

# **Proposed phased development of 5 No. Self-build dwellings, associated access and infrastructure works.**

## **Appeal Statement**



**Land West of Turners Green Road, Wadhurst, TN5 6TW**

**On behalf of Landstrom**

**January 2021**

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## **1.0 Introduction**

1.1 The appeal is being made under Section 78 of the Town and Country Planning Act 1990 in response to Wealden District Council's decision to refuse planning application reference WD/2019/2252, which sought outline planning permission for a phased development of 5 No. self-build residential dwellings and associated access and infrastructure works at Land West of Turners Green, Wadhurst, East Sussex, TN5 6TW.

1.2 The application was refused under delegated powers on 20<sup>th</sup> July 2020 for the following reasons:

*"When measured against the full objectively assessed housing need, the Council does not have a 5 year supply of housing land. It is accepted that the NPPF requires applications for housing to be approved without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or when specific policies in the Framework indicate development should be restricted.*

*The NPPF explains sustainable development has three objectives – economic, social and environmental. Planning policies and decisions need to guide development towards sustainable solutions while taking local circumstances into account.*

*The application site lies within the High Weald Area of Outstanding Natural Beauty outside the development boundary for Wadhurst defined within the adopted Wealden Local Plan (WLP) 1998 and retained in the adopted Wealden Core Strategy Local Plan (CSLP) 2013. It is located in an area where new residential dwellings would not normally be acceptable as they are contrary to the rural housing restraint policies within Saved Policies GD2 and DC17 of the WLP 1998 and WCS 6 of the CSLP 2013.*

*The site being on the northern edge of the village means that it is some distance from a number of the villages services and would rely on any future occupants to travel along roads without footpath and lighting to reach them, which is likely to discourage people from walking or cycling to reach these destinations. With this in mind, the occupiers of any dwelling here would be dependent on the use of the private car for most needs and services, which is the least sustainable mode of transport and would be in conflict with*

*the environmental objectives of sustainability, as set out in paragraph 8 of the NPPF. As a consequence, the proposal is not considered to present a sustainable form of development in a rural location.*

*It is considered that any built development on this site would be very harmful to the landscape and scenic beauty of the High Weald AONB as it would extend the settlement of Turners Green out into open countryside onto a site which currently contributes positively to the character of the AONB and setting of Wadhurst village. In addition, the proposed cul-de-sac layout is contrary to the historic settlement pattern in this part of the High Weald contrary to the objectives S2 and S3 of the High Weald AONB Management Plan. This further exacerbates the harm of residential development on this sensitive urban edge. Moreover, the loss of the mature boundary hedgerow to facilitate the new access along with the associated engineering works given the change in levels between the highway and site will have a significant detrimental impact on the immediate streetscene and AONB. The Council acknowledges that it will need to allow some development within the AONB to meet its housing requirement. However, development on this sensitive urban edge extending built form into open countryside would cause harm to the intrinsic natural beauty of this part of the countryside where the designation as an AONB ensures the highest status of protection in relation to its landscape and scenic beauty.*

*The weight to be afforded to the delivery of five self build plots in terms of housing supply; helping to meet the Council's statutory obligations with respect to the duty under Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended); support to the existing services and facilities in the village; and, short term economic benefit of the construction phase are outweighed by the significant adverse impacts identified. It is considered that overall the identified harm outweighs the benefits and that the proposal would not represent sustainable development under the NPPF.*

*The harmful effects of the proposals in this location would conflict with development plan policies other than those for the supply of housing and as such there are no material considerations that outweigh the conflict with the development plan. The proposals are contrary therefore to Saved Policies GD2, EN1, EN6, EN27 and DC17 of the Wealden Local Plan 1998, Spatial Planning Objectives SPO3 and Policies WCS6 and WCS14 of the Wealden Core Strategy Local Plan 2013, paragraphs 2, 7, 8, 11, 170 and 172 of the NPPF 2019. In addition it is considered that the development would run counter to the*

*constraints and qualities of the designated landscape in terms of the advice at 2.6 and 2.7 of Chapter 2 of the Wealden Design Guide November 2008 (adopted as Supplementary Planning Guidance).*

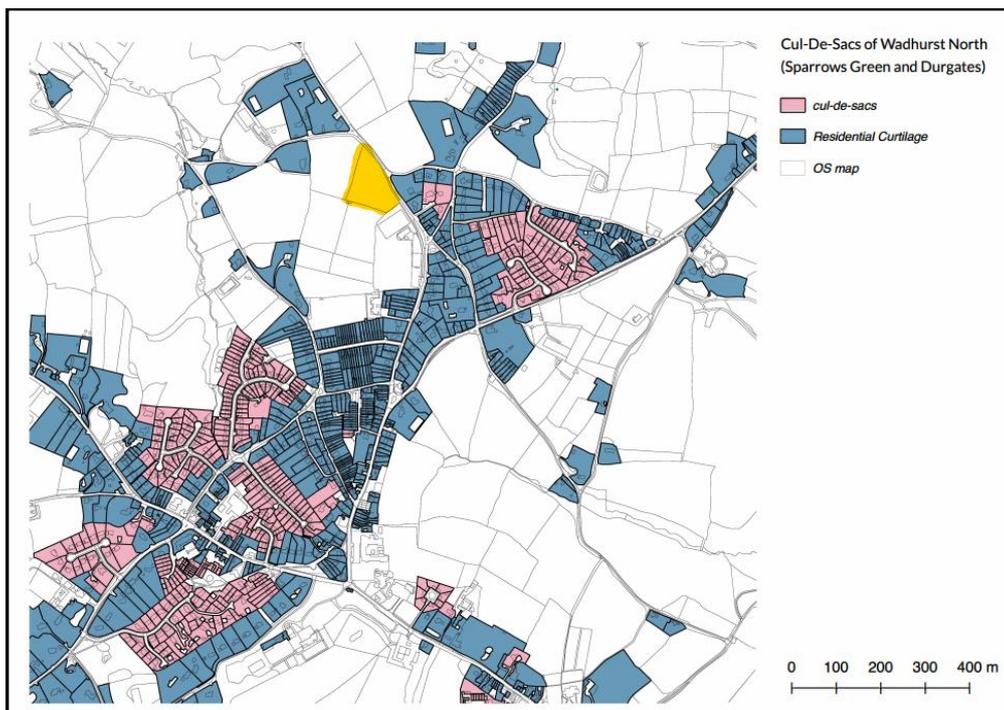
*In coming to this decision to refuse permission, the Local Planning Authority have had regard to the requirement to negotiate both positively and pro-actively with the applicant, in line with the guidance at paragraph 187 of the National Planning Policy Framework. However, the planning constraints leading to this refusal of a permission do not appear capable of resolution.”*

- 1.3 This Appeal Statement will set out why the above Reasons for Refusal (RfR) regarding sustainability and landscape harm have been incorrectly arrived at; that the sustainability of the site has been underrepresented and the potential impacts on landscape character have been overstated, alongside a lack of consideration to the genuine contribution that the proposal would make to meeting the Council’s duty under Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended) and the positive impact small schemes can have on the Council’s housing land supply.
  
- 1.4 The case will also be made that paragraph five of the RfR, has been overly reliant upon an individual consultation response from a non-statutory consultee without due consideration to the accuracy of the advice contained therein. Moreover, this undue reliance appears a contributing factor in the Delegated Refusal conclusion that the planning constraints leading to the refusal of the permission are incapable of resolution. This would appear to have impeded the Local Planning Authority’s (LPA) in its duty to approach the decision making in a positive and creative way (NPPF 38).

## 2.0 The Appeal Site and Surrounding Area

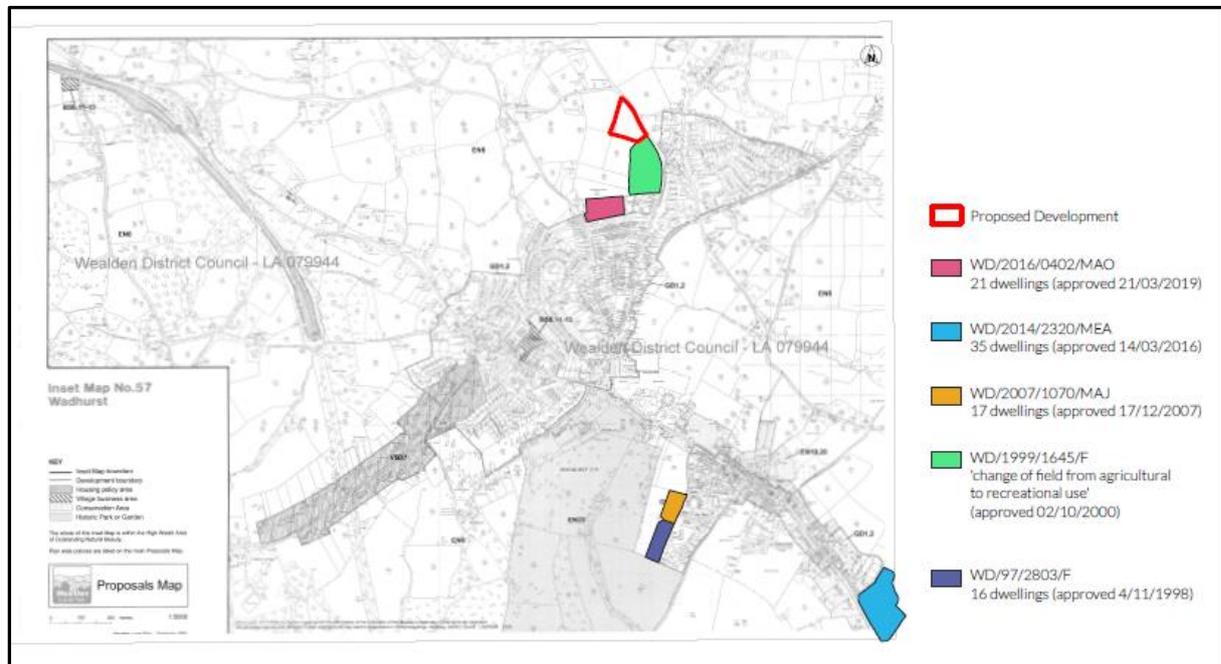
2.1 The appeal site (Easting 563625, Northing 133029) is located on the edge of Wadhurst settlement close to the northern settlement boundary at Turners Green. Wadhurst is one of the largest villages in the district, described in local policy terms as a sustainable settlement with good accessibility and provision of services and facilities. The settlement benefits from a train station on the Hastings to London mainline. The entire village is located within the High Weald AONB and accommodation within the Parish is characterised by large detached and semi-detached dwellings (withdrawn 2019 Local Plan p269 para 20.1, submitted to this appeal as Appendix A to this Statement).

2.2 The 1998 Wealden Local Plan describes the area to the north east of Station Road as comprising both modern cul-de-sac and older terrace and semi-detached development (p317 para 19.37.5) and this pattern of cul-de-sac development can be seen right up to the northern settlement boundary at Balaclava Lane, close to the appeal site. To the north and east of the appeal site, the area is characterised by larger detached properties set within spacious grounds. The appeal site, set within the context of the existing pattern of development, is shown below in yellow in Figure 1.



**Figure 1:** Pattern of Development in North Wadhurst

- 2.3 The development boundary for Wadhurst was set in 1998 though the adoption of the Wealden Local Plan and has not been amended since. Consequently, development has been approved outside the development boundary and Figure 2 below provides a map showing approved planning applications outside the development boundary.



**Figure 2:** Planning Permissions outside the Development Boundary

- 2.4 There are no listed buildings within the vicinity of the appeal site, which is located a considerable distance from the Wadhurst Conservation Area situated in the southern part of the settlement. The closest dwelling is approximately 30m east of the eastern site boundary, there are larger detached properties along Three oaks Lane, with the closest approximately 60m from the northern boundary and 100m west of the western site boundary.
- 2.5 Directly adjacent to the appeal site's southern boundary is the Sparrows Green Recreation Ground, comprising of a generous equipped children's play area, small area of outdoor adult gym equipment, four floodlit artificial grass tennis courts, two junior football grass pitches and four mini soccer grass pitches, and a brick built pavilion with changing facilities, toilets, social and activity areas. The recreation ground also has 30 parking spaces and disabled access. Opposite the vehicular entrance to the recreation ground is 'The Hall' a community building available for community meetings, social gatherings, and events. The pedestrian entrance to the recreation ground is approximately 120m from

the proposed entrance to the appeal site. There is footpath all the way from the recreation ground to the centre of the village, which contains the primary school and food shops, less than 800m from the appeal site. There is a continuous footpath to the railway station, which is a 2.4km (1.5 mile) and approximately 30 minute walk away and there is a connecting bus service between the train station and Sparrows Green. There is a secondary school approximately 1km from the appeal site in south Wadhurst accessible by footpath from the Sparrows Green Recreation Ground. All the services and facilities are within comfortable cycling distance

- 2.6 The appeal site itself has previously been used as agricultural land for grazing and lies wholly within Flood Zone 1 and at the lowest risk of flooding. The appeal site slopes gently from south to north and contains a Public Right of Way (PRoW) running east-west from approximately opposite the junction of Turners Green Road and Balaclava Lane. The PRoW links Turners Green Road to Three Oaks Lane, which links to the train station, providing an approximately 1.2km (0.8 mile) route to the train station from the site, albeit there is no footpath for much of the route the journey time on foot would be approximately halved.
- 2.7 The appeal site is located west of Balaclava Lane and four of the proposed self-build plots for development would be southwest of the northern tip of the settlement boundary. It is evident that development to northeast of the development boundary towards Woods Green would be resisted through the 1998 Local Plan and the now withdrawn 2019 Wealden Local Plan due to risk of coalescence and eroding the countryside, but this is not the stated position for proposals to the west and southwest:

*"Balaclava Lane forms a clear northern boundary to development in Turners Green, beyond which any new development would erode the open countryside separating the village from the small rural hamlets of Woods Green, Osmers Hill and Pell Green."* (1998 Local Plan p317 para 19.37.7 and 2019 withdrawn Local Plan p271 para 20.12.)

- 2.8 These hamlets are all situated northeast of Balaclava Lane. The appeal site and surrounding area are within the lowest level of landscape sensitivity of the whole area surrounding the settlement<sup>1</sup>, albeit it is recognised that overall sensitivity is high being located within the High Weald AONB. The appeal site is identified as having "*Low Landscape Capacity*", because of the character area it lies within rather than any innate

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<sup>1</sup> The Wealden Landscape and Settlement Character Assessment Supplementary Report 2016

qualities it possesses. The Council's Landscape and Settlement Character Assessment rightly acknowledges that even if an area is identified as having "*Low Landscape Capacity*" this expressly and unequivocally does not mean no development can take place in the area but rather:

*"The capacity evaluation for each landscape unit does not necessarily assume that this capacity applies consistently across the entire landscape unit. For example, it is possible for a certain amount/scale of development, where carefully sited, well-designed and with suitable landscaping mitigation, to be accommodated in a landscape unit assessed as having an overall low or moderate capacity."* (Paragraph 2.4.18)

- 2.9 The withdrawn 2019 Local Plan proposed allocations for 21 No. and 40 No. dwellings outside the development boundary at Wadhurst on sites with similar or higher levels of landscape sensitivity (WAD3 and WAD4, p287 and p291 respectively), which demonstrates that such sites can be deemed suitable when considered in the balance of the principles of sustainable development. The appeal site is visually well contained to the north, south and east in the wider landscape with open views to the west from elevated parts of the site. Field boundaries of mixed native species hedgerow act as screening, which greatly limits the views into the site from the public highway. At a local level, the Landscape Sensitivity is judged as High owing to its location in the AONB.
- 2.10 The site is in close proximity to the residential edge of Sparrows Green which includes a landscape detracting car park for around 30 vehicles and the local Sparrows Green Recreation Ground, which includes illuminated tennis courts and several sports pitches. The car park and sports facilities have an adverse influence on the tranquillity of the Site when they are in use. The high quality, wide framed, long distance views across the High Weald to the west are an influence on the Site's character also. Sparrows Green located to the south of the Site has developed along the historic ridge line and is predominantly residential. To the north, east and west there are occasional buildings, and the landscape is rural. Local roads are hedge and tree lined with a predominantly discrete and rural character.
- 2.11 Access to the site would be from Turners Green Road and located south of the junction with Balaclava Lane. Turners Green Road in this area is within a 30mph zone<sup>2</sup> and has

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<sup>2</sup> Lower average speeds of ~22mph in each direction recorded in Appendix D of the Transport Statement

a wide verge on the western side stretching from the PRow to the Sparrows Green Recreation Ground, becoming significantly wider on approach to the recreation ground. The development proposal includes the option<sup>3</sup> to provide a more formalised footpath along the verge to link the site and recreation ground. This would essentially mean that the site is linked by footpath to the village centre and its services and facilities less than 800m away and to the train station 2.4km away.

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<sup>3</sup> A Unilateral Undertaking to provide a footpath is submitted in support of this Appeal Statement

### **3.0 The Proposal**

- 3.1 The proposal is for the phased development of 5 No. self-build residential dwellings and associated access and infrastructure works. All matters are reserved except access and a Design Code is put forward to be conditioned for application at the reserved matters stage. The appeal scheme is intended to meet the aspirations of the self-builder in accordance with preferences expressed on the Council's Self-Build and Custom Housebuilding Register<sup>4</sup> (72% expressed preference for a village location with 26% specifically citing preference for between 1,000 and 1,499sqm). It is a genuine, 100%, self-build development opportunity for larger plots with design guidance for creating bespoke (but harmonious) self-build homes on the edge of a village settlement; rather than a council-led ensuing 5% self-build plots secured as part of larger development proposals, which are at risk of reverting to market housing if the self-build plots do not get purchased within 12 months of marketing.
- 3.2 Vehicular access to the site is proposed approximately 20m south of the PRoW in the form of a simple priority junction and will have a carriage width of 4.8m. Based on the recorded 85<sup>th</sup> percentile speeds, visibility splays of 2.4m x 33m are provided in each direction. No objection has been made by the Highways Authority in relation to the proposed access. The creation of the new vehicular access will require the removal of some 10m of the existing roadside hedge. The proposal seeks to provide an additional 440m of native planted hedging within the development through the framing of the serviced plots and the PRoW crossing the site. The intention to limit the impact on the existing hedgerow and the character of the area has informed the indicative layout and design credentials for the site.
- 3.3 The indicative layout, in keeping with the character and pattern of growth of the settlement, proposes a cul-de-sac arrangement to access 5 No. serviced plots and retains and enhances pedestrian permeability to the PRoW and countryside beyond. Plot density is greatest along the southern boundary, with larger plots/lower density graduating towards the north of the site. Subsequent phases would fix the scale, layout and landscaping prior to plots being sold to self-builders or a Custom Build developer that

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<sup>4</sup> The Council's October 2020 *Summary of Key Information* from the Self Build and Custom Housebuilding Register is attached at Appendix R

would apply for final reserved matters concerning appearance. All subsequent phases would be subject to the conditioned Design Code.

- 3.4 It has been the intention of this application that the accompanying Design Code be conditioned at the outset and outline permission stage, to ensure the quality and character of the overall development is secured and that the plots work together as a harmonious entity. The Design Code has established a set of 'Design Rules' and 'Plot Passports' covering architectural quality, materials and colour palette, thermal performance criteria, shared surface details and landscaping principles. The Design Code, modelled on principles from the 'Building for the High Weald', the 'Wealden Design Guide' and the 'High Weald AONB Colour Study 2017', is sufficiently detailed to provide a robust framework for future reserved matters applications on all remaining aspects requiring permission.

#### 4.0 Relevant Case Law

4.1 Prior to reviewing relevant planning policy below, it is important to understand the legal context within which this policy sits. There have been several notable cases recently which materially affect the weight that should be attributed to particular policies contained within the Development Plan and therefore affect the determination of the appeal proposal. These have now climaxed in the consideration of the National Planning Policy Framework by the Supreme Court for the first time.

Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council [2017] UKSC 36

4.2 The Supreme Court has handed down judgment in the cases of Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council [2017] UKSC 36 concerning the meaning and effect of the provisions of the NPPF on housing land supply and the presumption in favour of sustainable development. A copy can be found at Appendix B.

4.3 The leading judgement was handed down by Lord Carnwath (with whom Lord Neuberger, Lord Clarke and Lord Hodge agreed). It notes that the primary purpose of paragraph 49 is simply to act as a trigger to the operation of the "tilted balance" under paragraph 14. It explains how paragraph 14 is intended to operate indicating:

*"In the absence of relevant or up-to-date development plan policies, the balance is tilted in favour of the grant of permission, except where the benefits are "significantly and demonstrably" outweighed by the adverse effects, or where "specific policies" indicate otherwise."* (Paragraph 54)

4.4 Paragraph 56 explains that policies do not need to be labelled as "out of date" simply to ascribe the weight that should be afforded to them under paragraph 14. That is the preserve of the decision-maker. It states that restrictive policies in the development plan (specific or not) are relevant but explains that their weight will need to be assessed against the needs for development of different kinds (and housing in particular), subject where applicable to the "tilted balance".

4.5 The Supreme Court seemingly adopts the “narrow” approach but tries to steer decision-takers away from a legalistic exercise of determining whether policies are “out of date” by reference to paragraph 49. It asserts:

*“The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14.”* (Paragraph 59)

4.6 The strong inference in paragraph 59 is that if a Local Planning Authority is unable to demonstrate a five-year supply of housing land, the decision-maker need not concern themselves with the specifics of what is causing the lack of supply but rather attribute weight proportionally to address the problem applying the tilted balance. This allows the need to secure an adequate supply of housing land to be taken into account in determining the weight to be applied to a policy, even for those policies not specifically caught by paragraph 49.

4.7 The separate judgement by Lord Gill (with whom Lord Neuberger, Lord Clarke and Lord Hodge agree) stresses the importance that the NPPF places on boosting the supply of housing (paragraph 76 and 77). He describes the message the Government is sending to Local Planning Authorities contained in section 6 of the Framework as “*unmistakable*”.

4.8 With reference to how restrictive policies contained within the Development Plan should be approached Lord Gill stresses:

*“The rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply.”* (Paragraph 79)

4.9 Paragraph 80 notes the purpose of paragraph 49 is to achieve the Government’s ambition set out in paragraph 47 which is to “boost significantly the supply of housing”. The judgement notes that paragraph 49 only applies where:

*"the planning authority has failed to demonstrate a five-years supply of deliverable sites and is therefore failing properly to contribute to the national housing requirement."*

(Paragraph 80)

- 4.10 Paragraph 83 explicitly explains how decision-takers should approach the application of weight restrictive policies. It confirms:

*"If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right."* (Paragraph 83)

- 4.11 Clearly it is not the Government's intention to have the objectives of paragraph 47 frustrated, hence the provisions of paragraph 49 designed to "*put right*" the situation.

- 4.12 Paragraph 84 requires the decision taker to take a wider view of the development plan policies when material considerations (notably an absence of a five-year housing land supply) shift the focus away from the statutory force of development plan policies.

- 4.13 To summarise, where a local planning authority is unable to demonstrate a five-year housing land supply (like the existing situation in Wealden District) decision takers are required to attribute weight to different aspects of the planning balance noting the objective of the Framework to "*boost significantly the supply of housing*". The Supreme Court cautions against an approach where environmental and amenity policies are applied with "*full rigour*" lest the Government's objectives in the Framework be frustrated.

- 4.14 We therefore invite the Inspector to attribute diminished weight to any policies that restrict the supply of housing in the overall balancing exercise.

Hallam Land Management Ltd v Secretary of State for Communities and Local Government [2018] EWCA Civ 1808

- 4.15 The recent Court of Appeal decision considered a refusal given by the Secretary of State for the development of 225 dwellings in a strategic green gap. A copy has been included at Appendix C.

4.16 In reaching his decision, the Secretary of State appeared to accept a housing supply figure of 4.86 years and subsequently concluded that Eastleigh Borough Council's "*limited*" shortfall was not sufficient to outweigh the harm which arose due to conflict with policies for the protection of countryside. This was despite two appeal decisions issued at the same time for development within the Borough which determined the housing land supply in a materially different way, concluding in favour of the proposed development on the basis of the Council's "*significant*" shortfall of between 4.25 years and 4.71 years.

4.17 The Court stated that the NPPF does not require a "*mathematical*" calculation of housing supply in order to inform the application of the tilted balance contained under paragraph 14 (now 11), and the Secretary of State did not err in this instance. However, his failure to engage with the conclusions on housing land supply reached in the recent decisions affected the legitimacy of the weight attributed to the policies of the development plan.

4.18 The Court usefully set out examples of circumstances which could influence the weight attributable to a shortfall in housing land supply when determining the overall planning balance, and re-affirmed the principles established in *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council* on the interpretation of paragraph 14 of the NPPF:

*"The policy in paragraph 14 of the NPPF requires the appropriate balance to be struck, and a balance can only be struck if the considerations on either side of it are given due weight. But in a case where the local planning authority is unable to demonstrate a five years' supply of housing land, the policy leaves to the decision-maker's planning judgement the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small."*

4.19 The Court provided further insight into the extent of the weight that can be attributed to housing shortfall:

*"The weight to be given to the benefits of new housing development in an area where the 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 try and reduce it, and how much of it the development will meet".*

## 5.0 Relevant Appeal Decisions

5.1 There has been clarity provided by recent appeal decisions regarding weight that can be given to a local authority's housing need, and further the legal requirement for a Council to meet the demand for people to build their own homes, as set out in the Self-Build and Custom Housebuilding Act 2015 (as amended), the National Planning Policy Framework and related Government Planning Practice Guidance.

Appeal Ref: APP/P1615/W/18/3213122 - The Meadows, Bromsberrow Heath, Ledbury, Herefordshire HR8 1NX

5.2 The appeal concerned an outline application for the erection of up to 5 No. self-build dwellings and associated works with all matters reserved. A copy of the Inspector's decision is provided at Appendix D. The Inspector concluded that the lack of any clear policy within the Council's development plan to support Custom and Self Build housing or evidence of local initiatives to promote it, there could not be any confidence that local demand would be met and, therefore, that five Custom or Self Build houses would help to address the demand in the local area.

5.3 The Council has no local planning policy mechanism to deliver self-build plots and the Appellant considers it unrealistic to assume provision of sufficient self-build plots can be achieved within the rolling 3-year window, as required by the Self Build and Custom Housebuilding Act 2015 (as amended). This is set within the context of a rising application-rate to the Register, a point that will be returned to and evidenced later in the Appeal Statement.

5.4 This appeal highlights a number of important planning issues articulated by the National Custom and Self Build Association:

- *"Firstly, that the extent to which Councils are meeting their duties under the 2015 Act is an important material planning consideration when determining planning applications, even if a Council can show a five-year land supply. Councils are therefore well advised to take steps to meet their statutory obligations, which the National Custom and Self Build Association's Right to Build Task Force can help with.*

- *Secondly, that even if a local plan is up to date, the absence of a policy to support Custom and Self Build can heighten the risk of Councils losing planning appeals, given the support which the National Planning Policy Framework gives to the need for Councils to plan for people who wish to commission or build their own homes.*
- *Thirdly, the importance of applicants using a Unilateral Undertaking to give decision-makers confidence that the development will be delivered for Custom and Self Build housing.*
- *Finally, that outline planning permission (or Permission in Principle) can count towards meeting demand on registers.”<sup>5</sup>*

Appeal Ref: APP/G2435/W/18/3214451 (Appeal A) Land off Hepworth Road, Woodville DE11 7DW

- 5.5 The appeal concerned an outline application for self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure (outline – access and layout included) at Land Off Hepworth Road, Woodville, Swadlincote. A copy of the Inspector’s decision is provided at Appendix E. The Inspector concluded that, on balance, the economic, social, and environmental benefits of the proposal significantly and demonstrably outweigh the conflict with the development plan.
- 5.6 The Council in this case had 54 people on its register at the time, by comparison Wealden District Council has 104 people on its register as of October 2020. The Council had attempted to argue that it had permitted an additional 133 single plot dwellings across the district and thereby met its duty. The Inspector dismissed these in the light that the council could not ensure that any of these single dwelling permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015. He said, *“I consider it would be unreasonable to include any of the single dwelling permissions within the calculation of self-build and custom housebuilding permissions granted in the district.”*
- 5.7 The Inspector found the council had failed to permission sufficient serviced plots to meet the demand on its register for base period one, let alone subsequent periods. He states: *“Consequently, the ability of the appeal proposal to address the unmet demand for serviced plots that arose in base period 1, base period 2 and part of base period 3, in a*

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<sup>5</sup> Sourced from the NACSBA <https://righttobuildtoolkit.org.uk/herefordshire-planning-appeal/#>

*comprehensively planned manner, is a material consideration that weighs strongly in favour of the appeal proposal.*" The proposal therefore would make a substantial contribution to meeting the demand.

- 5.8 The Inspector also recognised the socio-economic benefits of the self-build proposal and that the development of each property would create opportunities for local builders and other associated small local construction businesses, boosting employment and creating training opportunities. We invite the Inspector to equally value the socio-economic benefits in this scheme

Appeal Ref: APP/C1435/W/17/3178137 Land to the west of Culpepper Close, Station Road, Isfield, East Sussex

- 5.9 The appeal in Wealden District concerned an outline application for residential development of 10 No. residential dwellings at land to the west of Culpepper Close, Station Road, Isfield with all matters reserved except access. A copy of the Inspector's decision can be found at Appendix F. The Inspector concluded that despite the moderate harm that the proposal would likely cause to the character and appearance of the area, including the rural setting of the village, this was outweighed by the substantial social and economic benefits of addressing the undersupply of housing in the district. He concludes: "*I attach substantial weight to the provision of 10 residential units in the context of the very significant current housing land shortfall.*" (Paragraph 34)

- 5.10 In respect of a conflict with the development strategy and the Council's planning boundary the Inspector advises: "*The site is also not located within an identified development boundary, though the weight I have given to the conflict with the Council's development strategy is substantially reduced due to considerable shortfall in housing land supply.*" (paragraph 33)

- 5.11 In relation to accessibility to services and facilities the Inspector notes:

*"17. In the context of its rural location where accessibility is not normally able to be as good as in urban areas, I consider that the proposed development would have reasonable accessibility to services and facilities without being entirely dependent on the private car. I acknowledge, however, that residents may still opt to use their cars for travel for several*

*journeys, particularly given the rather limited extent of services in Isfield itself. Bus services would also not provide the accessibility required later in the evening.*

*I therefore find that whilst there is reasonable accessibility without being dependent of the private car, the location of the site would not have the high level of accessibility generally sought by the relevant policies. It would therefore lead to some, albeit only moderate harm, in relation to the relevant accessibility aims of policies EN1 and EN2 of the LP, policy SP07 of the CSLP and the Framework. I have not, however, found any significant harm in relation to pedestrian safety impacts and find no harm in respect of policies TR3 and TR13 of the LP.”*

- 5.12 In our view, the Inspector correctly applies Government policy that does not seek to ban the use of the private car (particularly in rural areas) but seeks to avoid complete dependency. It is notable that Wadhurst sits higher in the settlement hierarchy to Isfield and benefits from a mainline train station. We would invite the Inspector to take a similar stance.

Appeal Ref: APP/C1435/W/17/3179061 Windmill Feeds and Saddlery, Lewes Road, Cross in Hand, Heathfield, TN21 0TA

- 5.13 The appeal in Wealden District concerned a development proposal to convert an existing building known as “The Saddlery” into 3 apartments and the demolition of the warehouse to provide two detached dwellings at Windmill Feeds and Saddlery, Lewes Road, Cross in Hand, Heathfield TN21 0TA. A copy of the Inspector’s decision can be found at Appendix G. The provision of new housing would not be within a defined settlement boundary. The Inspector concluded that *“the weight to be given to conflict with the relevant policies in this regard is substantially reduced due to the Council’s very significant shortfall in housing land supply.”* (paragraph 34).
- 5.14 Of significance is the Inspector’s conclusion regarding the provision of five dwellings: *“Set against the harm are the substantial social and economic benefits of addressing the under supply of housing in the District. I attach considerable weight to the provision of five residential units in the context of the very significant current housing land shortfall.”* (paragraph 35)

Appeal Ref: APP/C1435/W/17/3189368 - Land adjacent to Recreation Ground, Framfield Road, Blackboys

5.15 The appeal in Wealden District concerned a development for 7 dwellings in Blackboys, which is described as an unclassified settlement in the adopted Core Strategy. Despite this, it was found to have suitable services and connectivity for 7 dwellings. A copy of the Inspector's decision is attached at Appendix H.

5.16 Paragraph 13 of the Inspector's Decision states:

*"I find that although the location would not have as high a level of accessibility as sought by the Framework and development plan policies there is reasonable accessibility that would prevent full reliance upon private car. I conclude that the proposed development would be an appropriate location for new residential development in terms of accessibility to services and facilities. The proposal would therefore not materially conflict with Policies EN1 and EN2 of the Wealden Local Plan (LP), Policies SPO1, SPO7 and SPO8 of the CSLP and the Framework that seek, amongst other matters, to reduce the need for travel by car and concentrate development close to public transport opportunities."*

5.17 This decision continues the trend in recent appeals in the district where residential developments have been found sustainable, despite being in relatively less accessible locations which have a more limited sustainable transport offer.

5.18 It is clear from the above appeal decision that the NPPF does not prohibit the likelihood that occupiers of dwellings in rural areas may rely upon the private car to meet their day-to-day needs; the option of an alternative is sufficient to meet the aims of the policy. This has now been consented by Wealden District Council.

## 6.0 Planning Policy

### Wealden Local Plan 1998

- 6.1 Policies contained within the Wealden Local Plan (1998) can only be afforded weight in line with their consistency with the NPPF. This is in accordance with the approach taken by paragraph 213 of the Framework.
- 6.2 Policy GD2 confirms that outside development boundaries development will be resisted.
- 6.3 Policy DC17 restricts housing development to within development boundaries unless it conforms with other policies in the Plan.
- 6.4 These two policies are no longer defensible as tools to restrict housing development to the boundaries that were tightly drawn around settlements in 1998 and designed to meet the development needs up until 2004 in the absence of a five year housing land supply. They should be afforded greatly diminished weight.
- 6.5 Development within the AONB is addressed by Policy EN6. It asserts that development will only be permitted if it conserves or enhances the natural beauty and character of the landscape. It provides a list of eight considerations which the policy confirms will be paid "particular regard" when assessing development proposals. These criteria are:
- (1) the landscape characteristics of the subareas identified in the High Weald landscape assessment;
  - (2) the well-wooded appearance, especially Ancient Woodlands, together with other woods, tree belts and hedges;
  - (3) undeveloped steep valleys and ghylls;
  - (4) open heathland;
  - (5) undeveloped ridge positions and other visually exposed locations;
  - (6) areas of unspoilt or remote character;

(7) the traditional settlement pattern, building styles and materials;

(8) the High Weald Management Plan.

6.6 EN1 provides that the Council will "*pursue sustainable development, having regard to the principles in Government guidance and its own Strategy for the Environment, in considering the location, layout and design of development...*"

6.7 EN27 is a general design policy. It seeks to govern the scale, form, site coverage, density, use of materials, landscaping, and design of development with the aim of respecting the character of the area.

#### Wealden District Council's Core Strategy (2013)

6.8 The Council's decision notice includes a Spatial Planning Objective. We take objectives to be general aspirations and afford them less weight than actual planning policies. Nonetheless they form part of the Development Plan are addressed below.

6.9 SP03 indicates housing growth that is somewhat superseded and out of date, however of relevance here it also advises that "*The majority of new housing will be accommodated within, or as sustainable extensions to, existing towns, while allowing for limited growth within those villages capable of accommodating development in a sustainable fashion.*" It is worth noting in this context that housing growth within this policy was not at the time considered to be a ceiling on growth.

6.10 WCS6 is the Rural Areas Strategy, which identifies Wadhurst as a 'Service Centre' – the highest order of rural settlement and allocates 70 net additional dwellings. Figure 11 on p54 identifies growth potential of rural settlements and indicates Wadhurst has "*high*" growth potential.

6.11 WCS14 reiterates the presumption in favour of sustainable development that runs as a golden thread through the NPPF. The Core Strategy advises that:

*"When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework."*

6.12 It restates policy contained within the NPPF which confirms that planning permission will be granted unless material considerations indicate otherwise – taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or Specific policies in that Framework indicate that development should be restricted.

6.13 In essence, it brings the presumption in favour of sustainable development found at paragraph 14 of the 2012 Framework into the Development Plan and elevates it from a material consideration.

National Planning Policy Framework 2019

6.14 Paragraph 2 reiterates that planning law requires that applications be determined in accordance with the development plan unless material considerations indicate otherwise. It also advises that the NPPF is a material consideration.

6.15 Paragraph 7 refers to the purpose of the planning system to contribute to the achievement of sustainable development and articulates the well-known definition of meeting the needs of the present without compromising the ability of future generations to meet their own needs.

6.16 Paragraph 8 articulates the three overarching objectives, 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: economic, social, and environmental.

6.17 Paragraph 11 asserts that planning decisions should apply the presumption in favour of sustainable development. This means:

*"approving development proposals that accord with an up-to-date development plan without delay; or*

*where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, 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 proposed; 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."*

6.18 Footnote 6 re-iterates that the policies referred to under part (i) are contained within the Framework, rather than those contained within the development plan. Areas or assets of particular importance include land designated as Areas of Outstanding Natural Beauty. Assessment of the proposal against paragraph 172 of the NPPF is therefore of great importance in establishing appropriate application of the planning balance. A recent High Court Judgement<sup>6</sup> confirmed that the AONB cannot of itself constitute a clear reason for refusal i.e., paragraph 11 is not disengaged just because the proposal is within the AONB, rather this is established using the first paragraph of 172 of the NPPF such that major development in the AONB could constitute a clear reason for refusal and non-major development should be assessed within the planning balance. Justice Holgate held at paragraph 53 of the Judgement:

*"53. Interpreted in that straight forward, practical way, the first part of paragraph 172 of the NPPF is capable of sustaining a clear reason for refusal, whether in the context of paragraph 11(d)(i) or, more typically where that provision is not engaged, in the general exercise of development management powers."*

6.19 Leading to this conclusion, at paragraph 52, the judge finds that where there are countervailing benefits there is a balance to be struck. The decision-maker should assess whether those benefits outweigh the harm, with the weight given to the harm being increased by the requirement to give "*great weight*" to it. The judge articulates that the "*great weight*" attached to the assessed harm to an AONB is capable of being outweighed by the benefits of a proposal, so as to overcome what would otherwise be a reason for refusal.

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<sup>6</sup> Monkhill Ltd v SSHCLG [2019] EWHC 1993 (Admin), handed down on 24 July 2019

- 6.20 Paragraph 38 of the NPPF relates to decision making. It indicates that decision-makers at every level should seek to approve applications for sustainable development where possible.
- 6.21 The NPPF contains policies specifically relevant to the delivery of housing in section 5 paragraphs 59 – 76. The tone for the application of these policies is set by the Government's express purpose for the policies set out in paragraph 59, which is "*significantly boosting the supply of homes.*" It also encourages Councils to meet the objectively assessed needs for both market and affordable housing in full and identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15.
- 6.22 Paragraph 61 specifically refers to requirement for local planning authorities to reflect within planning policies different types of housing need including for people wishing to commission or build their own homes. Footnote 26 is of relevance here, as it refers to the Self Build and Custom Housebuilding Act 2015 and the requirement for planning authorities to keep a register for those seeking to acquire self-build plots and to have regard to this and to give enough suitable development permissions to meet the identified demand.
- 6.23 Small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. To promote this, inter alia, land to accommodate at least 10% of the area's housing requirement on sites no larger than one hectare should be found and planned for as per paragraph 68.
- 6.24 Paragraph 103 states that:
- "Significant 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. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making."*
- 6.25 We interpret this to mean that larger developments should be located in the most sustainable locations. This is a principle with which we agree with. Equally as interesting is what Paragraph 103 does not say – it does not indicate that comparatively less

sustainable locations should have no vehicle movements. We also note the important caveat in the last sentence of Paragraph 103 ensuring that development in rural areas is not precluded. It is clear that the Framework does not seek to preclude development in comparatively less sustainable locations and recognises the role that additional development can play in sustaining viable rural communities, nor ban the use of the private car altogether.

6.26 Paragraph 170 states decisions should contribute to and enhance the natural and local environment by (as relevant):

*a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*

*b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*

*d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*

6.27 Paragraph 172 informs that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty (AONB), which have the highest status of protection in relation to these issues. Major development should be refused within the AONB other than in exceptional circumstances. Classification of a scheme as major development is a subjective rather than prescriptive consideration and is a matter for the decision maker to determine. The proposal has not been considered to be major development in the AONB and therefore this presumption against granting approval contained under paragraph 172 does not apply.

Manual for Streets (2009)

6.28 Paragraph 4.4.1 confirms walkable neighbourhoods are typically characterised by a range of facilities within 800 metres walking distance, which can be comfortably accessed on

foot. It is explicit though that this is not an upper limit and PPS13 (now redundant) states that walking offers the greatest potential to replace short car trips, particularly those under 2 km.

- 6.29 Paragraph 6.3.1 indicates that the propensity to walk is influenced not only by distance, but also by the quality of the walking experience.
- 6.30 In this case the key facilities that Wadhurst offers such as sports, play and recreation, primary school, and food shop are all accessible by foot within the 800m walking distance suggested by the Manual for Streets. A Unilateral Undertaking is offered to provide a short section of rural footpath connecting the site to the recreation ground.

#### Planning for the Future White Paper 2020

- 6.31 The White Paper Planning for the Future proposes some significant changes to the planning system, all underpinned by the need to deliver more homes more efficiently. In the Government's one-page summary it says the reforms aim for "*the creation of a fast-track system for beautiful buildings and establishing local design guidance for developers to build and preserve beautiful communities.*"
- 6.32 Areas that are Protected under the new system would justify more stringent development controls to ensure sustainability, but development would not be precluded. "*In the case of self and custom-build homes, local authorities should identify enough land to meet the requirements identified in their self-build and custom housebuilding registers. For Protected areas, the key and accompanying text would explain what is permissible by cross-reference to the National Planning Policy Framework.*" (p29)
- 6.33 Demonstrating that new development will be high quality and accord with local and national guidance will be a prerequisite for detailed approvals. Outline planning permissions granted via the local plan will be masterplan-led and subject to a condition that a masterplan and design codes are brought forward prior to detailed plans. Whilst areas designated as 'protect' will not benefit from the fast track process, this direction of travel and thinking regarding outline permission and conditioned design codes is interesting in respect of what is proposed in this case.

Emerging Wadhurst neighbourhood Plan

- 6.34 The Wadhurst Neighbourhood Plan (WNP) is at an early stage of preparation with the Regulation 14 consultation not scheduled until May 2021<sup>7</sup>. The submission of the WNP to the local planning authority is currently scheduled for summer 2021, with potential examination in Autumn 2021. The WNP is therefore at such an early stage that it is not appropriate to afford it any weight, moreover there are no draft policies to consider at this stage.

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<sup>7</sup> <https://www.wadhurstnp.org/actions-timing>

## **7.0 Five Year Housing Land Supply**

- 7.1 The Decision Notice makes clear that when measured against the full objectively assessed housing need, the Council does not have a five year supply of housing land.
- 7.2 In the latest Council published figures the housing land supply relates to the position as of 1 April 2020 and this is recorded to be 3.75 years. At the time of the decision the housing land supply position as of 1 April 2019 was 3.67 years. We would not dispute that the Council is still unable to demonstrate a five year supply, albeit a very modest improvement has been shown between 2019 and 2020 positions.
- 7.3 The weight to be attributed to the shortfall depends on a number of factors including the degree of housing shortfall, the steps being taken to rectify that shortfall, including how long they will take and the contribution the scheme makes to the overall housing supply. This stems from *Hallam Land Management Ltd v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808.
- 7.4 By granting planning permission for developments that are 'policy compliant' with the now withdrawn Submission Local Plan, the Council's housing land supply as of 1st April 2019 stood at 3.67 years. The land supply was not disputed by the Inspector determining the Mornings Mill appeal (APP/C1435/W/19/32230484) in December 2019.
- 7.5 The Council first acknowledged its housing shortage in the Committee Report for Council Ref: WD/2014/2320/MEA published on 2nd March 2016. In that Report it was estimated the Council had 4.28 years' worth of supply. The Council's housing land supply position has fluctuated since 2016 dropping as low as 2.65 years in 2017 and has constantly been below the required five year minimum<sup>8</sup>. In this respect the problem has been persistent for some 5 years as demonstrated by the Housing Land Supply Position Notes in Appendices I to M and the steps taken by the Council to rectify it, i.e., the submission Local Plan (January 2019) which potentially provided a solution, have been ineffective and since been withdrawn by the Council.

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<sup>8</sup> The 2018 position relied on a stepped trajectory in the Proposed Submission Local Plan (later withdrawn at Examination in Public) to bring it to 5.69 years; the position reverted back to 3.67 years as of 1<sup>st</sup> April 2019.

- 7.6 Based on the evidence available, the degree of the shortfall is substantial. The Council needs to approve approximately 2,500 dwellings to obtain a five-year housing land supply. The Council is in the process of preparing a new Local Plan which may provide a solution, but this is way off with a timetable of some 2.5 years.
- 7.7 The shortfall has been present for a considerable period extending some 5 years. Inspectors in Appeal Ref: APP/C1435/W/17/3179061 (Cross in Hand) and APP/C1435/W/17/3178137 (Isfield) have attached "substantial" weight to the provision of 10 and 5 dwellings, respectively. It follows that the five dwellings proposed by this Appeal Scheme could also receive substantial weight.

## **8.0 Rebuttal of the Council's Reasons for Refusal**

### 8.1 The Council's Reasons for Refusal (RfR) state:

*"When measured against the full objectively assessed housing need, the Council does not have a 5 year supply of housing land. It is accepted that the NPPF requires applications for housing to be approved without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or when specific policies in the Framework indicate development should be restricted.*

*The NPPF explains sustainable development has three objectives – economic, social and environmental. Planning policies and decisions need to guide development towards sustainable solutions while taking local circumstances into account.*

*The application site lies within the High Weald Area of Outstanding Natural Beauty outside the development boundary for Wadhurst defined within the adopted Wealden Local Plan (WLP) 1998 and retained in the adopted Wealden Core Strategy Local Plan (CSLP) 2013. It is located in an area where new residential dwellings would not normally be acceptable as they are contrary to the rural housing restraint policies within Saved Policies GD2 and DC17 of the WLP 1998 and WCS 6 of the CSLP 2013.*

*The site being on the northern edge of the village means that it is some distance from a number of the villages services and would rely on any future occupants to travel along roads without footpath and lighting to reach them, which is likely to discourage people from walking or cycling to reach these destinations. With this in mind, the occupiers of any dwelling here would be dependent on the use of the private car for most needs and services, which is the least sustainable mode of transport and would be in conflict with the environmental objectives of sustainability, as set out in paragraph 8 of the NPPF. As a consequence, the proposal is not considered to present a sustainable form of development in a rural location.*

*It is considered that any built development on this site would be very harmful to the landscape and scenic beauty of the High Weald AONB as it would extend the settlement of Turners Green out into open countryside onto a site which currently contributes*

*positively to the character of the AONB and setting of Wadhurst village. In addition, the proposed cul-de-sac layout is contrary to the historic settlement pattern in this part of the High Weald contrary to the objectives S2 and S3 of the High Weald AONB Management Plan. This further exacerbates the harm of residential development on this sensitive urban edge. Moreover, the loss of the mature boundary hedgerow to facilitate the new access along with the associated engineering works given the change in levels between the highway and site will have a significant detrimental impact on the immediate streetscene and AONB. The Council acknowledges that it will need to allow some development within the AONB to meet its housing requirement. However, development on this sensitive urban edge extending built form into open countryside would cause harm to the intrinsic natural beauty of this part of the countryside where the designation as an AONB ensures the highest status of protection in relation to its landscape and scenic beauty.*

*The weight to be afforded to the delivery of five self build plots in terms of housing supply; helping to meet the Council's statutory obligations with respect to the duty under Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended); support to the existing services and facilities in the village; and, short term economic benefit of the construction phase are outweighed by the significant adverse impacts identified. It is considered that overall the identified harm outweighs the benefits and that the proposal would not represent sustainable development under the NPPF.*

*The harmful effects of the proposals in this location would conflict with development plan policies other than those for the supply of housing and as such there are no material considerations that outweigh the conflict with the development plan. The proposals are contrary therefore to Saved Policies GD2, EN1, EN6, EN27 and DC17 of the Wealden Local Plan 1998, Spatial Planning Objectives SPO3 and Policies WCS6 and WCS14 of the Wealden Core Strategy Local Plan 2013, paragraphs 2, 7, 8, 11, 170 and 172 of the NPPF 2019. In addition it is considered that the development would run counter to the constraints and qualities of the designated landscape in terms of the advice at 2.6 and 2.7 of Chapter 2 of the Wealden Design Guide November 2008 (adopted as Supplementary Planning Guidance).*

*In coming to this decision to refuse permission, the Local Planning Authority have had regard to the requirement to negotiate both positively and pro-actively with the applicant, in line with the guidance at paragraph 187 of the National Planning Policy Framework.*

*However, the planning constraints leading to this refusal of a permission do not appear capable of resolution."*

- 8.2 This section deals with the issues raised in this decision, in turn, and where relevant with reference to both the Landscape and Visual Assessment undertaken by Harper Landscape Architecture LLP and the Urban Design and Landscape Development Appraisal prepared by LDA Design.
- 8.3 Prior to the rebuttal of the RfR, it is worth noting the Appellant and Council's common ground within the reasons for refusal. Firstly, we agree the Council cannot demonstrate a five year supply of housing land and that this effectively engages Paragraph 11 of the NPPF. We would agree with the three objectives of sustainable development in paragraph 2 of the reasons for refusal. Paragraph 3 is also common ground insofar as the site is within the AONB, which as discussed above cannot of itself disengage paragraph 11 and is outside the defined development boundary. It is worth noting that this is the development boundary as at the 1998 Local Plan. The now withdrawn 2019 Submission Local Plan did not get far enough into the Examination in Public process for the Inspector to examine the proposed development boundaries contained within it and cannot therefore be relied upon for such purposes in this appeal. The remaining paragraphs of the RFR are refuted and will be considered further below.

#### Access to Services

- 8.4 The site is on the northern edge of the village, but it is within 800m and therefore walking distance of a range of services and facilities and contrary to the RFR (paragraph 4) that this would require travel along roads without footpath, there is footpath all the way from the recreation ground adjacent to the site into the village and key services such as primary school and food shop (within 800m) and on to the railway station. A good range of services and facilities including the train station and secondary school are within comfortable cycling distance. With nearby bus stops too, the site would clearly offer choice of transport modes.
- 8.5 The Council's assessment also fails to recognise the importance of the sport, recreation, children's play, and community facilities immediately adjacent to the site and so devalues this significant resource, its proximity to the site and its contribution to this sustainable location. The Appellant is prepared to submit a Unilateral Undertaking to connect by means

of a rural footpath the wide verge at the site's eastern boundary with the recreation ground curtilage and parking area, such that passage on foot from the site into the village would be secured if the Inspector is minded to allow the appeal. Technical Plans and cost estimates for the proposed footway works are presented in Appendix N. Turners Green Road itself is currently well used by walkers accessing the PRow and visits to the site have experienced a respectful shared use between cars, cycles, and pedestrians. Nonetheless a dedicated rural footway is considered to be beneficial for improving connectivity.

- 8.6 The settlement is considered by the Council to be sustainable (at the highest level of sustainability for rural settlements) and appropriate for high growth within the rural context. Described within the Core Strategy as a "Service Centre". With this in mind the conclusion by the Council that the site would be car dependent, when it is clearly so well located to services and facilities within a village context, appears to fail to understand that transport solutions will vary between urban and rural areas and that this should be taken into account in decision-making as per NPPF Paragraph 103.
- 8.7 Having wrongly made the assumption that future occupants would be discouraged from travelling by foot or cycle (or even electric scooter) to the varied services and facilities the village has to offer and determined that the proposed development would be car dependent; the RFR goes on to incorrectly assert that this would be in conflict with NPPF Paragraph 8 in respect of the environmental objective of sustainability; and simultaneously fails to apply Paragraph 9 that these objectives are not criteria against which every decision can or should be judged.
- 8.8 In respect of the sustainability objectives of Paragraph 8 of the NPPF, the Appeal site and proposed scheme are well aligned to the social, environmental, and economic objectives. In particular the scheme would offer five accessible homes to meet the identified self-build need within the district and would have particularly good accessibility to high quality sport, recreation and community facilities that are so vital for health and wellbeing, thus meeting the social objective. It would offer a net gain in biodiversity through native hedgerow planting and has the ability to guide the future design process through a conditioned design code based upon the principles of the High Weald and AONB design guides and that includes sustainability principles in relation to energy and thermal efficiency. There are different ways that this or a revised Design Code could be conditioned to ensure all subsequent applications lead to enhancing the built and natural environment. Economic

benefits would be through the contribution the scheme would make to local trades and businesses through the individual construction phases and ongoing patronage of future occupants to local services and facilities – not least the Sparrows Green Recreation Ground.

- 8.9 We would therefore invite the Inspector to consider that a good balance of attributes across the three tenets of sustainable development would be achievable and, contrary to the concluding sentence of this paragraph of the RfR, this proposal would present a sustainable form of development in a rural location.

#### Landscape

- 8.10 Paragraph 5 of the RfR asserts that “*any built development on this site would be very harmful to the landscape and scenic beauty of the High Weald AONB...*”. This paragraph of the RfR is queried in respect to its validity. The first section is, without being referenced, verbatim the consultation response from the AONB Unit, which is not necessarily the view of the AONB Joint Advisory Committee and does not have a statutory consultee status. Moreover, it contains errors that lead us to query whether undue weight has been applied to this response and whether a lack of scrutiny of it has impeded the authority from approaching the decision making process in this case in a positive and creative way as required by NPPF 38. A section of the consultation response is provided below with points of query in bold and the full response is appended at Appendix O.

#### "The Proposal

*The proposal is to provide plots for 5 self-build dwellings with **access** off Turners Green Road **approximately opposite Balaclava Lane**. The application is in outline form with only the access road and the plot locations shown.*

*The site is part of a **post-medieval field system** and has a **historic routeway** (public footpath) **crossing it from the location of the proposed access road** to the site's western boundary. The field is elevated above the surrounding countryside and has **views northwards** down across the valley. Its **character is typical of the older field systems** in the High Weald in that it has robust boundary vegetation and it forms an attractive part of the High Weald landscape. As noted several times in the LVIA there is little inter-visibility between the site and the settlement of Turners Green to the south-east, but as a consequence the **site feels very much part of the wider countryside***

*rather than relating to the settlement. This impression is reinforced by the rural nature of Turners Green Road at this point, itself a historic routeway.*

*It is considered that **any built development** on this site would be **very harmful** to the landscape and scenic beauty of the High Weald AONB as it would extend the settlement of Turners Green out into **open countryside** onto **a site which currently contributes positively to the character of the AONB**. In addition, the **proposed cul-de-sac layout is contrary to the historic settlement pattern in this part of the High Weald contrary to objective S2 of the Management Plan**. The **lack of any design guidelines** for the self-build dwellings means that it is impossible to say whether the buildings themselves will enhance the architectural quality of the High Weald, but the proposed **layout certainly doesn't reflect the character of the High Weald** as required by objective S3 of the Management Plan."*

- 8.11 The table below provides a response to the observations of the High Weald AONB Unit's response, concentrating on those highlighted in bold above. This response has drawn on information gathered from site visits, the LVIA and the Urban Design and Landscape Development Appraisal and consultation with the Landscape Professionals, a review of historic maps, and the AONB Management Plan.

**Table 1:** Response to AONB Unit Consultation Response

<b>AONB Officer observations</b>	<b>Response</b>
<i>Access approximately opposite Balaclava Lane</i>	It is the PRoW that is approximately opposite Balaclava Lane
<i>The site is part of a post-medieval field system</i>	The Site is likely to be an early enclosure but not part of an Ancient field system.
<i>Its character is typical of the older field systems in the High Weald in that it has robust boundary vegetation and it forms an attractive part of the High Weald landscape.</i>	The Site is divided from the rest of the field by a recent post and rail fenced boundary.
<i>a historic routeway (public footpath) crossing it from the location of the proposed access road</i>	No evidence to suggest the PRoW across the site is an historic routeway (often narrow, deeply sunken and edged with trees, hedges, wildflower-rich verges, and boundary banks), it runs atop the crest of the agricultural field. We would suggest the public footpath emerged around the Victorian era and the coming of railway to Wadhurst, providing a short cut to the station from Turners Green.

	<p>The indicative layout is not fixed, and plot sizes can vary, therefore potential to restrict development to south of the PRoW and maintain views from the PRoW away from the settlement if desired can be secured by the Council at reserved matters stage.</p> <p>The PRoW does not cross the site from the location of the proposed access road, rather from approximately opposite Balaclava Lane.</p>
<i>Views northwards down across valley</i>	<p>Long distance views from the site are westwards; northerly views are impeded by the dwelling on Three Oaks Lane and strong boundary hedges and trees.</p>
<i>the site feels very much part of the wider countryside rather than relating to the settlement.</i>	<p>There are clusters of existing dwellings and independent dwellings close-by in the 'wider countryside' that are separated from the settlement edge by a greater distance than the proposed development.</p> <p>As layout is reserved, with ample opportunities for layout options to deliver five dwellings within the site, the proposed development could take more the form of a cluster that is a form clearly appropriate for either settlement edge or wider countryside.</p>
<i>the rural nature of Turners Green Road at this point, itself a historic routeway.</i>	<p>The alignment and character of Turners Green Road will be retained by the development.</p> <p>There is already existing residential development on this part of Turners Green Road directly opposite the Site.</p> <p>Only a narrow entrance will be created in the boundary hedgerow.</p> <p>Entering Turners Green existing settlement is already visible in this location on this historic route.</p>
<i>any built development on this site would be very harmful to the landscape and scenic beauty of the High Weald AONB as it would extend the settlement of Turners Green out into open countryside</i>	<p>The observation excludes consideration of 'any development on this site'. Fails to consider the potential for development to respond to the High Weald Design Guide and the potential to meet High Weald Management Plan Objective S1 regarding small scale development and S2 to enhance the architectural quality of the High Weald.</p> <p>The site is not considered open countryside given the site's location within the Sensitive Urban Edge and the proximity of the dwellings to the north, west and east of the site. Development of the site will not extend beyond the limits of the established surrounding built development and therefore the harm from developing the site would be moderate.</p>
<i>a site which currently contributes positively to the character of the AONB</i>	<p>The AONB is a mix of buildings and settlement in landscape, the relationship between them is an intrinsic part of the High Weald landscape. The High Weald AONB Housing Design Guidance sets out how this mix can be achieved by following established principles of approaching building and landscape design. The proposed development will follow this guidance, and is conceived to be an appropriate built form response for the settlement edge setting.</p>
<i>proposed cul-de-sac layout is contrary to the historic</i>	<p>Application is in Outline and layout is not fixed and with the relatively low number of proposed dwellings for the</p>

<p><i>settlement pattern in this part of the High Weald contrary to objective S2 of the Management Plan</i></p>	<p>size of site, multiple options exist for the Reserved Matters Application regarding layout.</p> <p>The Site access is proposed as not to be adopted, and therefore the form and design of the access will not be constrained by the highway authority adoption and design requirements.</p> <p>Cul-de-sac development is a noted part of the Wadhurst settlement pattern and the whole of Wadhurst is within the AONB so it could not be said to be out of character with this AONB settlement. The 1998 Local Plan states: "The larger settlement of Durgates, Sparrows Green and Turners Green comprises principally residential estate development. To the north-east of Station Road, existing development is relatively compact in its form and comprises both modern cul-de-sac and older terrace and semi-detached development served off narrow winding roads, often 'country lane' in their character." (19.37.5)</p>
<p><i>lack of any design guidelines for the self-build dwellings means that it is impossible to say whether the buildings themselves will enhance the architectural quality of the High Weald,</i></p>	<p>Design guidance for the dwellings was provided that included design parameters, design principles and design coding. Engagement with this document could have been beneficial prior to responding.</p> <p>There would be a limited range of choices for some aspects of the dwelling designs, and greater flexibility for the internal layouts and finishes. Plot boundaries and access treatments would be prescribed. The development would be managed by a custom-build developer which would allow self-build purchasers to select from the range of choices, but all choice and combinations will be derived from the High Weald AONB design guidance.</p> <p>If the submitted Design Code is not satisfactory a condition or S106 obligation could require the submission of an approved Design Code prior to the submission of the Reserved Matters Applications.</p>
<p><i>the proposed layout certainly doesn't reflect the character of the High Weald as required by objective S3 of the Management Plan.</i></p>	<p>S3 requires developments to be designed in accordance with High Weald AONB design guidance. See above.</p>

8.12 It would seem that this response has unduly influenced the Council's willingness to approach the application in a positive and creative way. There is a strong suite of tools produced by the High Weald AONB Unit and the Council for use in guiding architectural quality, design, layout – all matters that are reserved for subsequent phases and, nonetheless, which the Applicant (now Appellant) had sought to consider and address through the submission of a detailed Design Code (a framework to guide reserved matters applications), to potentially be conditioned, that was totally missed by the AONB Unit. There was opportunity for the Council to engage with the Design Code and seek any

amendments, guided as necessary by input from the AONB Unit, to ensure future layout options and design would enhance the architectural quality of the High Weald and ensure development would reflect the character of the High Weald in its scale, layout, and design, as per AONB Objective S2. Instead, the Council, knowing that the AONB Unit response was incorrect on this topic chose not to reengage them on the matter. This is especially disappointing given the Case Officer was alerted by the Applicant to the apparent oversight by the AONB Unit and seemingly chose not to seek any clarification (a copy of correspondence is provided at Appendix P). The Officer's Report, (a copy is provided at Appendix Q) clearly refers to the Design Code and tellingly stops just short of copying the offending sentence from the AONB Unit response into the Decision Note RfR.

- 8.13 The Council concludes in the final paragraph of the RfR that the planning constraints leading to the refusal do not appear capable of resolution, this is thought to largely result from the High Weald AONB Unit response that "*any built development would be very harmful*", which as we have shown is not well founded. The appeal site is identified as having "*Low Landscape Capacity*", again because of the character area it lies within rather than any innate qualities it possesses. The Council's Landscape and Settlement Character Assessment rightly acknowledges that even if an area is identified as having "*Low Landscape Capacity*" this expressly and unequivocally does not mean no development can take place in the area. The LVIA supporting the application identifies a limited zone of visibility, with Significant landscape impacts limited to the local landscape which is already in proximity of residential development. It finds that during construction and on completion impacts will be Not Significant except for three viewpoints close to the site or within the site which would be Significant. The development will have the most direct impact on the views from the PRow crossing the site.
- 8.14 The report makes recommendations for mitigation and takes account of the potential for hedgerow subdivision of the proposed development plots, and separation of the PRow crossing the Site, although further enhanced mitigation could be provided to benefit the effectiveness and to reduce the Significance further to achieve a greater level of acceptability. The LVIA recommends that there are good grounds to grant planning consent. This recommendation is made on the basis that there are limited impacts on a very localised area of landscape, and with the right detailed proposals the proposed development would be in accordance with landscape related planning policy.

- 8.15 A further landscape technical assessment has been undertaken in the form of an Urban Design and Landscape Development Appraisal to support this Appeal and any future resubmission; this is provided at Appendix R. The purpose of this appraisal is to assess, in general terms, the suitability of the Site for residential development from an urban design, landscape and visual perspective; consider other relevant environmental constraints and opportunities; and make recommendations for the design of the proposed development, including mitigation measures considered appropriate for the location within the High Weald AONB, and being located on the settlement edge.
- 8.16 This report concludes: "*In the area of the Site there is focus within the High Weald AONB on Ancient Woodland, ancient field systems, habitat connectivity, increasing biodiversity, and climate change resilience and adaptation. The Site and its development do not affect Ancient Woodland and ancient field systems, and the development has the scope and opportunity to increase the effectiveness of habitat connectivity, increasing biodiversity, and climate change resilience and adaptation in the AONB.*" It is therefore considered plausible that through careful application of the High Weald AONB design principles, self-build development in this location is capable of conserving and enhancing the landscape in accordance with paragraph 172 of the NPPF.

#### Self-Build

- 8.17 The weight to be afforded to five self-build plots, as per paragraph six of the RfR has been under considered when set within the context of a housing land supply of some 3.67 years<sup>9</sup> and 104 individuals on the Self Build and Custom Housebuilding Register (Appendix S). The Council has no planning policy mechanism to deliver self-build plots. One of the most popular choices of location for such a plot is recorded as being Wadhurst. An additional piece of research has been undertaken by Custom Build Homes in support of this Appeal, which highlights that true demand for self-build plots could be far higher due to a lack of awareness of local registers; their survey data, which has been accepted in other appeals is presented in Appendix T.
- 8.18 72% of applicants on the Council's register are interested in a plot of land under 1,500 square metres in size, which this development proposal could deliver for all five of its plots given all matters are reserved except access. Current indicative layout and plot size would

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<sup>9</sup> Now marginally improved with 3.75 years being recently published for 1<sup>st</sup> April 2020

deliver four plots between 1,000 and 1,499 square metres, specifically preferred by 26% of the Register's individuals.

- 8.19 The Cross in Hand Appeal referred to in Section 6, for a development site within this district, could have guided the Council to the appropriate amount of weight to be placed on the provision of five residential units: "*Set against the harm are the substantial social and economic benefits of addressing the under supply of housing in the District. I attach considerable weight to the provision of five residential units in the context of the very significant current housing land shortfall.*" This is before adding the additional weight that the Duty under the Self-Build and Custom Housebuilding Act places on decision-making for the Council. It is not clear from the latest published AMR Section 6 (Appendix U) whether the Council has granted any relevant permission for the requisite base periods. This site would make a meaningful contribution to Base Period 2 (to October 2020) or 3 (to October 2021), which each require 24 permissions. Annex 2 of this AMR confirms that based on the projected delivery of housing development with detailed planning permission (small sites with 9 or less (net) units) as of 1 April 2019 that 553 dwellings will be delivered within the five year period. This accounts for a total of 11.6 per cent of the total housing delivery showing the cumulative value of small sites to the overall supply. Its notable that this excludes 'minor' outline schemes with planning permission, so the true contribution is even higher.
- 8.20 Within the penultimate paragraph of the RfR the Council asserts that there are no material considerations that outweigh the conflict with the development plan, despite the fact that the strategic policies are out of date, there is no five year supply of housing land and the Council has a legal duty under the Self Build and Custom Housebuilding Act to deliver serviced plots. Paragraph 2 of the NPPF referred to in the Council's penultimate paragraph refers to applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise; the age of the development plan, the extent and prolonged nature of the district's housing need and land supply, the legal Duty to self-build and custom housebuilding are clearly strong material considerations in favour of allowing the appeal. We would contend these material considerations should have been given greater weight in respect of any perceived or actual conflict with the out-dated development plan, as in our view the proposal accords with the NPPF policies 2, 7, 8, 11, 170 and 172.

Wealden Design Guide

- 8.21 Turning to the notion that the development would run counter to the constraints and qualities of the designated landscape in terms of the advice at 2.6 and 2.7 of Chapter 2 of the Wealden Design Guide November 2008; paragraph 2.7 refers to the vulnerability of fringes of settlements to development that fails to respect local distinctiveness in terms of materials, design, detailing and relationship to neighbouring buildings. The Appeal proposal and the submitted planning application demonstrate considerable thought was given to the special qualities of the High Weald AONB. The Design and Access Statement, the Design Code, the LVIA and the Urban Design and Landscape Development Appraisal show a high level of commitment to understanding the context of the site and the settlement of Wadhurst, both wholly within the AONB, and to providing the most appropriate form of development within that context. It is not considered that the development proposal is in any way in conflict with paragraphs 2.6 and 2.7 of the Wealden Design Guide 2008.
- 8.22 Further to the purported conflict with 2.6 this is most likely in relation to the following constraints from the bullet point list:
- Extensive views to and from ridges
  - The natural beauty of the High Weald
  - The natural elements of scenic beauty
- 8.23 The remaining nine bullet points would not seem relevant to this site. Responding to the three identified constraints in the above bullet points: As demonstrated by the LVIA, *"whilst the Landscape Sensitivity, at a district scale is judged as High this is the least sensitive part of LSA 7 owing to its adjacency to Sparrows Green residential area, its local amenities and the landscape detractors."* (paragraph 5.57).
- 8.24 Despite the site being located along the Wadhurst ridge line, the site is visually well contained to the north, south and east with wide, framed, open views from higher parts of the Site towards the west. Views from across the valley to the west have limited public viewpoints and see the site as discrete and predominantly screened (LVIA para 5.71). The more recent Urban Design and Landscape Development Appraisal concurs with this at section 2.5: *"From the wider landscape there may be distant views of the proposed development from equivalent high ground located 3-4 km to the west, however, the*

*dwellings would largely be obscured by inventing vegetation and the views will be of the wider landscape, and the far horizon would be visible beyond and in other directions, resulting in the site being a very indistinct part of the view."*

- 8.25 In the area of the Site there is focus within the High Weald AONB on Ancient Woodland, ancient field systems, habitat connectivity, increasing biodiversity, and climate change resilience and adaptation. The Site and its development do not affect Ancient Woodland and ancient field systems, and the development has the scope and opportunity to increase the effectiveness of habitat connectivity, increasing biodiversity, and climate change resilience and adaptation in the AONB.
- 8.26 The landscape reflects human interaction with the landscape, which has changed and will continue to change. The need for residential development is one of many changes. The AONB is a mix of buildings and settlement in landscape, the relationship between them is an intrinsic part of the High Weald landscape. The suite of High Weald Design Guides and together with the High Weald AONB Management Plan set out how this mix can be achieved by following established principles of approaching building and landscape design. The proposed development will follow this guidance and is conceived to be an appropriate built form response for the settlement edge setting.

## 9.0 Conclusions

- 9.1 The appeal proposal would deliver five, highly desirable, self-build plots in a sustainable rural location, helping the council to fulfil its legal duty to provide for individuals registered on its Self-Build and Custom Housebuilding Register. The village of Wadhurst is a Service Centre within the development plan, described as a sustainable location with a range of jobs, services and facilities; the site is within walking distance of sports, recreation, community, primary school, and food shopping facilities within Wadhurst and there is footpath the significant majority of the way. A Unilateral Undertaking is submitted to provide a short rural footpath connecting the site to the Recreation Ground, meaning the site would be fully connected by footpath to the services and facilities. The site is close to bus stops with connections to the local train station in Wadhurst connecting Hastings to London. The site is within cycling distance of the train station and would be considered highly accessible by electric cycle and scooter.
- 9.2 The small scale nature of the proposal, the consideration given by the proposal to the design requirements of the High Weald Design Guides and AONB Management Plan and the existing character of the settlement has led to a conclusion within the LVIA and Urban Design and Landscape Development Appraisal that significant impacts would be localised and with the right detail proposals at the reserved matters application stage, the proposed development would be in accordance with landscape related planning policy.
- 9.3 It is concluded that the proposal would offer an opportunity for much needed new self-build housing and can deliver planted boundaries aimed at enhancing the landscape at the Sensitive Urban Edge (SUE). The Sparrows Green Recreation Ground is very suburban in character and with the illuminated tennis courts would suggest that the sensitivity is less along this specific section of the designated SUE boundary as it touches the Site and that landscape proposals could enhance this edge. As the Site is adjacent to the suburban land uses of Sparrows Green Recreation Ground and is not close to Ancient Woodland, nor displaying evidence of ancient field system characteristics or arable cultivation, it is not typical of that on which the High Landscape Sensitivity is evidenced. Furthermore, it is queried whether the Council's RfR can reasonably consider the site as both within the Sensitive Urban Edge and within "open countryside" simultaneously.

- 9.4 The development will have the most direct impact on the views from the Public Right of Way (PRoW) crossing the site. The LVIA makes recommendations for mitigation and takes account of the hedgerow subdivision of the proposed development plots, and separation of the PRoW crossing the Site, although enhanced mitigation could be provided to benefit the effectiveness and to reduce the Significance further to achieve a greater level of acceptability.
- 9.5 The High Weald landscape reflects human interaction with the landscape, which has changed and will continue to change. The need for residential development is one of many changes. Support is given to the appeal proposal by the Government's desire to "*boost significantly the supply of housing*" and this is particularly important given the current five year housing land supply shortage in Wealden District.
- 9.6 The Supreme Court has been unmistakably clear that:
- "If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right."* (Paragraph 83)
- 9.7 Essentially, every policy that restricts development should be afforded less weight in the planning balance as the need for housing and the weight afforded to delivering it assumes greater prominence in the overall balancing exercise.
- 9.8 Although the scheme would introduce new built development in to the AONB, the degree of harm would be limited taking account of the urban edge setting and the existing development nearby and surrounding the site. The site has been sensitively designed to ensure a minimal landscape impact. The site would nestle neatly into the existing settlement pattern and the proposal's impact on the wider landscape would be limited and as such, despite the great weight that should be afforded to the protection of AONBs paragraph 172 does not provide a clear reason for refusal in this case (as acknowledged on the Council's Decision Notice) and the presumption in favour of sustainable development found at paragraph 11 is engaged.

- 9.9 We therefore respectfully request the Inspector allows the appeal proposal in line with paragraph 11 of the Framework subject to appropriate conditions.