



MID SUSSEX

DISTRICT COUNCIL

Town and Country Planning Act 1990

STATEMENT OF CASE

Planning Inspectorate Ref: 6005786

Local Authority Ref: DM/25/0445 / AP/26/0023

Appeal by:
Miller Homes Ltd

Appeal Site:
Land at Colwell Farm Lewes Road Haywards Heath West
Sussex RH17 7TB

1.0 INTRODUCTION

- 1.1 This statement is prepared by Mid Sussex District Council ("the Council") as the Local Planning Authority's response regarding an appeal under Section 78 by Miller Homes following the Council's refusal (by a Decision Notice dated 10 September 2025) of application ref DM/25/0445 ("the Application").
- 1.2 The Application seeks outline planning permission for the erection of up to 80 dwellings, with associated landscaping, open space, infrastructure and vehicular and pedestrian accesses, on land at Colwell Farm, Lewes Road, Haywards Heath, West Sussex. It is the means of access that is to be determined at the outline stage, with landscaping, appearance, layout and scale to be determined in a subsequent reserved matters application.
- 1.3 The Application was reported to Committee with an officer's recommendation for approval. Rejecting that recommendation, members decided that permission should be refused for the following 5 reasons, as set out in the Decision Notice:

1. The proposed development is located within the countryside outside of the built-up area of Haywards Heath. It is considered that the development would be out of keeping with the rural character of the area and fails to protect the local distinctiveness of the area by extending the settlement boundary of Haywards Heath and eroding the rural nature of the site, contrary to policy DP12 of the Mid Sussex District Plan 2014-2031 and policies E5 and E9 of the Haywards Heath Neighbourhood Plan.

2. The site is considered to be in an unsustainable countryside location where pedestrian access to the town centre would not be convenient or attractive for future residents, and this could not be sufficiently mitigated by the proposed off site works in this application. Therefore, the proposal would result in a heavy reliance on the private car to address basic day to day needs from local services and shops. The proposal therefore conflicts with policy DP21 of the Mid Sussex District Plan 2014- 2031 and the provisions of the NPPF which seeks to actively manage patterns of growth to make the fullest possible use of public transport.

3. The development would result in an unacceptable intensification of development within the setting of the Grade II listed Colwell House and North

Colwell Barn, an undesignated heritage asset. The development would also detract from the rural character of the setting of the southern part of the Lewes Road Conservation Area. It is not considered that the public benefits of up to 80 dwellings on the site would outweigh the harm to the setting of both the designated and non-designated heritage assets. The proposal is therefore considered to be contrary to the requirements of policies DP34 and DP35 of Mid Sussex District Plan 2014-2031 and the aims of the NPPF and policy E9 of the Haywards Heath Neighbourhood Plan.

4. The proposal would result in the loss of a significant number of trees, which make an important contribution to the character and appearance of the area. The loss of these trees is not adequately compensated for or mitigated against in the application. The proposed development therefore conflicts with policy DP37 of the Mid Sussex District Plan 2014-2031 and policy E9 of the Haywards Heath Neighbourhood Plan.

5. The proposal fails to provide the required affordable housing, the infrastructure contributions, off site highway works and the biodiversity net gain requirements. The application therefore conflicts with policies DP20, DP21, DP31 and DP38 of the Mid Sussex District Plan and the Mid Sussex Supplementary Planning Documents 'Affordable Housing' and 'Development Infrastructure and Contributions'.

2.0 STATEMENT OF COMMON GROUND

- 2.1 A Statement of Common Ground ("SoCG") is being progressed between the Council and the Appellant and will follow.
- 2.2 The SoCG will include a detailed description of the site and surroundings and identify the relevant development plan policies and guidance. A schedule of up-to-date application and appeal documents will also be provided that will form part of the Inquiry's Core Documents List. The SoCG will also identify any remaining areas of disagreement between the parties not identified in this statement ahead of the Inspector's Case Management Conference.

3.0 THE SITE AND ITS SURROUNDINGS

- 3.1 The site of the planning application lies to the south of North Colwell Farmhouse and comprises of three irregular open greenfield parcels which are separated by belts of mixed hedges and trees.
- 3.2 The proposed access lies within the built-up area of Haywards Heath, with the wider application site for the dwellings within the countryside as defined in the District and Neighbourhood Plan.
- 3.3 The site benefits from extensive vegetation around the boundaries with trees and hedges also within the site. Beyond the southern boundary is Ancient Woodland. To the north of the site are residential properties and their gardens which form linear ribbon development along Lewes Road. These are comprised of large, detached dwellings. To the northern boundary is the Lewes Road Conservation Area. In addition, there is a Grade II listed property of Colwell House
- 3.3 The site is allocated as a local gap within the Haywards Heath Neighbourhood Plan (HHNP).
- 3.4 Further to the west is a public right of way (HAH/29CU/2) which runs north to south. This is separated from the site by the neighbouring garden and other land outside of the application site. This footpath is well screened and there is no intervisibility.

4.0 PLANNING HISTORY

- 4.1 There are no previous planning applications of direct relevance to the determination of this appeal.

5.0 PLANNING POLICY

- 5.1 The adopted development plan comprises the following; Mid Sussex District Plan 2014 – 2031, Haywards Heath Neighbourhood Plan 2016 and the Site Allocations Development Plan Document (SADPD) (June 2022).
- 5.2 Relevant District Plan policies:

DP4 - Housing
DP6 - Settlement Hierarchy
DP12 - Protection and Enhancement of Countryside
DP15 – New Homes in the Countryside
DP20 - Securing Infrastructure
DP21 - Transport
DP28 - Accessibility
DP31 - Affordable Housing
DP34 - Listed Buildings and other Heritage Assets
DP35 – Conservation Areas
DP37 - Trees, Woodland and Hedgerows
DP38 - Biodiversity

5.3 Relevant Neighbourhood Plan policies:

Policy E5 – Local Gap
Policy E6 – Promoting Green Infrastructure within the site
Policy E8 – Sustainable development
Policy E9 – Protecting and reinforcing the local character
Policy E11 – Major development of the edge of Haywards Heath
Policy T1 – Provision of pedestrian and cycle connections

5.4 Relevant SADPD policy:

SA38 – Air Quality

Mid Sussex District Plan 2021 - 2039 - Submission Draft (Regulation 19)

5.5 The Council is reviewing and updating the District Plan. The NPPF states that Local Planning Authorities may give weight to relevant policies of the emerging plan according to the stage of preparation; the extent to which there are unresolved objections to the relevant policies; and the degree of consistency of the relevant policies in the emerging plan to the NPPF.

5.6 The Regulation 19 Draft of the District Plan 2021-2039 was submitted for examination in July 2024. The Inspector initially appointed to examine the draft Plan was Ms Louise Nurser. Following the conclusion of the Stage 1 Hearing session, Ms Nurser wrote to the Council advising that she considered the draft Plan had failed the Duty to Co-operate and inviting the Council to decide whether

it wished to withdraw the draft Plan or request her to write a formal decision letter. Having taken advice, the Council concluded the Inspector's reasons were legally defective and that it would, therefore, not withdraw the draft Plan. In addition to sending a Pre-Action Protocol Letter to the Secretary of State, the Council wrote to Ms Nurser inviting her to re-open the examination to consider further submissions. Ms Nurser agreed to that request and was in the process of arranging a date for a further hearing session, when the Government announced that it was proposing to abolish the Duty to Co-operate and would shortly be laying the necessary statutory instruments to remove the need for plans which were already at examination to satisfy the duty.

- 5.7 This announcement made it possible to resume the examination of the draft Plan on the basis that (even if Ms Nurser's position on compliance with the Duty to Co-operate had remained unchanged) this would not have prevented adoption of the Plan. However, due to Ms Nurser's other commitments at the time of the announcement, it was not possible for her to continue to a Stage 2 Hearing session in a timely manner, and a new Inspector (Mr Jonathan Bore) was appointed to take over the Examination.
- 5.8 Mr Bore has since delivered his preliminary observations on the Development Management Policies of the draft Plan. The scheduled hearing sessions into all other aspects of the Plan were held over a period of three weeks between 24 February 2026 and 19 March 2026.
- 5.9 At the end of the first week of the Examination, and in light of the significant unmet needs arising in Crawley (and, to a lesser extent, Brighton & Hove) Mr Bore asked the Council to review its assessment of sites with a view to identifying further allocations in order to meet a higher housing requirement, which he has suggested should be "towards the upper end" of the range from 1200-1300 dpa. The Council is currently undertaking this work, which will include a reappraisal of all sites previously rejected, including the Appeal Site. The outcome of that process is not known, but the Council will keep the Appellant and the Inspectorate updated, as appropriate.
- 5.10 At present, there are unresolved objections to a number of the policies in the draft District Plan and as such, only minimal weight can be given to it. This planning application has therefore been assessed primarily against the policies of the

adopted District Plan and the NPPF. However, depending on the progress of the draft Plan between now and the determination of this appeal, the weight which can be given to it may change. Again, the Council will keep the Inspectorate updated, as necessary.

- 5.11 The Council expects to adopt the new District Plan 2021 - 2039 before the end of 2026. Once adopted, the new will replace the current District Plan 2014-2031, and its policies will have full weight.

Position Statement 1

- 5.12 As a result of Ms Nurser's preliminary conclusions on the Duty to Co-operate, progress of the new District Plan was stalled for much of 2025. In that time, and as a consequence of (a) the fact that the adopted District Plan was more than 5 years old (b) the December 2024 changes to the NPPF and (c) the Council's inability to adopt the new Plan, the Council became unable to demonstrate a 5-year housing land supply. In order to address this situation, and provide guidance on its approach to development management in the absence of an updated District Plan, the Council adopted Position Statement 1: Delivering Sustainable Development in Mid Sussex, which stated that:

Approved by the Council in December 2025, the position statement is a material consideration in the determination of planning applications and provides guidance on how the Council will consider speculative planning applications to ensure future development takes place in the right places, is delivered in a sustainable and high-quality manner and is accompanied by the necessary infrastructure.

- 5.13 Section 5 of the Position Statement sets out that the Council continues to support the delivery of the housing sites and sustainable communities identified for development of the Submission Draft District Plan.
- 5.14 The Position Statement sets out that the Council will expect planning applications on the preferred sites to comply with the site-specific principles as set out in the Submission Draft District Plan. This reflects that many of the site-specific policy principles were the subject of discussion and agreement with site promoters/developers during the preparation of the Plan.

5.15 Section 6 of the Position Statement sets out eight decision making principles, which reflect the chapters of the Submission Draft District Plan, which need to be taken into account as part of the decision process for any application. These principles are as follows:

- Sustainability
- Natural Environment and Green Infrastructure
- Countryside
- Built Environment
- Transport
- Economy
- Housing
- Infrastructure
- Heritage Assets
- Trees

SDP Development Infrastructure and Contributions (2018)

5.16 This SPD is applicable as it provides an overview of the full range of the District Council's requirements relating to planning obligations to offset the likely impact of development such as the proposed scheme will require. It should be read in conjunction with the Affordable Housing SPD and Development Viability SPDs.

Affordable Housing Supplementary Planning Document (SPD)

5.17 This SPD is applicable as it identifies the District Council's requirements relating to affordable housing. It should be read in conjunction with the Developer Contributions Infrastructure SPD and the Development Viability SPD.

National Planning Policy

5.18 The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three overarching objectives to sustainable development, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). The three objectives are economic, social and environmental.

5.19 Paragraph 9 of the NPPF states.

'These objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so we should take local circumstances into account, to reflect the character, needs and opportunities of each area.'

5.20 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. Paragraph 11d indicates that the presumption means for decision making:

'where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of date⁸, granting permission unless:

i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or

ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole.'

5.21 Footnote 8 states that in the situation where the local planning authority is unable to demonstrate a five-year supply of deliverable housing land then the policies which are most important for determining the application are deemed to be out of date. Footnote 7 indicates where relevant:

*'the policies referred to are those in this Framework (rather than those in development plans) relating to... land designated as ...**designated heritage assets**...'*

5.22 Therefore, for decision-taking relating to land affecting designated heritage assets, it is first necessary to determine whether the heritage policies in the Framework provide a clear reason for refusal under paragraph 11 (d) (i). If they do, it is not necessary to assess the application under paragraph 11(d)(ii) of the Framework. If the application of the heritage policies on their own do not provide a strong reason for refusal under paragraph 11(d)(i), it will then be necessary to consider whether the adverse impacts of granting permission (which will include

any harm to heritage assets, alongside any other harm) significantly and demonstrably outweigh the benefits under para 11(d)(ii).

6.0 HOUSING LAND SUPPLY AND THE EMERGING LOCAL PLAN

- 6.1 While the Council has performed excellently in respect of the Housing Delivery Test, a new standard method formula was published alongside the amendments which were made to the NPPF in December 2024, which gives Mid Sussex a significantly higher housing requirement than the current District Plan, which is now more than 5 years old. As a result, and having regard for the need for an appropriate buffer, the Council is currently unable to demonstrate a five-year supply of deliverable housing sites as per the requirements of paragraph 78 of the NPPF.

Adopted Local Plan Position

- 6.2 The Mid Sussex District Plan 2014-2031 was adopted in March 2018. This established a housing requirement of 876 dwellings per annum until 2023/24 and 1,090 dwellings per annum thereafter.
- 6.3 Planning Practice Guidance (ID: 68-006-20190722) states that housing requirement figures identified in adopted strategic housing policies should be used for calculating the 5-year housing land supply figure where the plan was adopted in the last 5 years, or the policies have been reviewed within the last 5 years and found not to need updating. In other circumstances, the 5-year housing land supply will be measured against the area's local housing need calculated using the standard method.
- 6.4 As the Mid Sussex District Plan 2014-2031 was adopted more than 5 years ago and is currently being updated, the Council cannot rely on the housing requirement set out in the adopted District Plan for the purposes of the 5-year supply calculation. The standard method calculation therefore applies.
- 6.5 This means that the current standard method calculation is 1,358 dwellings per annum. It is this figure the Council's 5-year supply should be calculated against. The Council will seek to agree a precise figure for its housing land supply with the Appellants in the Statement of Common Ground. However, even if that is not

possible, the Council recognises that it does not have a 5-year supply of housing when calculated against this figure.

- 6.6 At Submission (July 2024) the emerging District Plan (policy DPH1) established a housing requirement of 1,090 dwellings per annum for 2021-2039. However, following the hearing session held on 19th March the Inspector has indicated that the proposed requirement of 1,090 dwellings is not sound, and has asked the Council to test the potential for an increased housing requirement towards the upper end of the range between 1,200 – 1,300 dwellings per annum, and to allocate additional sites accordingly to ensure the overall housing requirement is met and that a 5 year supply can be demonstrated on adoption.
- 6.7 The Council has commenced work on this, with a view to publishing a ‘long list’ of sites in mid-May which will be subject to further in-combination testing. Subject to the results of the in-combination testing, the additional sites proposed for allocation will be put forward as main modifications to the plan and subject to consultation and potential further hearings (indicatively in Summer 2026).
- 6.8 The Inspector has indicated that the review process should consider all sites previously rejected (including those rejected at an early stage on the basis that there was a “showstopper” which rendered them unsuitable). The Appeal Site will therefore be among the sites being reviewed
- 6.9 While the outcome of this process is not yet known, it is expected that the new District Plan will identify a requirement which is in the range requested by the Inspector but will also identify sufficient sites to provide a 5-year supply of deliverable housing sites.

7.0 CASE FOR THE LOCAL AUTHORITY: OVERVIEW

- 7.1 The Council will present evidence to the Inquiry to support the reasons for refusal set out above which is summarised here and expanded under each subheading below.
- 7.2 In summary, the appeal should be dismissed because:

1. The proposed development is contrary to the development plan as a whole. The appeal site lies outside of the built-up area boundary as defined by the development plan. It is not a type of development that is supported in the defined countryside area for planning purposes and does not protect the intrinsic character and beauty of the countryside. It is therefore contrary to DP12 of the Mid Sussex District Plan and Policy E5.
2. The site due to its scale and location will adversely impact the setting of designated and non-designated heritage assets namely the Lewes Road Conservation Area, in which part of the site lies within with one boundary directly abutting the conservation area. the setting of the Grade II listed Colwell House and its associated curtilage and the non-designated heritage asset of North Cowell Barn.
3. The application fails to demonstrate appropriate levels of pedestrian connectivity to the town centre which is approximately 2.4km from the edge of the site adjacent Lewes Road.
4. The proposed access will result in the loss of 8 mature and healthy Category B trees, 3 of which are mature Oaks that will be lost to facilitate the proposal. The Council will contend the applicant has failed to justify the loss of these trees within a Conservation Area. The loss of these trees particularly the Oak trees cannot not be compensated by replanting as the visual amenity and ecological value of mature oak trees would take years to develop from newly planted specimens.
5. Although (because the Council cannot demonstrate a 5-year housing land supply) para 11(d) of the NPPF is engaged, the tilted balance is not triggered, and there are no material considerations which justify a decision other than in accordance with the development plan because policies DP12, DP21 DP34 DP35 and DP36 of the MSDP and policies E5 and E9 of the HHNP remain consistent with the NPPF and should be given significant weight; and the adverse impact on designated heritage assets provides a strong reason for refusal within the meaning of para 11(d)(i) and/or the adverse impacts on designated and non-designated heritage assets, the substantial loss of trees and poor pedestrian connectivity together significantly and demonstrably

outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

Reason 1: Development Outside the Built-up Area Boundaries

- 7.3 The starting point for this reason is that the application site falls outside of the built-up area of Haywards Heath as defined by the District Plan, within the open countryside and as defined in the HHNP is within a local gap between Haywards Heath and neighbouring parishes.
- 7.4 The Council considers that the proposed development would be out of keeping with the rural character of the area through the rearward development proposed. As such the proposal would not maintain or enhance the quality of the rural landscape character of this part of the district and would thereby conflict with Policy DP12 of the District Plan.
- 7.5 The site is identified as a local gap under Policy E5 of the HHNP. The Council will demonstrate that the development would fail to protect the local distinctiveness and would erode the gap between Haywards Heath and other settlements.
- 7.6 In addition, the Council will demonstrate that the proposal will not protect or reinforce local character due to the scale and location of development proposed and would thereby be contrary to Policy E9 of the HHNP.
- 7.7 It is considered that the proposal would unduly erode the landscape character of the area, impacting on the local distinctness of the area and extending the settlement boundary of Haywards Heath and eroding the rural nature of the site.
- 7.8 Overall, the urbanising effect of the development proposed would have a poor relationship with its context and result in a significant harmful effect on the rural setting of Haywards Heath. The Council will contend that by failing to be sympathetic to the local character and setting, the appeal scheme is in conflict with para 135 (c) and para 187 (b) of the NPPF.
- 7.9 As the site is not allocated for residential development, the application is in conflict with the above policies, which are central to the principle of development at this location, and a fundamental aspect of the spatial strategy of the adopted

development plan. Of itself, that is sufficient to render the proposed development contrary to the development plan.

Reason 2: Access to the Town Centre

- 7.10 The government has produced a new internet tool to demonstrate the connectivity of a site: <https://www.gov.uk/guidance/connectivity-tool> .
- 7.11 The Connectivity Tool is designed to aid built environment professionals and others to understand the connectivity of places in England and Wales. The tool can be used to:
- display how any location in England and Wales is connected to everyday services by walking, driving, cycling and public transport
 - plot new transport routes to understand how these would affect an area's connectivity.
- 7.12 This tool provides a map with squares that can be clicked on to provide a connectivity score from 0 to 100, with 100 being the most connected.
- 7.13 Utilising the governments connectivity tool the site has a score of between 33 and 46 meaning that it has below average standard of connectivity.
- 7.14 In regard to connectivity to the town centre the appellants design and access statement states:
- 'As shown at Figure 11, there are a good number of local facilities / amenities within a reasonable walk distance of the proposed homes – including food shops, a primary school, doctors / pharmacy and Princess Royal Hospital, and many of these facilities are just over the 800m distance i.e. closer to 800m than 1,600m. The town centre and Oathall Community College are within a maximum usual walking distance'.*
- 7.15 The submitted Design and Access statement fails to define what is a reasonable and maximum usual walking distance.
- 7.16 It should be noted that the submitted Framework Travel Plan advises in para 3.3.1:

'The nearest bus stops to the site are located on Northlands Avenue (via Footpath 29CU) circa 1km walk distance from the centre of the site.'

- 7.17 It is generally accepted as part of the decision-making process that an appropriate walking distance to local facilities is 800m which equates to a 20-minute walk. This is detailed in government guidance namely Active Travel England Standing Advice Note: Active travel and sustainable development - June 2024.
- 7.18 Hayward Heath town centre which provides the main facilities for people to meet their day-to-day needs is approximately 2.8km from the centre of the appeal site. This is clearly a distance that future residents will travel to by car rather than walking.
- 7.19 While noting the proposed off-site improvement works to pedestrian access to encourage walking the council will contend this may provide a safer walking route but it will not reduce the walking distance or time to the Town Centre. These works will therefore not create a strong promotion of sustainable pedestrian travel to the town centre.
- 7.20 The transport statement and travel plan fail to detail the potential pedestrian routes from the site to the town centre to help establish any sustainable connection.
- 7.21 Overall, the proposal would conflict with para 115 (a) of the NPPF as sustainable transport modes are not prioritised when taking account of the development and its location.

Reason 3: Heritage

- 7.22 The Council will demonstrate the Application has failed to fully assess the level of adverse impact of the development on the Lewes Road Conservation Area, the Grade II Listed Building of Colwell House and the Non-Designated Heritage Asset of North Colwell Barn.
- 7.23 The Landscape Visual Impact Assessment (LVIA) submitted by the appellant is deficient in that other than the view towards the access from Lewes Road (view

4), the submitted viewpoints within the LVIA do not consider the impact on views from within the Lewes Road Conservation Area. The LVIA does not include viewpoint from Colwell House or its gardens and contains no viewpoint from North Colwell Barn or its immediate setting.

- 7.24 While the application is seeking to reserve all matters other than access it is clear that the development would have a fundamental impact on the character of the site, which would become suburbanised. This will remove and reverse the positive contribution which the Site currently makes to the settings of the above-mentioned heritage assets.

Conservation Area

- 7.25 The development will adversely affect the semi-rural character of this part of the Conservation Area, and the sense that it represents a transition from town to countryside.
- 7.26 The new access from Lewes Road will also have a direct urbanising impact on this part of the Conservation Area. In terms of the street scene of Lewes Road there will loss of at least 8 trees including 3 oaks, trees and hedging along this part of the road, to the detriment of its transitional, semi-rural character. There may also be channelled views along the access road from within the Conservation Area in which the residential development beyond is visible.
- 7.27 The Council will demonstrate that the impact on the Conservation Area is likely to be one of less than substantial harm, at around the mid-high range of that scale.

Listed Building

- 7.28 With respect to Colwell House, the impact of the development on the existing wider rural setting of the listed building will be not only visual, but also in terms of increased noise, activity and light levels within close proximity to the house and its immediate garden setting, all of which will detract from the surviving historic rural setting of this country house.
- 7.29 This will be detrimental to its special interest as identified above, and how this appreciated. This will result in a level of harm at less than substantial, at around the mid-level of that scale.

Non-Designated Assets

- 7.30 In terms of the Non-Designated Asset at North Colwell Barn, the Council place the level of harm caused to be around the mid-level, to an asset of a mid-level of interest in the local context. Again, this will not be purely through visual impact, but also in terms of noise, activity and light levels. In the case of the Barn, the level of impact is also affected by the likely historical relationship between the former farm building and the farmlands which were part of the farmstead.
- 7.31 The Council will contend that limited weight should be given to the retained and additional planted screening which is noted in several locations around the site, given the guidance in the relevant Historic England guidance GPA Note 3 *'The Setting of Heritage Assets'* that:
'As screening can only mitigate negative impacts, rather than removing impacts or providing enhancement, it ought never to be regarded as a substitute for well-designed developments within the setting of heritage assets. Screening may have as intrusive an effect on the setting as the development it seeks to mitigate, so where it is necessary, it too merits careful design. This should take account of local landscape character and seasonal and diurnal effects, such as changes to foliage and lighting. The permanence or longevity of screening in relation to the effect on the setting also requires consideration. Ephemeral features, such as hoardings, may be removed or changed during the duration of the development, as may woodland or hedgerows, unless they enjoy statutory protection.'
- 7.32 In this context, the fact that screening will be of seasonally variable and potentially ephemeral planting is significant. Furthermore, the screening in itself may be harmful, to the extent which it succeeds in divorcing the affected assets from their wider rural setting.
- 7.33 Any screening outside the red line of the application site and not within the control of the applicant cannot form a consideration as there is no method of ensuring this is retained and managed.
- 7.34 In summary, there are three aspects of heritage harm – to the setting of the listed building, to the Lewes Road Conservation Area and to a non-designated asset.

- 7.35 This site would breach policies DP34 and 35 of the Mid Sussex District Plan and policy E9 of the HHNP with the harm falling into the less than substantial category.

Reason 4: Tree Loss

- 7.36 The arboriculture report submitted with the application indicates that 43 Category B trees have the potential to be lost to facilitate the entire proposal.
- 7.37 However, in regard to this appeal as the application is seeking to reserve all matters other than the access it is the trees that are affected by the access which are the principal consideration.
- 7.38 The arboriculture report advises the proposed access into the site from Lewes Road will require the loss of 8 mature trees which are in good condition to facilitate the development. 3 of these trees are irreplaceable oak trees.
- 7.39 While the specific loss of these trees in a Conservation Area forms a consideration for this appeal, the appellant has not provided any specific compensation for these trees.
- 7.40 The Council will argue the loss of the loss of these trees especially the Oak trees cannot be sufficiently compensated for by replanting; and that the lost visual amenity and ecological value of mature Oak trees would take years to develop from newly planted specimens.
- 7.41 The Council will also contend the submitted arboricultural report fails to assess the issue of tree removal to provide the required visibility splays for the access. This indicates a least one further tree will need to be removed.
- 7.42 All of the trees to be removed in the creation of the access fall within the Conservation Area and has such are protected by Section 211 of the Town and Country Planning Act 1990.
- 7.43 The loss of these trees would be contrary to Policy DP37 of the District Plan as it would lead to the unnecessary loss of mature healthy trees that contribute to the visual amenity and character of the area.

- 7.44 Policy E9 of the HHNP states that development must:
'respects the natural contours of a site and protects and sensitively incorporates natural features such as trees, hedges and ponds within the site.'

The development by removing healthy trees fails to incorporate them within the scheme and is therefore contrary to this policy.

- 7.45 The loss of these trees means the development has failed to take into account para 136 of the NPPF which identifies that trees make an important contribution to the character and quality of urban environments.

Reason 5: Infrastructure

- 7.46 The application was also refused due to a failure to provide the infrastructure contributions, off-site highway works to serve the development, the required affordable housing and biodiversity net gain requirements.
- 7.47 Whilst it is anticipated that this reason can be resolved prior to the Inquiry by an appropriate section 106 legal agreement, at the date of this Statement of Case, this remains outstanding.
- 7.48 The Appellant's indicate a willingness to enter into a legal undertaking during the appeal process and sign a Section 106 agreement before the Inquiry Hearings. If no such agreement is reached on these matters, the Council will present evidence in support of its position that the appeal scheme fails to accord with Policies DP20, DP24 and DP31, the Affordable Housing Development Infrastructure and Contributions SPDs, the NPPF and requirements in relation to biodiversity net gain.

Tilted Balance / Planning Balance

- 7.49 While the Council acknowledges the potential benefits of the scheme (provision of new housing, including affordable housing and that the Council cannot demonstrate a 5-year housing land supply), para 11(d)(i) and/or (ii) of the NPPF is engaged and the tilted balance is not triggered.

7.50 In this regard, the Council will contend that the weight to be attached to the current shortfall in the 5 year housing land supply should be reduced in the light of the Council's consistently good record (up to January 2025) of maintaining a 5 year supply, its excellent record under the Housing Delivery Test, and the fact that the Council is actively taking steps to address the shortfall through its emerging Local Plan, which is now well advanced should be adopted by the end of this year. In particular, the Council will:

- Demonstrate that, when considering the weight to be attached to the contribution which the proposed development would make towards meeting the identified need for housing, it is well established that it is relevant to consider the extent of the shortfall, the length of time for which it has existed, the reasons behind the shortfall, and the steps which the local planning authority is taking to address this
- note that (as detailed above) the current lack of a 5-year housing supply is as a result of the examination into the updated District Plan having been paused. Prior to this, however, the Council will demonstrate that it has consistently managed to maintain a 5-year supply of housing since adoption of the current District Plan, and that its performance under the Housing Delivery Test has been outstanding.
- refer to the conclusions of the Inspector's comment when dismissing appeal ref APP/D3830/W/23/3319542 (decision dated 5/10/2023, (Appendix 1) concerning an application for the development of up to 120 residential dwellings at Albourne), where she said:
"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.
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. 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”

- refer to the fact that its new District Plan is currently back under further examination, with adoption anticipated by the end of this year, at which point the Council will again be able to demonstrate a 5-year housing supply. The Council will contend that significant weight should be given to the fact that the housing supply will shortly be addressed through the adoption by the end of the year of the emerging MSDP.

7.51 Further, in so far as the Appellants rely on any shortfall in the 5 year housing land supply as a basis for justifying development which is contrary to the development plan, the Council will interrogate the Appellants’ evidence as to the likelihood of the appeal scheme coming forward sufficiently quickly to make any, or any material contribution to that shortfall.

7.52 Against this backdrop, the Council will contend that:

- the adverse impact on designated heritage assets provides a strong reason for refusal within the meaning of para 11(d)(i) and/or the adverse impacts on designated and non-designated heritage assets, the substantial loss of trees and poor pedestrian connectivity together significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

- there are no material considerations which justify a decision other than in accordance with the development plan because policies DP12, DP15, DP20 DP21, DP34, DP35 and DP37 of the MSDP and E9 of the HHNP remain consistent with the NPPF and should be given significant weight.

8.0 Witnesses and Evidence

8.1 It is anticipated that the Council will present evidence in respect of:

- matters associated with the progress of the District Plan
- harm to the character of the countryside and erosion of the rural nature of the site;
- the site being an unsustainable location where there would be a heavy reliance on the private car for future residents;
- heritage harm;
- harm to trees;
- the overall planning balance.

8.2 For the avoidance of doubt, the Council does not currently anticipate that there will be any significant disagreement as to the number or importance of trees which will be lost and does not envisage that this issue is likely to require specialist input. Similarly, the Council envisages that its evidence in relation to sustainability and impact on the character and appearance of the countryside will be presented by a planning officer. On this basis (and without prejudice to call a specialist witness on these issues if it appears that this will be necessary), the Council expects that its case will be presented by three witnesses, namely (a) a member of its local plans team who will provide evidence on the progress of the local plan (b) a heritage witness who will address the harm to designated and non-designated heritage assets and (c) a planning witness who will address the remaining arguments and the overall planning balance.

8.3 It is anticipated that the Appellant will engage with the Council in a constructive dialogue ahead of the Inquiry to resolve the outstanding issues relating to the Section 106 and a draft planning obligation to avoid the need to contend these matters in front of the Inspector. If so, no witness will be called to address reason for refusal number 5 (in relation to securing affordable housing, the

infrastructure contributions, off site highway works and the biodiversity net gain requirements).

Appeal Documents

8.4 The Council intends to refer to the following documents in their case:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- National Design Guide (2019)
- Mid Sussex District Plan 2014-2031 (March 2018)
- Site Allocations Development Plan Document (SADPD) (June 2022)
- Haywards Heath Neighbourhood Plan (2016)
- Mid Sussex District Plan 2021 – 2039 – Submission Draft (Regulation 19)
- Mid Sussex Affordable Housing SPD (July 2018)
- Mid Sussex Development Infrastructure and Contributions SPD (July 2018)
- Position Statement 1: Delivering Sustainable Development in Mid Sussex
- Planning (Listed Buildings and Conservation Areas) Act 1990
- The Setting of Heritage Assets Historic Environment Good Practice Advice in Planning: 3 (Second Edition)
- Statements of Heritage Significance: Analysing Significance in Heritage Assets Historic England Advice Note 12
- Conservation Areas in Mid Sussex (August 2018)
- Relevant appeal decisions and judgements of the courts

9.0 Conditions

9.1 In accordance with the NPPF (2024) and without prejudice to the Council's Case, the Council will engage with the Appellant to provide, as part of the Statement of Common Ground a list "recommended conditions" in the event the Planning Inspectorate allows this appeal.

9.2 As directed by the Planning Inspectorate the Council will seek to resolve as many outstanding issues as possible, and if the Inspectorate allows, seek to

provide an updated Statement of Common Ground during the course of the appeal process as needed.