result that – if the testing demonstrated a problem – the Council would only be able to address that by removing other sites from the Plan, notwithstanding that – when preparing the long list – it had concluded that these were preferable to Ansty. In this regard, the Council acknowledges that the Rebuttal Evidence of Mr S Brown includes a Technical Note which concludes that there would be no unacceptable in-combination effects.

However, this has not been reviewed or accepted by WSCC, whose conclusions on even the current round of in-combination testing are still unknown. Until such time as that has happened, the Council does not agree that the Technical Note should simply be accepted, not least because to do so would itself involve assuming (and therefore predetermining) the outcome of that process.

e. Para 50(a) is therefore also satisfied. In setting out points (a) to (d), the Council has "indicate[d] clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process" for the purposes of para 51.

31. The Appellant's response to this is both confused and confusing. Aspects of it are clearly wrong as a matter of law and would inevitably lead to a High Court challenge if adopted by the Secretary of State.

32. First, in x-exam of Ms Salisbury, Mr Simons highlighted the fact that prematurity was not one of the Council's original reasons for refusal but had only been introduced following publication of the long list. From that, he sought to deduce the propositions that the long list was the reason for the change, that it was therefore necessary to focus on the long list, and that prematurity could not be in issue because the long list was not part of the plan and therefore could not be prejudiced.

33. This argument is wrong in so many ways that it is difficult to know where to begin. However, taking the points in turn:

a. *Prematurity not an original reason for refusal*

i. While it is correct that prematurity was not originally raised as a reason for refusal (even though the new Plan had been submitted for examination), this overlooks the fact that, at that point in time, Inspector Nurser had issued the letter setting out her provisional conclusion that the Plan had failed the Duty to Cooperate. Although she had not issued a final decision to that effect, the only route by which the Council would have been able to challenge that conclusion would have been judicial review. The fate – indeed, the very existence - of the new Plan was

therefore hanging by a thread. In those circumstances, it is not surprising that prematurity was not raised.

ii. In contrast, by the time of the long list, the Duty to Cooperate had been abolished, the Plan was back on track, Inspector Bore had indicated that there were no issues with legal compliance and that the underlying spatial strategy and allocations were sound, and had provided his comments on the entire suite of development management policies. The Plan was not only further advanced: there was no longer any reason to doubt that, subject to identifying additional sites to meet the unmet needs of Crawley and Brighton & Hove, there would in fact be a Plan which could be adopted.

iii. In short, the relevance of the long list as the "trigger" for raising prematurity had more to do with the Council's assessment of whether the Plan was sufficiently advanced (para 50(b)) than to the substance of what might be prejudiced or predetermined (para 50(a)).

b. *The long list as "the reason" for raising prematurity*

i. While there is no dispute that publication of the long list was the event which finally triggered the Council's decision to raise prematurity, it does not follow that it was the sole reason. As noted above, the long list was one of a number of things which had changed since the member's decision on the application. As Ms Salisbury explained[58] it was the combination of those factors which led to the decision.

ii. There are obvious reasons why the Council would have wanted to wait until publication of the long list before making a decision on this. In particular, if Ansty had been included on the long list, that would have carried with it an in-principle recognition that whatever harms had been identified in the reason for refusal were outweighed by the need for the additional housing which Inspector Bore had asked the Council to provide. That would have had a fundamental impact on the Council's position in relation to Main Issue 2.

[58] Salisbury x-exam

c. *The long list cannot support an argument of prematurity, because the long list is not part of the plan*

i. This argument fundamentally misunderstands what prematurity is about. As we have already commented, prematurity is about the plan process, not the plan. The production of the long list was clearly a part of that process. It involved decisions not only as to which sites should be bought forward in response to Inspector Bore's request, but also as to the sites which should not. Whether those decisions were correct is a matter for the remaining parts of the plan process to determine. Granting permission for Ansty now would make all of that irrelevant.

34. Second, Mr Simons has suggested that granting permission for Ansty cannot prejudice the "outcome of the plan-making process", because the "outcome" is simply the adoption of a new Plan, and there is no reason why Ansty would prevent that happening. However - as we have already explained - the "outcome of the plan process" is not simply the adoption of a plan: it is the content of that plan.

35. Third, Mr Simons contends that the grant of permission for Ansty cannot undermine decisions which are "central to an emerging plan" because the appeal scheme is compatible with the fourth pillar of the emerging plan's spatial strategy[59]: "opportunities for extensions to improve sustainability of existing settlements". However, fitting in with that one element of the emerging plan is not enough: even within the overall spatial strategy, there are choices to be made which relate to scale, location and phasing. For the reasons we have already set out, the grant of permission for Ansty undermines the Council's preferred choices on all three.

36. Fourth, Mr Simons and Mr S Brown argue that granting permission for Ansty cannot prejudice the outcome of the plan process, because it will not prevent the Council from bringing forward a plan which still contain all the sites it has selected. Again, we have already explained why that is nonsense. Leaving aside the possible implications of in-combination testing, the plan-making process is not simply about choosing what goes into a plan: it is also about deciding what should be left out. In this case, the Council

[59] CD5.18 p. 33

and its officers have now (on two separate occasions) made a conscious decision that Ansty should not be brought forward. The Appellant is challenging that through the Local Plan Examination. Granting permission through this appeal would render that entire debate irrelevant.

37. Fifth, Mr Simons and Mr S Brown argue either that prematurity is not an issue, or that no weight should be placed upon it, because the outcome of the Local Plan process is still uncertain.[60] In this regard, Mr S Brown repeatedly asserts that the inclusion in the long list of sites which would involve major development in the National Landscape is contrary to both national policy and the Council's spatial strategy and are therefore likely to be found "unsound"[61]. We make the following points in reply:

    a. Most importantly, this entire argument conflates the factors which are relevant to a decision to give weight to an emerging policy under para 49 with the conditions which are necessary to justify an argument based on prematurity. That conflation is laid bare in bare in paras 4.177-4.184 of Mr S brown's evidence, where he explicitly dismisses the Council's arguments about prematurity by reference to the criteria in para 49. In x-exam, however, he agreed that those criteria were not part of the para 50 test. As we have already explained, para 49 weight and para 50 prematurity are two totally different things. It would be an obvious error of law to proceed on any other basis.

    b. If and so far as it is relevant to consider Mr Brown's contention that the long list faces an uphill battle at the Local Plan Examination (see (c) below), it needs to be recognised that the very reason why the Council has even gone down the road of considering sites in the National Landscape is because Inspector Bore has specifically advised that he regards the Council's previous view (that major development in the NL was a "showstopper") as wrong, and that the Council should be willing to consider <u>all</u> options. That is exactly what we have done.

    c. Mr Bore's advice was expressly given on the basis that selecting sites for allocation should be based on more than simply identifying conflicts with

[60] See in particular CD8.1 paras 4.176, 4.177, 4.184, 4.187
[61] See e.g. CD8.1 paras 1.17, 4.153-154, 4.182, 4.184-5, 4.194

national policy and needed to embrace the benefits which particular sites could deliver, even though this might not sit comfortably with their formal designation. In concluding that the long list is contrary to national policy, Mr S Brown presents only one half of that analysis. In order to come to any meaningful view on whether he is right about the prospects of the long list becoming part of the Plan, the Secretary of State would need a much wider suite of evidence, which he simply does not have.

d. In reality, however, points (b) and (c) demonstrate precisely why this appeal gives rise to issues of prematurity. It is impossible to see how the Secretary of state could accede to Mr S Brown's argument that prematurity is not in play (or that it should be afforded little weight) because the long list is contrary to national policy and therefore may not find favour with Mr Bore, without considering whether that assertion was well-founded. As Mr S Brown himself recognises, that would involve coming to a conclusion on a matter which is ultimately for the Local Plan process.[62] That is the very essence of predetermination.

e. The suggestion that, if the conditions for demonstrating prematurity are satisfied, no weight should be placed on it because the outcome of the plan-making process is uncertain is completely illogical. Mr S Brown agreed that the whole concept of predetermination presupposes coming to a conclusion on a matter which has yet to be decided through the Local Plan process. It would be perverse to the point of irrationality to conclude that the uncertainty which lies at the heart of the concept of prematurity was the very reason why no weight could be placed on it.

38. In conclusion, this case falls squarely within the limited circumstances where – even in the context of the presumption in favour of sustainable development – prematurity can justify the refusal of permission. Moreover, as explained by Ms Jarvis, given the central importance of the plan-led process as a matter of national policy (as expressed in both

[62] CD8.1 paras 4.154, 4.160, 4.162, 4.197

the NPPF[63] and Written Ministerial Statements[64]) it is an extremely weighty consideration which, in this case, does justify refusal.

Main Matter 5: The Overall Planning Balance. Including the Emerging Plan

39. The starting point here is s.38(6) and the requirement that planning applications should be determined in accordance with the development plan, unless material considerations indicate otherwise.

40. In this case, it is common ground that the appeal scheme is contrary to the development plan as a whole.[65] On behalf of the Appellant, Mr S Brown agrees that this is the case, simply because of the conflict with Policies DP6 and DP12. In the Council's submission (for the reasons canvassed above), there is also conflict with Policies DP13 and DP16 of the District Plan, and Policies AS1 and AS2 of the Ansty, Staplefield. However, while that difference is relevant to the question whether the other material considerations outweigh the conflict with the development plan, it does not affect the conclusion that permission should only be granted if there are other material considerations.

41. In that regard, it is common ground that the NPPF is an important "other material consideration". In particular, para 11(d) advises that, in circumstances where the Council cannot demonstrate a 5YHLS, there should be a presumption in favour of the grant of permission unless either para 11(d)(i) or 11(d)(ii) is satisfied. In this case, the Council accepts that it cannot currently demonstrate a 5YHLS, with the result that para 11(d) is engaged, and the issue is whether the presumption is negated by 11(d)(i) or (ii).

42. The Decision Notice[66] expressly sets out members' view that, having regard to the identified harm to the High Weald National Landscape, para 11(d)(i) applies. In this regard, we note as follows:

[63] CD6.1 para 15
[64] See e.g. CD12.2 p 2 "the plan-led system is, and must remain, the cornerstone of ur planning system. It is through local plans that communities shape decisions about how to deliver the housing and wider development their area needs".
[65] CD8.1 para 1.6, 3.29
[66] CD3.3

a. It is common ground that the whole of para 189 of the NPPF - including the final clause dealing with development in the setting of a National Landscape - sets out national policy "relating to … a National Landscape", and consequently that the whole of para 189 falls within fn7 and is capable in principle of providing a "strong reason" for refusal within the meaning of para 11(d)(i). Whether it does so in fact will depend on the nature and extent of the harm to the fn7 designation, balanced against the benefits of the scheme.

b. We have set out above the Council's position in relation to harm to the National Landscape. In our submission, the appeal scheme would cause clear harm. In circumstances where National Landscapes attract "the highest status of protection", that is a matter to which very great weight should be given.

c. The position in relation to benefits is largely set out in Section 5 of the Planning Statement of Common Ground[67]. We return to the specific question of the weight to be attached to the contribution the appeal scheme might make to the 5YHLS below, but beyond that it is common ground that the contribution which it would make to housing needs generally, and to the provision of affordable homes, C2 care homes and self-build plots in particular is substantial. It is also agreed that significant weight should be given to the financial contributes towards G&T pitches, the provision of a primary school and land for a SEND school, the public transport improvements and the improvement/provision of on and off-site sports pitches and facilities.

d. As to the balance to be struck between these, the Council's position was set out in its Statement of Case,[68] para 9.10 of which concluded that (emphasis added):

> "while the Council acknowledges the potential benefits of the scheme (provision of new housing, including affordable housing, specialist housing (residential care units and self-custom build plots), the provision of a primary school, sports facilities, local centre and health hub, public open space etc.) it will contend that these are outweighed by

[67] CD7.1
[68] CD15.2

the impact on the setting of the HWNL in isolation, and /or that impact taken together with the resulting landscape impacts and coalescence between the settlement of Ansty and Cuckfield."

This was also the basis on which the Council opened its case.[69]

e. The Council recognises that, in presenting her evidence to this Inquiry in relation to para 11(d)(i), Ms Jarvis did not carry out the same balancing exercise, but proceeded on the understanding that harm to the NL was itself sufficient to give rise to a "strong reason". Having regard to the decision in ***Monkhill Ltd v. SSHCLG***[70] the Council accepts that this was wrong, and that the Secretary of Site therefore cannot place any reliance on Ms Jarvis's conclusions on this issue. Nonetheless, the position of members as recorded in the Decision Notice and expanded upon in the Council's Statement of Case clearly did address the balance in the way that ***Monkhill*** requires. The evidence of both the harms and benefits have been presented to this Inquiry and remains to be evaluated by the Secretary of State. In the Council's submission, notwithstanding that the benefits of the appeal scheme are substantial, they are outweighed by the "great weight" which para 189 of the NPPF requires to be given to the protection of the NL, such that there is a strong reason for refusal within the meaning of para 11(d)(i).

43. Even if the Secretary of State disagrees with that assessment, that is not the end of the matter, because it is necessary to move on to para 11(d)(ii). Having concluded that this application failed at 11(d)(i), it was not necessary for the Decision Notice to go on to address this, but it will be noted that the reason for refusal also identifies harm to the rural character of the area, the loss of trees and the perceived coalescence of Ansty and Cuckfield. These mattes were therefore clearly in members minds, even though they are not covered by fn7 policies. They are directly relevant to para 11(d)(ii), and are addressed in that context in both the Council's Statement of Case and the evidence of Ms Jarvis.

44. The principal differences between 11(d)(i) and 11(d)(ii) are that:

[69] See ID02 para 25(a)
[70] ID24

a. One the one hand, the pool of harms which can be taken into account is not limited to fn7 policies;

b. On the other, the threshold at which refusal is justified is raised: the harms must "clearly and demonstrably" outweigh the benefits.

45. Applying this:

a. The list of benefits remains the same as described above in the context of para 11(d)(i);

b. The list of harms should be expanded, to include:

i. The harm which arises by reason of conflict with the development plan. Here, the Council accepts that the weight to be attached to this is reduced because the District Plan is out of date. Nonetheless, in keeping with previous appeal decisions[71], Mr S Brown accepts that conflict with policies such as DP12 continues to attract moderate weight.

ii. The significant adverse impact of the appeal scheme on the countryside and the distinctive rural character of the area;

iii. The loss of trees;

iv. The adverse effects on coalescence and the loss of openness between Ansty and Cuckfield;

v. The harm to the National Landscape. Even if this is not sufficient to provide a "strong reason" for refusal under 11(d)(i), it is nevertheless harm and needs to be placed on the scales. It is a matter which para 189 tells us should attracts great weight;

[71] See e.g. Sayers Common CD11.8 para 25

vi. The less than substantial harm to heritage assets. Here, the Council has accepted that this is not enough to trigger 11(d)(i), but it is still relevant under 11(d)(ii). Once again, it is a matter which attracts great weight;

vii. Assuming prematurity is not viewed as a reason for refusal in its own right, the harm which would be caused to the plan-led system as a result of granting permission for a housing development of strategic proportions at precisely the point in time at which the identification of strategic sites is being argued through the local plan process.

46. In the Council's submission, the cumulative weight of these harms is more than enough to "clearly and demonstrably" outweigh the benefits, when assessed against the policies in the Framework taken as a whole, such that para 11(d)9ii) is engaged.

47. In all of this – and whether the matter is viewed through the lens of para 11(d)(i) or 11(d)(ii) – it is important to remember that the reason why we are in para 11(d) at all is because of the current shortfall in the 5YHLS. It is therefore also relevant to ask whether the grant of permission in this case is necessary to resolve that problem, and the extent to which it is, in fact, likely to do so. As Lindblom LJ observed in ***Hallam Land Management v. SSCLG***[72]

> "the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet."

48. In that context (and as we have already observed at the start of these closing submissions) we invite the Secretary of State to note that the current shortfall in the 5YHLS is not a longstanding or persistent problem, but one which has arisen relatively recently due to the December 2024 changes to the standard methodology, and the more timely resolution of which was prevented by the hiatus in the examination of the emerging local plan. Prior to that, the Council had an excellent track record of housing

[72] CD13.2

delivery which demonstrates its understanding of the importance of tackling shortfalls. As at December 2024, it was already well advanced in bringing forward new plan which met the entirety of MSDC's needs, with almost 1000 homes to spare. Indeed, but for the 2025 hiatus, the problem would already have been tackled.

49. More importantly, the new Plan is now firmly "back on track". Once adopted, it will not only meet all of MSDC's own needs, but will also make a very substantial contribution to the unmet needs of neighbouring authorities. If the new Plan is not already in place by the time of the Secretary of State's decision, it is at most likely to be only a month or two away.

50. The Appellant says the Secretary of State should dismiss all this, because there is no certainty that the emerging plan will be found sound or that, if it is, it will give the Council a 5YHLS. In the sense that nothing in this life is ever certain, that is true, but this is not a binary issue. Similar comments could have been made at the time of the Scamps Hill inquiry, but that did not prevent the Inspector there concluding that "there are <u>good prospects</u> for the shortfall being remedied in the future".[73] In the Council's submission, that remains the case:

    a. Inspector Bore has already confirmed that significant parts of the new Plan (including the spatial strategy, the development management policies and the originally proposed allocations have either passed the relevant tests of legal compliance and soundness, or can be modified to do so. He has asked the Council to test the capacity for raising the contribution to the unmet needs of Crawley and Brighton & Hove, but it is not credible to think that he would have tasked the Council with identifying additional sites if he did not believe that any associated issues with soundness could not be addressed. He has set out a timetable for the further work required which would enable him to complete his report in December this year. There is absolutely no reason to believe that the Council will not be in a position to adopt the new Plan early in 2027.

    b. As to whether the Plan is likely to deliver a 5YHLS is concerned:

[73] CD11.5 para 97

i. One of the key tests of soundness is whether an emerging plan is consistent with the NPPF. That includes compliance with the requirement in para 72 that plans should identify a supply of specific deliverable sites for five years following the intended date of adoption. While this does not mean that Plans can only be found sound if they do this, that is the normal starting point and it would be extraordinary if Inspector Bore proceeded on any other basis.

ii. There is no question as to whether the emerging Plan will be able to meet MSDC's own needs: the Reg 19 draft already does that, and Mr Bore has already indicated that the allocations on which it relies are sound. The question mark relates only the extent to which the Plan should also seek to meet the unmet needs of neighbouring authorities.

iii. That is a matter over which Inspector Bore has complete discretion. While he has asked the Council to "test" a figure in the range from 1200 to 1300 dpa, he has not yet decided what that figure should be, and it is clear that his decision will, at least in part, turn on the number of additional sites the Council has been able to identify. In so far as some sites may not be deliverable in the early years, he has the freedom to approve a stepped requirement.

iv. It is therefore within his gift to ensure that the Council will be able to demonstrate a 5YHLS from the date of adoption. This is not a guarantee that he will do so, but this would be the normal expectation.

51. In summary, the position remains as it was at the time of the Scamps Hill appeal: MSDC is an authority which takes its responsibilities for meeting housing need seriously, and there is a good prospect that the shortfall will be remedied in the near future, in the way that the planning system considers it should be remedied - through the local plan process. And if the "gap" on which the Appellants rely will soon be closed in any event, the appeal site is simply not needed.

52. Finally, and as we observed in opening, this point has even greater force when it is recognised that the contribution which appeal scheme will make to the 5YHLS is small and – even on the Appellant's case – a fraction of the number of homes for which they seek permission. In this regard, we note as follows:

a. The Appellant's estimate of what the appeal site could deliver is found in CD5.20[74] and suggests that 300 homes could be delivered in the 5 year period to 2030/31. Of itself, that is less than a quarter of the appeal scheme.

b. Mr S Brown suggests that this estimate is based on the Appellant's "considerable knowledge of the local market, understanding of delivery rates and a review of the Council's Headroom Paper".[75] However, no evidence or detail of that "considerable knowledge and experience" has been presented to this Inquiry, and in x-exam Mr S Brown acknowledged that the Appellant itself has never delivered a housing scheme on this scale, and that it will not be the housebuilder responsible for delivering Ansty. Although the Appellant is apparently in discussion with a housebuilder, there is no evidence from that housebuilder of their experience or whether they agree with the figures in CD5.20.

c. If one looks at CD5.20, the main explanation[76] given for assuming the commencement of development in 2028/2029 is the 4.4 year lead in time from receipt of an application to first completions cited by the Council in its Matter 2 Statement.[77] However, as Ms Salisbury explained, that figure is based on the Councill's experience of one other site, which the situation was very different to that at Ansty. Some of those differences (the need for significant up front infrastructure) would suggest that Ansty might be able to do even better, but others point the other way. In particular, that scheme progressed from application not outline permission in just 10 months. By the time the Secretary of State comes to consider the appeal, the Ansty application will be approaching its third birthday, and will have lost almost 2 years in comparison.

d. In those circumstances, the Council suggests that the Start to Finish Report is a much more useful indicator. For developments of the size of the appeal scheme, that indicates an average of 2 ½ years simply to get from the outline permission

[74] Para 3.29
[75] CD8.1 para 4.48
[76] See CD5.20 para 3.28
[77] See para 2.14 and Table 4 of CD5.32

to the approval of reserved matters. On that basis, there is no way in the world that delivery at Ansty could commence as early as 2028/2029.

e. There is no good reason to believe that Ansty can be brought forward any more quickly than the average:

   i. The agreed conditions do not require application for approval of reserved matters until the end of 5 years from the grant of outline permission.
   ii. The agreed conditions require approval of a Design Code and a Phasing Plan before any application for approval of reserved matters is submitted. These are both documents which the eventual housebuilder will want to submit, and they are not likely commence work on that until they have signed an agreement with the Appellants for the acquisition of the site.

f. Ms Salisbury has set out a table what she considers to be a reasonable timetable for these things to happen.[78] She was not cross-examined or challenged on any of that, nor has the Appellant produced a comparable breakdown showing how they expect to do things more quickly.

53. In those circumstances, we invite the Secretary of State to agree with Ms Salisbury that the contribution which the appeal scheme could make to the 5YHLS is far less than the 300 homes shown in CD5.20, and is more likely to be around 66 homes. That is less than 5% of the total number of dwellings for which permission is sought. In those circumstances, for the contribution which the appeal scheme might make to the 5YHLS to be the justification for granting permission would be a very clear case of the tail wagging the dog. Whether the matter is viewed through the lens of para 11(d)(i) or 11(d)(ii), or even through the s.38(6) balancing exercise to which the Secretary of State will ultimately need to return, it is another compelling reason why the benefits do not outweigh the harm.

[78] CD9.3B para 5.40

Conclusions

54. For all these reasons, the Council invites the Secretary of State to conclude that:

a. this is an application which is contrary to the development plan, and should therefore be refused unless there are other material considerations;

b. the NPPF para 11 presumption in favour of sustainable development is not such a consideration, because:

i. the application is premature, in circumstances where para 50 clearly recognises that this can be reason enough, on its own, to justify refusal in a case where para 11 would otherwise be engaged; and/or
ii. the harm to the NL provides a string reason for refusal; and/or
iii. the cumulative harm which the appeal scheme would do clearly and demonstrably outweighs the benefits;

c. there are, therefore, no "material considerations" which justify a decision which is otherwise than in accordance with the development plan; and

d. that this appeal should therefore be dismissed.

PAUL BROWN

24 June 2026

Landmark Chambers
180 Fleet Street
London EC4A 2HG