



Planning Rebuttal Proof of Evidence

Colwell Farm, Haywards Heath

**Town and Country Planning Act 1990 Planning and
Compulsory Purchase Act 2004 Section 78 Appeal**

Appellant: Miller Homes

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1.0 Introduction

- 1.1 This Planning Rebuttal has been prepared principally in response to evidence submitted by Mr Simon James Greaves in relation to Planning Matters (CD11.3), acting on behalf of the Rule 6 Party.
- 1.2 I do not seek to respond to or address every point made by Mr Greaves in his Proof of Evidence. The absence of a comment on a particular point or paragraph made by Mr Greaves (or by any other witness) does not imply in any way my agreement or otherwise with such points. My response will focus on particular matters where I consider it would be helpful, ahead of the Inquiry, for the Inspector to have my counter view, for example, where I consider Mr Greaves has misapplied policy or omitted consideration of particularly pertinent points. These, in broad terms, will be:
- Section 2: The adopted Development Plan and its status and weight
 - Section 3: The emerging Local Plan, its policies and the housing requirement, and the document's status and weight with regard to NPPF paragraph 49;
 - Section 4: The draft NPPF and its application to the development (also with reference to the Transport Evidence of Mr Russell, paragraphs 2.7-2.11)
 - Section 5: The Planning Balance
- 1.3 My Rebuttal is supplemented by Rebuttals prepared by two others on behalf of the Appellant as follows:
- Ms Lyndsey Barratt – Ecology (responding to Mr Carpenter's Proof of Evidence)
 - Mr Neil Marshall – Transport and Accessibility (responding to Mr Russell's Proof of Evidence)
- 1.4 My Rebuttal should also be read alongside my Proof of Evidence (PoE – CD9.1) and the PoE of others.

Errata

- 1.5 I also wish to correct an error in my PoE in respect of the benefits afforded to the scheme that I tabulate at 8.47 of my proof. The 'Delivery of Housing within 5 years' identified within the table of benefits should be deleted.
- 1.6 The timely delivery of the scheme within 5 years, as I underline at 8.13-8.15 of my proof, is a positive benefit which should be accorded very substantial weight. However, this factor forms part of the wider weight afforded to both the delivery of market and affordable housing, and to my conclusions that both should be separately given **very substantial weight**. All other identified benefits remain as per my PoE. This change does not change my overall conclusions on the appeal scheme.



2.0 The Development Plan and Housing Land Supply

Mr Greaves Proof of Evidence, [37] and [54]: *Gladman v SSCLG*

- 2.1 Mr Greaves refers twice to the judgment of the Court of Appeal in *Gladman v SSCLG* [2021] EWCA Civ 104 (CD13.7) but does not identify the relevant paragraphs or section relied upon.
- 2.2 The *Gladman* judgment is of relatively limited assistance in this case, beyond setting out the point of principle that (1) weight is a matter for the decision-taker and (2) the NPPF 11d(ii) exercise involves the consideration of conflict with the development plan as an adverse effect. As the Court of Appeal concluded at [61]:

“Whether and how policies of the plan are taken into account in the application of the policy comprising paragraph 11d)ii will be a matter for the decision-maker’s planning judgment, in the circumstances of the case in hand.”

- 2.3 In my own assessment of NPPF 11d(ii) within Section 7 of my Proof of Evidence, I have weighed the conflict with the development plan as part of the adverse effects. My Proof of Evidence (paragraph 8.48) attached limited negative weight to the conflict with DP6 and DP12, for the reason explained earlier in the Proof at Sections 4 and 7.
- 2.4 *Gladman* therefore supports the same approach. A decision-taker must consider, in accordance with NPPF 11d (a) the appeal schemes’ accordance with each policy, (b) the degree to which each policy is out of date, and (c) then apply any weight to identified conflict accordingly.
- 2.5 I have accepted that there are focused conflicts with the Development Plan (CD9.1 paragraph 7.62).
- 2.6 However, recognition of such conflict is not the end of the matter in the s38(6) PCPA exercise and the attribution of weight as part of the overall planning balance. Where a plan is out of date, as is the case in MSDC, NPPF 11d(ii) directs that permission should be granted in accordance with the tilted balance. In the instant case, I have clearly identified why the weight to the conflict must be reduced. As I shall set out below, Mr Greaves’ contrary position is not correct or is significantly incomplete.

[43]-[49], [61] and [63]: NPPF 11d(ii)

- 2.7 Mr Greaves makes no reference to NPPF paragraph 11(d) at paragraphs 43-49, and paragraphs 51-54 in his discussion of the weight to be afforded to the Development Plan, notwithstanding its clear importance.
- 2.8 I disagree with his assessment at paragraph 61 that there is conflict with five MSDP policies and two HHNP policies, and shall address this below.

[63] Housing Land Supply

- 2.9 Mr Greave’s paragraph 63 is unclear. He appears to imply that the emergence of the new plan should, in essence, mean that the existing development plan should be afforded more weight now. He also points to his Main Issue 3, which suggests less weight should be afforded to the 5YHLS.
- 2.10 This is not how NPPF paragraph 11d and footnote 8, works. Those provisions make clear that where there is a lack of 5YHLS, relevant policies should be considered out of date. There is no qualification of this and this has been accepted by MSDC.
- 2.11 I consider this further in respect of each relevant policy in Section 7 of my Proof of Evidence, and summarised at paragraph 7.57.



- 2.12 I now consider the points made by Mr Greaves in respect of each policy with which he finds conflict.

Countryside Policies: DP6 and DP12

[69]-[71]: Policy DP6

- 2.13 Mr Greaves finds conflict with Policy DP6, but does not expressly state the weight that he attaches.
- 2.14 My Proof of Evidence 7.15 to 7.22 explains why I also find conflict, but sets out why this conflict should attract significantly reduced weight. The Council's *Position Statement 1* (CD6.5) concurs, confirming at Appendix A:

'The policy [DP6] has limited weight in decision making.' [my addition for clarity]

[65]-[66]: Policy DP12

- 2.15 Mr Greaves then finds conflict with policy DP12 in respect of its location outside of the built up area boundary (BUAB), as it will 'not maintain or enhance the quality of the rural and landscape character'. At [108], he does concede that DP12 should be accorded only "moderate-significant weight".
- 2.16 The Rule 6 party has presented no expert evidence in relation to landscape, character or appearance matters, nor has the Council. It is not open for them to make a submission of harm in this manner.
- 2.17 I set out my view on the application of policies DP12 of my proof, paragraphs 7.23 to 7.28. I identify conflict with policy DP12, given the site's location outside of the BUAB. However, I do not find any conflict with DP12 arising due to harm to the character and appearance of the area based on Mr Cook's evidence.
- 2.18 Policy DP12 can only be afforded limited weight.

[72]-[73]: Policy DP15

- 2.19 Mr Greaves alleges conflict with policy DP15, and states at [107] that it should be accorded full weight on the basis of accordance with NPPF 82-84. This is not an NPPF 82-84 case and accordingly his analysis is flawed.
- 2.20 In respect of Policy DP15, I do not consider this policy relevant, which is common ground with the Council (CD8.1 – paragraph 4.9 and associated table; Policy 15 is not included). Even if DP15 were engaged, any conflict could not be attributed anything more than very limited weight, in line with DP6 and DP12. The short point is that Policy DP15 adds very little to Mr Greaves' case or to the main issues for determination.

Character and Tree Loss

[77]: Policy E5

- 2.21 Mr Greaves asserts that Mr Carpenter's evidence suggests Policy E5 is breached in respect of 'character'.
- 2.22 That is another impermissible attempt by the Rule 6 Party to run a case on a wholly unsubstantiated basis. The Rule 6 Party have not submitted expert evidence in respect of appearance and character. Mr Carpenter has no landscape or design qualifications. His evidence concerns ecology. He cannot and does not actually purport to address matters of character and appearance.
- 2.23 In respect of Ecology matters, in so far as where they are referenced within Policy E5, I rely on and prefer the evidence of Ms Barratt which confirms the proposals would not unduly erode the ecology of the area.



[79]-[81]: Policy DP37

- 2.24 Mr Greaves then asserts conflict with Policy DP37 due to the loss of trees and hedgerows on site. He suggests that this is a standalone 'contravention of this policy'. That is, again, the wrong approach.
- 2.25 The development will result in some loss of existing trees. As I set out in paragraphs 4.28 to 4.41 of my evidence, DP37 does not prohibit all tree loss, and neither does the NPPF. There will be no breach of the policy in this case. Based on Mr Forbes-Laird's evidence, supported by Mr Andrew Cook, the proposals do not conflict with Policy DP37. This was also confirmed by the Officer's report (CD3.3 para 12.179).
- 2.26 In respect of Ancient Woodland Matters, I refer to Mr Forbes-Laird's evidence. The Appellant's position is that there will be no harm arising to Ancient Woodland. Mr Greaves' position is wrong on this, and Mr Carpenter has both incorrectly interpreted the NPPF definition and failed to have regard to the relevant cartographic evidence.

Heritage

[67]-[68]: Policy E9

- 2.27 Mr Greaves asserts conflict with policy E9. In alleging conflict, he states, without providing evidence:

'...these features (local character, conservation area, and a Listed Building) are unarguably degraded to some degree by the impacts of this proposed development, and crucially there is no prospect of reinforcement/enhancement.'

- 2.28 This is a further unsubstantiated submission.
- 2.29 No evidence is presented to back up these claims. Mr Greaves has no heritage or landscape qualifications and has not assessed harm caused to the heritage assets. He has no evidential basis to assert harm to local character or designated heritage assets on any different basis to the very limited levels identified by the Appellant (e.g. low level of LTSH to the Conservation Area).

[85] Policy CP34

- 2.30 Mr Greaves then appears to allege a conflict with Policy CP34.
- 2.31 He states that he relies on the evidence presented by the Council. There is no such evidence before the inquiry. The Council has withdrawn its case on this point.
- 2.32 The Rule 6 party again present no evidence of their own on this matter. The only expert evidence presented to this inquiry on heritage matters is from the Appellant's witness, Mr Jonathan Smith. Mr Greaves has no evidence of his own, no relevant qualifications and has entirely failed to substantiate any case on heritage harm to any designated or non-designated heritage asset.
- 2.33 Policy DP34, as I confirmed in my evidence at 7.34-7.37 and at 4.83-4.84, concerns designated and undesignated heritage assets, excluding Conservation areas which are considered separately via policy DP35.

Colwell House

- 2.34 Mr Jonathan Smith's expert evidence has shown that no harm is caused to the Grade II designated heritage asset of Colwell House. Therefore, the application of paragraph 215 of the NPPF does not apply to Colwell House. In any case, in a scenario where less than substantial harm is to be found to Colwell House, I confirm at 8.46 of my proof that this harm would be outweighed by the public benefits, as agreed by MSDC (CD8.2 paragraphs 3.15-3.17).



North Colwell Barn

- 2.35 Mr Smith has found less than substantial to the non-designated Colwell Barn heritage asset. I undertake the paragraph 216 balance at 4.93 of my evidence.
- 2.36 In consequence, I find the proposals in compliance with Policy DP34, which specifically refers to the application of national policy to the consideration of harms to heritage assets, as I have done.

Policy DP35

- 2.37 Mr Greaves does not reference conflict with DP35 relating to conservation areas. For completeness, I have assessed Policy DP35 at paragraphs 7.38-7.41 and 8.44-8.45 of my evidence, and I have found no conflict.

NPPF 215 and 216

- 2.38 Mr Greaves makes no reference to the relevant paragraphs of the NPPF Heritage Chapter in his Proof of Evidence, in particular paragraphs 215 and 216. These set out how less than substantial harm to identified heritage assets should be considered and weighed.

Summary

- 2.39 In summary, the Rule 6 party has not presented any evidence in relation to Heritage matters and these are therefore uncontested. The NPPF 215 and 216 and s66(1) and s72(1) tests have been set out in my Proof of Evidence, and as set out therefore, the proposal is acceptable in heritage terms, applying both the policy and the statutory tests. NPPF 11d(i) is also clearly not engaged in respect of heritage matters.

Transport

[61] and [146]-[148] Policy DP21

- 2.40 At paragraph 61, Mr Greaves does not reference policy DP21 as a policy with which the development is alleged to conflict. However, it is apparent that Mr Greaves does find conflict with this policy at paragraphs 146-148 of his evidence.
- 2.41 The approach adopted by Mr Greaves (and Mr Russell) applies an overly prescriptive approach to the application of DP21. Their submissions are unclear. However, they appear to imply that any form of development that permits car travel is not supported. This is not the national policy test, which is instead about providing a genuine choice of travel, with a focus on prioritising walking, cycling and public transport. It is also expressly not how Policy DP21 is itself drafted.
- 2.42 In my Proof of Evidence at paragraphs 4.9-4.27, I have assessed both local and national transport policy (having regard to Mr Marshall's evidence) and with reference to relevant recent appeals which show that sustainability and accessibility are not arbitrary considerations of specific distances or measures. For the purposes of NPPF 110 and 115(a), one should apply a judgement taking account of a variety of factors, including distances, but also wider sustainability considerations, such as the status of Haywards Heath, as a category 1 settlement. Mr Marshall expands on this in his rebuttal evidence.
- 2.43 For the reasons set out in Mr Marshall's evidence and rebuttal evidence, I do not find conflict with policy DP21.

Ecology

[186] Policy DP38

- 2.44 At paragraph 186, for the first time within his evidence, Mr Greaves alleges conflict with Policy DP38, on the basis of Mr Carpenter's evidence.



- 2.45 On the basis of Ms Barratt's evidence, including her rebuttal evidence, I maintain my view, as articulated at paragraphs 7.45-7.47 and expanded on at 5.13 – 5.21, that there is no conflict with Policy DP38.

Biodiversity Net Gain

- 2.46 In respect of BNG, the Appellant's assessment approach has been robust. In any case, the matter of post-development BNG is a matter to be finalised via the statutory BNG condition, which will require 10% BNG to be provided. The appellant has always accepted this will require off site provision to achieve the 10% net gain. This is entirely in accordance with the legislation and guidance. The appellant has already engaged with off-site BNG providers, including Biofarm.

- 2.47 The R6 party is attempting to change its case on BNG matters. They previously accepted in their SoC that:

'3.27...the Appellant will likely be able to achieve the biodiversity gain objective and that it will be corrected so the mandatory 10% post-development value is achieved...'

- 2.48 The R6 Party have no basis to alter their position now.

Ancient Woodland

The NPPF Test

- 2.49 Mr Greaves refers to Mr Carpenter's submission that the site contains Ancient Woodland. As Mr Forbes-Laird makes clear, this is simply wrong.
- 2.50 The specific evidence shall be addressed at the inquiry by Mr Forbes-Laird, however I shall comment on the policy position.
- 2.51 Mr Greaves suggests that the Inspector *'193...should proceed on the assumption that there is Ancient Woodland on site'*.
- 2.52 This approach has no foundation in legislation and none in planning policy. What is proposed is contrary to the NPPF and would constitute an error of law, as it based on an incorrect interpretation of the NPPF text.
- 2.53 As Mr Forbes-Laird has set out, the R6 is trying to complicate what is a simple factual policy test. The NPPF specifies:

Ancient woodland

An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).

- 2.54 The Site has not been continuously wooded since 1600AD, as explained by Mr Forbes-Laird. This is a simple question of fact, confirmed by the cartographic and photographic record.
- 2.55 The R6's submission that one should apply an "assumption" is therefore completely incorrect.
- 2.56 Mr Greaves, in support of this assertion, points to a wholly different NPPF provision/topic area: NPPF paragraph 116 of the NPPF relating to highways. I consider this paragraph has no bearing on the consideration of whether the approach that should be taken to the consideration of the presence of Ancient Woodland.

Summary on Policy Conflict

- 2.57 I have found a limited degree of conflict overall with the Development plan, in respect of DP6 and DP12 only.



- 2.58 I shall move on to consider whether material considerations outweigh the harm caused by the development plan. I undertake this balance in Section 8 of my Proof of Evidence.



3.0 The Emerging Plan

NPPF 49 and Weight

- 3.1 It is common Ground with MSDC that the emerging plan attracts 'minimal weight' currently (MSoCG - CD4.7).
- 3.2 Paragraph 49 of the NPPF describes how weight can be accorded to emerging plans. Mr Greaves has not set out how he has applied paragraph 49 of the NPPF to his consideration of the emerging policies.
- 3.3 In respect of paragraph 49(a), the plan has been consulted on and has been the subject of hearings. However, the examining inspector Bore, has not yet found the plan sound. This is, as I have clearly set out in my evidence 3.23-3.35, principally due to concerns regarding the proposed housing requirement and the need to allocate many more sites. This is clearly expressed in Inspector Bore's letter to the Council (CD7.5).
- 3.4 The plan will still be subject to a Main Modification consultation (forecast to take place 27th July to 7th September) and may be subject to further hearings. It is only on publication of the Inspector's report that the plan can be formally found sound and attract significant weight.
- 3.5 It is accepted that the policies within the emerging plan may or may not attract a higher or lower level of weight, depending on criteria (b) and (c). In making this assessment in relation to the specific draft policies, I have reviewed the Inspector's comments on development management policies, specifically Inspector Bore's comments in the *Development Management Policies* note he produced (CD7.13) and the Council's response in document *MS08: Development Management Policies –Proposed Modifications* (CD7.14).
- 3.6 However, this must be viewed in the important context that the emerging plan itself can only be afforded minimal weight at this time.
- 3.7 In addition, the weight to be applied to emerging policies (and any conflict that may be found with them) should not be applied in a way that 'double counts' harm with adopted Development Plan policies.

Emerging Local Plan Policies

- 3.8 I have nevertheless reviewed the emerging policies, having regard to the evidence of others on Heritage, Landscape, Transport and Ecology. Whilst it is unlikely that the plan will be adopted prior to the decision, it is clear that there will be no conflict. Mr Greaves' case on this basis is again incorrect.

Draft Policy DPN1

- 3.9 Based on the evidence of Ms Barratt on Ecology and Mr Forbes-Laird on Arboriculture and Ancient Woodland, the proposals do protect biodiversity and ecology and do not cause harm to any irreplaceable habitats, including Ancient Woodland. It also, whilst creating breaks to facilitate access (using existing breaks where feasible), still provides connecting features and retains the wider ecological network. There is also nothing to suggest that the proposals breach other requirements of the policy. Draft Policy DPN1 would therefore be complied with.

Draft Policy DPN2: Biodiversity Net Gain

- 3.10 The scheme will deliver a minimum Biodiversity Net Gain of at least 10% in line with the latest statutory requirements and guidance, and the commentary of Inspector Bore (CD7.13). The s106 will secure BNG on site, and ensure its longevity and proper management. The proposals have sought to provide as much BNG on site as possible, and this is illustrated by the generous green buffers around the site, largely reserved for biodiversity enhancement. Where the 10% net gain is not achievable on site, this is provided



for using off site credits, as the statutory metric allows. Draft Policy DPN2 would therefore be complied with.

Draft Policy DNP3: Green and Blue Infrastructure

- 3.11 The proposals maintain a network of green infrastructure through the incorporation of generous green buffers around the site and the retention of the majority of existing planning, supplemented by new planting. Where breaks are made through existing hedgerows, these are targeted at existing access points wherever possible, and kept as narrow as possible to maintain connectivity. The proposals also incorporate public open space and naturalistic drainage features. Draft Policy DPN3 would therefore be complied with.

Draft Policy DPN4: Trees, Woodland and Hedgerows

- 3.12 The Inspector requested multiple changes to this policy, in that some of the points were not clear enough, with other aspects of the policy requiring deletion. The inspector specifically confirmed:

'Not all trees and hedgerows can or should be protected or incorporated into development. There are many that are poor specimens, diseased or simply in the wrong place' (CD7.13 - Inspector Bore table of comments, DPN4, 'Issue' Column).

- 3.13 For reasons I have already explained in respect of MSDP DP37, I find the policy adheres to relevant elements of the policy and would not conflict with it.

Draft Policy DPC1: Protection and Enhancement of the Countryside

- 3.14 I find, at this time, a degree of conflict with this draft policy only inasmuch as the appeal scheme sits outside of the BUAB, in the same way that I found conflict with adopted policy DP12. On the basis of the evidence of Mr Andrew Cook, I do not find any conflict in landscape terms. I also apply considerably less weight to the conflict – very limited weight to the policy within a plan, which itself has minimal weight - given it is clear that MSDC have been tasked with finding new sites which will require the allocation of sites outside of the BUAB. As rehearsed elsewhere, the site is on the Long List of sites for potential allocation, and hence there is a likelihood that the site will be allocated in the emerging plan, and hence would not then be in conflict with policy DPC1.

Draft Policy DPC3: New Homes in the Countryside

- 3.15 For the reasons given elsewhere in respect of adopted Policy DP15, which DPC3 largely replaces, I do not consider this draft policy is relevant to the proposed development.

Draft Policy DPT1: Placemaking and Connectivity

- 3.16 The weight attributed to this draft policy should be considered in the context of the Inspector's comments, whereby the current iteration of the policy uses supporting documents that have not formed part of the Mid-Sussex Local Plan Examination process and were also produced by a third-party and not the LPA itself. Inspector Bore states in relation to the guidance on 20-minute neighbourhoods:

*20 minute neighbourhoods: there is no problem in including this as a concept. However, it is not appropriate for the policy to include a link to a document produced by an external organisation and expect development to embed the principles of that document. **That document is not part of the development plan, has not been examined and itself can***



carry limited weight. (CD7.13 – Inspector Bore table of comments, DPB1¹, ‘Issue Column’; my *emphasis*)

- 3.17 Mr Greaves places much weight on 20-minute neighbourhoods, but given this is the section of the policy that has been most critiqued by Inspector Bore, it should be given no weight.

Draft Policy DPT3: Active and Sustainable Travel

- 3.18 The Inspector also requested additional changes of the wording of this policy which further limits the weight which should currently be attributed to it. Mr Greave’s evidence also refers to 20 Minute Neighbourhoods which as mentioned previously, did not form part of the examination process with the data stemming from a third-party and not directly from the LPA. I therefore attach no weight to this draft policy.

Draft Policy DPH2: Sustainable Development Outside of the BUA

- 3.19 This Policy largely replicates DP6. However, it is positively worded and has been written in such a way that it does not explicitly prevent developments of more than 10 dwellings in the way that DP6 does.² Like with Draft Policy DPC1, if the site is allocated, it would in any case align with this policy. Therefore, any conflict with this policy (notwithstanding that, as worded, it may not be in conflict) would be very limited.

Summary

- 3.20 Overall, the development plan for the site is not the emerging plan.
- 3.21 The draft policy text is material, but strictly subject to NPPF 49. The weight that can be accorded the policy text is very limited. In any case, I have found the appeal scheme to be generally consistent with the draft plan’s policies. Even where I have currently found conflict, this conflict will be removed if the site is allocated.

Inclusion on the Long List

- 3.22 Mr Greaves attaches “minimal” weight to the inclusion of the site on the Long List of sites for further consideration, despite seeming to attach a high level of weight to the draft policies of the plan.
- 3.23 As I set out in my reasoned evidence, paragraph 8.18-8.23, I apply substantial positive weight to the status of the site in relation to the plan.
- 3.24 Mr Greaves’ assertion that the site will not likely be included is not supported by the evidence or current position of the emerging plan.
- 3.25 The site is not currently allocated, and any new allocations will be subject to further consultation via the main modifications process. I accept this reduces the weight to be afforded to the site’s inclusion on the long list.
- 3.26 However, there are material considerations, as set out in my proof 8.18-8.23, that increase the weight to be afforded to the site’s status in relation to the emerging plan.
- 3.27 The assertion made at paragraph 201 by Mr Greaves that the Inspector indicated further dwelling numbers should be found via an ‘*initial emphasis on finding greater densities from existing allocations*’ is incorrect. To the contrary, having attended the relevant hearing sessions myself, Inspector Bore clearly directed that all options be considered, including

¹ In his discussion of DPT1 and his concerns with that policy, Mr Bore cross references to his commentary on DPB1 in relation to 20 Minute neighbourhoods.

² I accept that it is possible this is an error in the drafting of the policy based on the supporting text associated with it.



potential site allocations in the High Weald AONB. Mr Greaves' position is also not supported by any of the Council's own documentation.

- 3.28 The summary of the hearings provided at paragraph 4 of the MS-12 Post-Hearings Site Selection Methodology Review (CD7.2), makes no reference to such an approach. There is no reference to this approach in the post-hearing letter of the inspector (CD7.5). In any case, the significant uplift in requirement asked for by the inspector (200-300dpa additional) is not going to be accommodated by intensification of sites alone.
- 3.29 The need to allocate additional sites to meet a higher housing figure is material to the consideration of this appeal.
- 3.30 The approach adopted by Mr Greaves to considering whether the site is likely to be adopted is also misplaced. Mr Greaves applies adopted and emerging policies to the site, including policies relating to the countryside. It is illogical to claim a proposed countryside policy is a reason to not allocate the site and demonstrates a misunderstanding of the local plan site allocation process, which by definition more often than not will require allocations of sites outside of settlement boundaries.
- 3.31 He conflates the application of planning policies (whether adopted or emerging) to a site as part of the application (and appeal) consideration process, with the consideration of a site for allocation. The process of allocation is undertaken within a fundamentally different context. In this case, MSDC have been directed to identify additional sites to meet acute housing needs. It is not appropriate to simply apply policies of an adopted (and out-of-date) plan to justify whether or not a site will be allocated.
- 3.32 Mr Greaves is also mistaken to refer to the historic omission from allocation to suggest it remains inappropriate to allocate it now (Footnote 14). This again ignores Inspector Bore's clear direction that more sites must be allocated, via a review of previously rejected sites.
- 3.33 MSDC has recognised the distinction between the consideration of a site for allocation and consideration via the development management process in their decision to no longer contest the appeal (CD10.2), writing:
- '...the decision to include the appeal site on the long list indicates an in-principle acceptance by the Council that the conflicts with policy previously identified in the decision notice are now outweighed by the need for the additional contribution to meeting the needs of neighbouring authorities which the District Plan Inspector is asking Mid-Sussex to make.'*
- 3.34 Finally, no case is being brought that this appeal is in any way 'premature' under the terms of paragraph 50 of the NPPF.
- 3.35 Mr Greaves' position is, with respect, illogical. It is based on a fundamental misunderstanding of the wording of NPPF 11d and 49.
- 3.36 Mr Greaves, on the one hand, wants to suggest that the emerging plan and its policies should attract a high level of weight and the local plan's imminent adoption will resolve the housing supply deficit, whilst asserting this should point to *less* weight being given to the current 5YHLS position (in summary, paragraph 218).
- 3.37 On the other hand, Mr Greaves says that no weight should be given to the site's inclusion on the long list, despite the clear need for more sites, such as the appeal site, to be allocated in order for the plan to be found sound (in summary, paragraph 210).
- 3.38 The position is far simpler. There is a significant deficit in the required supply of housing to meet identified housing needs. The proposal will help address that deficit at a sustainable location and hence should be accorded very substantial weight now. This has effectively been recognised by the Council's withdrawal from the appeal. The prospect of allocation, as indicated by inclusion on the long list, and the need to meet a recognised housing deficit are material factors in support of the grant of permission.



4.0 The Draft NPPF

- 4.1 Firstly, at this time, the draft NPPF published for consultation in December 2025 attracts only limited weight. Until such time as a new NPPF is published, this will remain the case. I shall use the short-form “NDMP” for the proposed national decision-making policies.

Draft NDMP Policy S5

- 4.2 Mr Greaves and Mr Russell, within the transport PoE, cite Draft NDMP S5 of the draft NPPF, specifically paragraph 1(h) of that NPPF at paragraphs 161-164 and 2.9-2.11 of the PoE, respectively.
- 4.3 The way in which draft policy S5 has been applied by Mr Greaves and Mr Russell is incorrect and misleading.
- 4.4 Draft NDMP S5 and the associated criteria (a) to (j) provide for the different types of circumstances in which development outside of a settlement boundary (in mid Sussex, defined by the BUAB) would apply. (a) to (j) are all separate exceptions. The different types of “development” listed are individual / mutually exclusive. In other words, they do not all need to apply for a development to be in compliance with S5. This is self-evident from the separate criteria themselves, in referring to “development”.
- 4.5 I agree with Mr Greaves that the draft policy S5 is of relevance to this case (albeit attracting limited weight at this time).
- 4.6 Mr Greaves has failed to give any consideration to criterion (j) of S5 of the draft NPPF, which is especially pertinent to this case and would be engaged given the agreed current 5YHLS position in MSDC. Criteria (j) states:

j. Development which would address an evidenced unmet need (including, but not limited to, development proposals involving the provision of housing where the local planning authority cannot demonstrate a five year supply of deliverable housing sites or scores below 75% in the most recent Housing Delivery Test), and where the development would:

i. be well related to an existing settlement (unless the nature of the development would make this inappropriate) and be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure; or

ii. comprise major development for storage and distribution purposes which accords

- 4.7 The proposed development complies with this criterion, and the benefits of the proposal are not substantially outweighed by any adverse effects, and hence the appeal scheme adheres to policy S5.
- 4.8 An alleged failure to comply with the wording of Draft NDMP S5(1)(h) has no bearing on the application of criteria (j) or the appeal schemes' overall adherence to policy S5.
- 4.9 I discuss the relevance of adherence to Draft NDMP S5 at 3.6 of my evidence. The draft national policy adds positive weight (albeit limited at this time) to the site's suitability.

Draft NDMP TR3

- 4.10 Having reviewed the Rebuttal evidence of Mr Marshall, with which I agree, I consider the development to accord with Draft NDMP TR3.
- 4.11 Importantly, TR3 is not an exclusionary policy. It is positively worded. Just like paragraph 110 of the NPPF, TR3 recognises that consideration of accessibility and sustainability is a judgement. Haywards Heath is a Category 1 settlement with a well-connected rail station



and a range of facilities to support the majority of people's needs. In this context, my discussion of the appeal 3355546 (12.20) remains relevant.

- 4.12 The development is also not one that will result in a 'significant' amount of traffic movement in the context of the area (Paragraph 7.7.1, Transport Assessment CD1.19; confirmed by WSCC Highways 5.23 CD8.5).
- 4.13 TR3 also envisages that development can come forward in rural areas, underlining that it is not an exclusionary policy, and that a diverse range of locations can be sustainable in transport terms. The site is not in a 'rural area'. It adjoins a category 1 settlement and the proposals actively facilitate the delivery of improvements focused on improving walking and cycling. This includes improvements to the footways and crossings on Lewes Road and Snowdrop Lane, contributions towards local cycle and walking improvements in the locality, including footpath HAH-29CU.
- 4.14 If the housing crisis is to be addressed, a range of sites will be required to meet housing needs and this will include sites located at the edge of existing settlements, like Haywards Heath. Policy S5, as I will now turn to, allows for precisely this eventuality.



5.0 The Planning Balance

[54], [87], [96], [207]: Mr Greave's Planning Balance: Benefits and Adverse Effects

- 5.1 Mr Greaves has failed to undertake a full consideration of the planning balance within his Proof of Evidence at any point, especially a proper identification of the benefits and the weight to be accorded them.
- 5.2 In my Proof of Evidence, Section 8, I have set out my approach to the benefits and harms/adverse impacts that will arise from the scheme, and as summarised in table form at 8.47 (benefits) and 8.48 (harms/adverse impacts).
- 5.3 Mr Greaves, on the other hand, has focused almost exclusively on the harms that arise from the development.
- 5.4 Mr Greaves makes several passing references to a 'full balancing exercise' at paragraphs 54, 87, and 96. He then only undertakes a partial balancing exercise at his [207].

[194]: Housing Delivery

- 5.5 He refers to the site's housing delivery as a benefit, although no specific weight is assigned. The approach to the weight to be given to housing is misplaced. Mr Greaves at paragraph 194 acknowledges a need for housing, but then states these are only:

'general pressures, and not unique to this area, not exceptional.'

- 5.6 This approach is significantly out of step with the NPPF, Written Ministerial Statements and with contemporary appeal decisions. With respect, Mr Greaves' approach shows a disregard for the acute and widely acknowledged housing crisis, which flies in the face of current government statements which have been confirmed since July 2024 (as renewed several times in WMSs):

*'England remains in the grip of a **housing crisis that is both acute and entrenched**' – Minister of State for Housing and Planning 16th December 2025 (CD16.4) (my **emphasis**).³*

- 5.7 The need for new homes in MSDC specifically is very acute and entrenched. The fact that the 'pressures' are felt across the country, and particularly in the South-east, does not reduce the weight to be afforded to housing delivery, and is very far out of step with multiple s78 appeal decisions. To the contrary, it only heightens the need for housing to be delivered. My evidence, supplemented by Mr Stacey and Mr Pycroft's evidence, plainly highlights that the need for housing is acute and pressing within Mid Sussex.
- 5.8 In Section 8 of my evidence, I set out how material considerations clearly indicate that permission should be granted despite the (in my view, limited) conflict with the development plan. This includes an assessment of how I have had particular regard to relevant NPPF paragraphs 66, 110 and 115, 129 and 135-139 (paragraphs 8.56-8.59 of my evidence).

[99] Previous Appeal Decision and the Tilted Balance

- 5.9 Mr Greaves's paragraph 99 references an appeal 3319542 (CD12.26), where he suggests that a reduced level of weight should be afforded to market housing delivery and the application of the tilted balance. The referenced appeal was decided at a time when MSDC could demonstrate a 5YHLS. It is materially different to the situation at the present time, where MSDC now cannot demonstrate a 5YHLS, and it is common ground that the shortfall is 'significant' (CD8.3 – paragraph 2.13).

[63] Emerging Plan and Housing Land Supply



- 5.10 Mr Greaves' paragraph 63 also argues that the weight attributed to housing, and the application of the tilted balance, should be reduced as a result of the emerging plan and the claim that this will imminently resolve the current 5YHLS. As my evidence at 3.36-3.42 demonstrates, the plan can only be sound if more sites, like the appeal site, are allocated for development. Mr Pycroft's evidence relating to HLS has shown that a 5YHLS will not be possible on the adoption of the plan without further site allocation.
- 5.11 No reference is made by Mr Greaves to the evident benefits arising from the delivery of affordable housing, which will be secured by the development
- 5.12 As I have set out in my Proof of Evidence, **very substantial weight** should be applied to **affordable housing delivery**, and **separately market housing delivery**, for the reasons set out in paragraphs 8.2-8.7 (and expanded upon in Mr Stacey's proof) and 8.8 – 8.17 respectively.
- 5.13 Mr Greaves has failed to have regard to any of the other benefits arising from the development.

Summary

- 5.14 Mr Greaves' approach to the consideration of the planning balance, and especially the benefits deriving from the scheme, fails to take account of the totality of the proposals and is very far out of step with established practice in appeal decisions in LPAs with a major HLS shortfall.
- 5.15 The harms arising from the scheme plainly do not significantly and demonstrably outweigh the significant benefits. Consequently, the appeal should be allowed.





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