

**TOWN AND COUNTRY PLANNING ACT 1990**

**SECTION 78**

**PLANNING AND COMPULSORY PURCHASE ACT 2004**

**APPEAL BY TAYLOR WIMPEY UK LTD (FORMERLY TAYLOR WOODROW DEVELOPMENTS LTD)**

**Appeal against the decision of Wealden District Council to refuse outline planning permission for a mixed use scheme comprising 300 dwellings (including 30% affordable housing) 930m<sup>2</sup> of B1 business use, formal and informal open space, access roads and highway improvements including footpaths, landscape proposals and environmental enhancements**

**On land at Bird in Eye (North), Framfield Road, Uckfield, East Sussex**

LPA Reference: WD/2006/2173/MEA  
PINS Reference: APP/C1425/A/07/2042597/NWF

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**CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT**

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**September 2008**

1. These Closing Submissions on behalf of Taylor Wimpey (“TW”), the Appellant in respect of the Bird in Eye (North) site, (“BIEN”), should be read in conjunction with our Opening Submissions dated 15<sup>th</sup> January 2008. Abbreviations are used. We do not always give participants at the inquiry their full title but no discourtesy is intended. These submissions are not intended as a comprehensive review of all the evidence, but brings together the key issues.

2. Structure of Closing Submissions

2.1. Introduction

2.2. Housing Land Supply

2.3. The case for Bird in Eye North

2.4. The case against Downlands Farm

2.5. Conclusions

3. Introduction

3.1. By way of background, it is relevant to note why it is that there are (and have been) such a plethora of appeals before the SS within Wealden District. This is relevant because WDC, through its counsel in Opening<sup>1</sup>, sought to shift the blame for the thoroughly unsatisfactory position which exists in Wealden district onto TW. Unsurprisingly this provoked xx of WDC’s witness, Walker. From that, the following was agreed:

3.1.1. TW and its development partner, Martin Grant Homes, participated in the development plan process. In the First Deposit Draft Plan, BIE(N) was identified as a proposed allocation site.

3.1.2. BIEN was subsequently deleted, and Cysleys Farm and the Sandpits sites were included. Tellingly, and entirely correctly, Walker felt unable to endorse those two sites as being more appropriate for housing development than

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<sup>1</sup> WDC 1 para 16

BIE(N)<sup>2</sup>. In fact, they are wholly inappropriate. In particular the Cysleys Farm site is wholly unrelated to the town and its facilities.

3.1.3. The reason the LP process was abandoned was because WDC felt there would be duplication of resources or (even worse) delay in getting the new LP system in place by 2007, and GOSE wanted WDC to direct its resources into preparing the LDF. At the time of the decision to abandon the LP, WDC thought that the LP would be adopted by 2007/2008 and it was also believed by WDC that the LDF would be adopted by April 2008. WDC's assumption in relation to the LDF was wholly unfounded.

3.1.4. In his evidence to the High Court, Woolf said that he thought that the LP could have been adopted by mid/late 2007.

3.1.5. However, Woolf said that he thought the LDF process would take much longer, and in his witness statement in the High Court proceedings he said that he thought that the Housing Allocations LDF would not be adopted until July 2011. By contrast, WDC told the court in a signed witness statement that the Housing Allocations LDF would be adopted in mid 2008.

3.1.6. The facts are, as Walker was forced to acknowledge, that there is no prospect of the LDF being adopted before 2011; and that had the LP continued its due process, it would have been adopted by now.

3.1.7. Thus, the appalling housing delivery situation which exists in Wealden is entirely attributable to the decision of WDC to abandon its LP based on an overly optimistic assessment of the date by which the LDF could be put in place. Rather than blaming TW for this situation, WDC should have had the good grace to acknowledge that the statements it made in the High Court and Court of Appeal were, at best, misleading and wrong, and that the prognostications of Woolf have in fact been proved to be correct. Unfortunately the Court of Appeal accepted the misleading evidence of WDC.

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<sup>2</sup> Cross-examination by Peter Village QC

Thus, the reason why the housing land situation has to be addressed through the development control process, in accordance with the advice in PPS 3, is entirely of the making of WDC and its decision to abandon the Local Plan.

3.1.8. The fact is that whilst Christopher Boyle (CB), in his Opening, proclaimed the importance of safeguarding the primacy of the development plan, the reality was that WDC shed crocodile tears for the development plan in Wealden. They found it far more convenient to proceed with a non-statutory plan, which could have no independent scrutiny, and thus promulgate a strategy which preferred bizarre allocations such as Cysleys Farm.

3.1.9. In his closing, CB returns to the theme of the primacy of the development plan led system, asserting that “there should be no doubt that significant housing such as is proposed by all three sites (separately or together) should not be brought forward except through the forward planning process”. That is bunkum. WDC itself has eschewed reliance on the development plan system which the BIEN Appellant, together with Martin Grant Homes, engaged in from the start. It is WDC who abandoned reliance on the development plan system, attempting to push through its misguided strategy by reliance on a non-statutory local plan.

3.2. The starting point for the consideration of these appeals is the advice in Para 71 of PPS 3 that “Where LPAs cannot demonstrate an up-to-date five year supply of deliverable sites, for example where the Local Development Documents have not been reviewed to take into account policies in this PPS or there is less than five years supply of deliverable sites, they should consider favourably planning applications for housing, having regard to the policies in this PPS including the considerations in Paragraph 69.”

3.3. As the evidence demonstrates beyond doubt, there is less than five years supply of deliverable sites. The release of the BIE(N) site will also comply with the considerations set out in Paragraph 69 of PPS 3.

#### 4. Housing Land Supply

4.1. **“Wealden’s recent record of delivering housing has been poor overall.”** Those are not our words but are a direct quotation from WDC officers themselves<sup>3</sup>. Given the approach of WDC at the inquiry to the issue of Housing Land Supply (HLS), that conclusion is entirely unsurprising. Nor is the conclusion of the EIP panel who noted at para 26.42 of its report:

**“We note with some concern however that the delivery rates in Wealden over the last four years and possibly longer have been significantly below the SP target.”**

4.2. In light of the admittedly dire housing land position in Wealden, we start with a very potent point – that there is no basis to depart from the Inspector’s decision given in the recent Polegate case, in which it was found that WDC had been unable to demonstrate a five year supply of housing land. It was surprising to say the least that Mr Walker should have chosen not to have brought that decision letter to the attention of the inquiry when he had the opportunity, instead seeking one-sidedly to “update” the housing land figures in WDC 15. It would appear, having regard to the latest SoCG on Housing Land Supply<sup>4</sup> that WDC has abandoned reliance on that document. But the fact that Mr Walker remained silent on the existence of the Polegate decision<sup>5</sup> is strong corroborative evidence of the impression we formed of his evidence in respect of HLS generally – that Mr Walker was beset by an affliction in respect of housing numbers - he saw only what he wanted to see. Of particular importance in that case is the fact that, first, there was found to be a district wide housing land supply shortfall. Second, and perhaps even more relevantly, was the conclusion in para 77 of the decision that even if the Inspector was wrong in the conclusions on deliverability “Housing requirement figures are targets not ceilings. Additional housing would not be harmful to the Council’s housing strategy. It would give the Council more leeway to meet its trajectory and take pressure off other areas.”

4.3. The conclusion of the Polegate Inspector is now reflected in the SE Plan Proposed Modifications, para 7.7 which states that: **“It is important that the housing**

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<sup>3</sup> WDC3 para 1.1 Report to Cabinet, 12/12/07.

<sup>4</sup> WDC 27

<sup>5</sup> North 14

**requirement figures set out in this RSS are treated as a minimum**". (Our emphasis).

4.4. Turning to the detail of the housing land supply case, we start with the agreed base date against which the HLS assessment must be considered. That date is October 2007. That date was agreed at the outset of the exercise, and its adherence is vital given that any HLS assessment is necessarily a snapshot of what the HLS position is at any given point in time. It is important, as a matter of fairness, that the Inspector and SS adheres to that date in their assessment. If one starts to take into account *some* updated information, derived from knowledge acquired later, then such an approach could easily lead to an unfair and unbalanced assessment. Thus, if one takes account of subsequent changes to supply after 1/10/07, then one needs to counterbalance that with an additional figure for the on-going requirement within the same period. This becomes very complicated. It was for that reason that the Appellant deprecated the attempt by WDC to introduce such evidence. It is to be noted that in response to the Appellants' objections, the Inspector has not admitted Mr Walker's document<sup>6</sup>. In those circumstances, it is unnecessary to comment on it. However, insofar as WDC continue to maintain that the requirement for the number of units should be reduced by 159, then the supply requirement amounts to 413 – see WO 2, page 5, para 12(a) – nearly 3 times the additional 159 units on the supply side relied on by WDC.

4.5. We start with the Requirement. WDC steadfastly refuses to consider the requirement arising out of the Structure Plan. That is an extraordinary position given that it forms part of the development plan for the purposes of Section 38(6) and the relevant policies have been saved in accordance with the advice in PPS 12. Given that it forms part of the development plan, it forms the starting point for the consideration of housing land supply in the district. The assessment has been undertaken on the basis of the emerging SE Plan figures as well, but those figures

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<sup>6</sup> WDC 15

are still subject to change and whilst material, cannot be given substantial weight given they may change yet again<sup>7</sup>.

- 4.6. The Requirement based on the SP remains as set out in North 2.1A. The areas of dispute relate to, first, the question of whether the shortfall in provision between 1991 and 2006 of 512 units is carried forward; and second whether the SE Plan figure should be used for assessing the shortfall in the period April 2011 to October 2012.
- 4.7. On the first point, it is the conventional and time-honoured approach to consider the overall development plan requirement (1991-2011) and take account of the shortfall and surpluses up to the base date of the land supply study. That is what the Appellant has done in calculating the figure of 1451 found at the first page of North 2.1A. Walker has ignored the pre- 2006 deficit of 512 dwellings. That is wholly unjustified in calculating the SP requirement.
- 4.8. On the second point regarding the calculation of the requirement figure from April 2011 to Sept 2012, again the Appellant has simply extrapolated the average over 20 year SP figure of 550 per annum (given this particular overall calculation is considering the SP requirement). It happens that 550 per annum for WDC now appears in the SE Plan proposed changes which provides further justification for this approach.
- 4.9. It is correct that the arguments which were presented to the inquiry and in cross-examination regarding para 2.1 of the then draft SE Plan have been overtaken by events. The position now is that there is a requirement as contained in the Proposed Modifications, under Policy H2, which states that “In planning for the delivery of housing provision Local Planning Authorities will also take into account of the following considerations:....The need to address any backlog of unmet housing needs within the housing market areas they relate to, in the first 10 years of the Plan”. Given the amendments which have been made, it is impossible (and completely wrong) to interpret the reference to “backlog of unmet housing needs”

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<sup>7</sup> It is relevant to note that the advice in Para 4.19 of PPS 12 (2004) as to the weight which may be attached to emerging development plans after publication of the proposed modifications has not been retained in PPS 12 (2008).

by reference to paragraphs in an earlier draft of the SE Plan which have since been withdrawn or deleted.

- 4.10. Walker continues to maintain that there is no requirement to take account of unmet housing need, either for the purposes of the SP calculation or the SE Plan calculation. Thus, at para 4.18 (and following) of Walker's Supplementary proof of evidence submitted on 5/9/08 he equates the term "unmet housing need" with what appeared in Policy H1 and para 2.1 of the Draft SE plan. Leaving aside his own (wholly inaccurate) interpretation of what this previous draft said or meant, the fact is that he has made no allowance at all for such unmet housing need. That is completely at odds with what the SS intends by the proposed modifications.
- 4.11. In summary, therefore, the Appellants figures set out in North 2.1A accurately reflect the requirement to October 2012 – **a requirement of 5356 dwellings based on the Structure Plan figures**. It is the Appellants' primary case that the five year supply of housing land should be determined by reference to the requirements under the Structure Plan given that that remains the approved development plan.
- 4.12. Turning to the requirement based on the emerging SE Plan figures, these are now set out in WDC 27, Table 3, where the differences between the Appellants and WDC are explained. Again, the key difference relates to the additional provision to meet the backlog of housing need. In this respect, WDC makes no allowance at all. This is completely unrealistic and typical of the unfair approach of Mr Walker. It takes no account of the clear advice in the emerging SE Plan. The Appellants have made an assessment based on affordable housing need: see WO 2, paras 5 – 9; and in respect of general housing needs, paras 10-11. This gives a range in respect of unmet housing need of between 715 and 628 dwellings, which provides **an overall housing requirement based on the emerging SE Plan for the period October 2007 – October 2012 of between 3909 and 3822 dwellings**.
- 4.13. There is no dispute, as we have already explained, that Wealden as a district has a lamentable, indeed, disgraceful record in the provision of housing. The approach advocated by Walker seeks to reward Wealden for its years of housing

under-provision by “wiping the slate clean” and ignoring the woeful housing supply record of the past. Such an approach is cynical, and a betrayal of the aspirations of the very large numbers of people who deserve a decent house in which to live. Walker’s approach is particularly depressing given (having regard to the acceptance of Wealden’s poor record by WDC itself) the shamefully high numbers of people in need of affordable housing in Wealden district. This is a matter covered by Mr Ian Dove QC in his closing submissions<sup>8</sup>, and we gratefully adopt his assessment of the appalling affordable housing crisis which exists in Wealden. The truth of the matter is that the failure of Wealden to supply dwellings in accordance with its responsibilities under the Structure Plan has not diminished the outstanding unmet need. This is recognised by the emerging SE Plan which is why there is a requirement to make provision for the unmet demand, both in respect of market and affordable housing.

4.14. We should add that there is a rich irony in the manner in which Walker addresses the question of unmet need. In his Supplementary evidence at paras 4.11 and 4.12 he seeks to emphasise that paragraph 2.1 of the draft SE plan has been deleted and that, accordingly, the reference to shortfalls and surpluses against planned provision in RPG 9 have been removed and are irrelevant. We agree. But the very fact that these references have been deleted also mean that Walker is unable to pray them in aid in seeking to interpret the policy as now proposed by the SS in the Proposed Modifications. What is sauce for the goose is sauce for the gander. Accordingly, Walker’s submissions as to how to interpret “the backlog of unmet needs” at para 4.19 of his submissions must be rejected. The fact is that the wording relied on by Walker has been removed from the SE Plan Proposed Modifications draft. This is explained by the SS as follows: “The wording [of paras 1.1 to 2.5] has been amended to remove superfluous wording and to provide the appropriate context for the amended policy H1 and the new policy H2 as proposed by the [SS]”. It is completely wrong and unacceptable for Walker to claim that a new provision, inserted into new policy H2, should be defined by reference to some wording from a previous draft which has been removed. Walker is simply making it up as he goes along, simply to justify his own perverse interpretation of the new

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<sup>8</sup> Paras 21 to 26

policy. And in answer to the disingenuous point raised by Walker at his para 4.22, the reason why the Appellants argue that unmet housing need should be added to the housing provision is that the provision, and the context of the new policy H2, is entirely different to the wording which existed previously.

- 4.15. An entirely new point has been raised by Walker at his para 4.23, seeking to disaggregate Wealden into different sub-regional areas for the purposes of assessing the five year supply of housing land, based on the SE Plan figures. Given the numerous references in his statement acknowledging the Inspector's injunction against raising new matters of evidence (whilst at the same time accusing the Appellants of introducing new evidence), this point is a flagrant and outrageous attempt to introduce new evidence and rely on a point which has not been raised before. The point is as misconceived in its substance as it is in its introduction.
- 4.16. There is absolutely no warrant for seeking to disaggregate the housing requirement figures within Wealden District and require the five year housing land supply calculation to be based upon "Rest Of Wealden" rather than the district as a whole. The reason for this is very simple: as the SS made clear in her proposed modifications, in accepting the Panel's recommendation, there is a need for flexibility in the provision of housing land within Wealden District. Thus, at page 112 of the Proposed Modifications, the SS accepted the following recommendation of the panel (Recommendation 7.2): **"The only parts of the region where local authorities should have flexibility to transfer housing provision between the sub-region and the remainder of their district is in the Sussex Coast and Gatwick are sub-regions and in Reigate and Banstead district** (para 7.105).
- 4.17. The suggestion that there is any justification, in assessing the five year supply of housing land, for adopting an inflexible approach to the dire housing land supply position within Wealden, such that the district should be considered in two separate parts for the purposes of assessing housing land supply, is manifestly wrong. It is telling that Walker did not think it proper or appropriate to refer to the panel's recommendation in this respect, which has been accepted by the SS.

4.18. Of more assistance to the Inspector and the SS in the determination of these appeals, and entirely consistent with the flexible approach enunciated by the panel and the SS, is the reference in the SE Plan proposed modifications to the overall suitability of Uckfield to accommodate more housing development. Thus, at para 25.27 of the changes it is stated:

**“The town of Uckfield will continue to play an important role as a small market town in supporting its wider hinterlands. Given its accessibility by rail and road and its lack of serious environmental constraints it is expected that the town will help meet wider housing needs through provision of new dwellings”**

4.19. This is to be contrasted with the position of WDC, as articulated splendidly by Mr Boyle in Opening: “WDC considers that Uckfield is not suitable for significant additional growth, possibly at all..”. The harsh fact is that WDC has set its face against any further development in Uckfield notwithstanding the overwhelming support from the SS herself for such development.

4.20. History does not relate whether WDC wrote to the SS to complain about the supposed mistake in the panel report at para 26.41 of the panel report. This was a matter which vexed Mr Walker (see his para 7.11) but the fact is that if WDC did seek to correct the “mistake” it would appear that such representations have fallen on deaf ears.

4.21. Turning to **Supply**, we start with a matter of approach. And that approach is very simple: let us assume that in PPS 3, when it says, at para 58 of PPS 3, that “LPAs should not include sites for which they have granted planning permission unless they can demonstrate, based upon robust evidence, that sites are developable and are likely to contribute to housing delivery at the point envisaged”, the SS does indeed seek robust evidence. This requirement, as Keene LJ observed in the context of the requirement for an informed assessment of viability in PPS 3 (Blyth Valley BC v Persimmon Homes [2008] EWCA Civ 861) is not “peripheral, optional or cosmetic”. Similarly, the requirement for robust evidence for the purposes of assessing the five year supply of housing land.

- 4.22. Typically, no SHLAA has yet been undertaken in Wealden. Note in particular the process requirements as set out in Fig 2 of the SHLAA guidance, which involves engagement with key stakeholders, including house builders and local property agents. There was no evidence that such had been undertaken. The most Walker had done was speak to the case officer for individual sites. No meeting notes or file notes were produced.
- 4.23. So far as Small Sites were concerned, these are subject to the advice in PPS 3 para 59: that “Allowances for windfalls should not be included in the first 10 years of land supply unless LPAs can provide *robust evidence of genuine local circumstances that prevent specific sites being identified*. In these circumstances, an allowance should be included but should be realistic having regard to SHLAA, historic windfall delivery rates and expected future trends.” (Our italics). Again, we suggest that this advice should be adhered to. It should be applied as it was intended, and as it states. In respect of Small Sites, there was a complete lack of robust evidence of genuine local circumstances that prevent specific sites being identified. No such evidence was brought to the inquiry. As Walker agreed<sup>9</sup>, there was a clear onus on the LPA to produce such evidence, if it existed. In the light of WDC’s failure to bring such robust evidence to the inquiry, underpinned by a SHLAA and evidence of genuine local circumstances that prevent specific sites being identified.
- 4.24. The other “class” of sites in respect of which there was in principle disagreement was the non-statutory local plan sites and which did not have the benefit of planning permission. Given the crystal clear advice in para 58 of PPS 3, there can be no basis for including the non-statutory local plan sites even if they had planning permission. Yet there is reliance on 716 dwellings by WDC with no planning permission; and there is also clear evidence that at inquiry Inspectors have been reluctant to give any material weight to the fact that the site is included in a non-statutory local plan. To do so would be in flagrant disregard for the Advice in the Companion Guide to PPS 1, para 18. We especially rely on the Five Ash Down DL where these points were expressly made.

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<sup>9</sup> Cross-examined by Peter Village QC

Given that none of the sites benefit from the grant of planning permission, reliance on them would be in flagrant disregard of the provisions of PPS 3. None of those sites can be said to available now (or more accurately for the purposes of this assessment) available as at the agreed assessment date of 1/10/07; some of the sites, as explored in cross-examination<sup>10</sup> have already found not to be suitable (eg CR 1-3, CR1-4, C-R 1-5, C-R 4, HA 1, HA 8, H 12.)

4.25. In respect of other named sites with planning permission, there was a dispute regarding delivery rates. Thus, Woodholm Farm/Welbury Farm, Hellingly Hospital and Shepham Lane were all examples of sites where the Appellants had very clear evidence of delivery rates which supported their contentions as to rates of delivery.

4.26. Thus, WDC's evidence, produced through Walker, was the antithesis of robustness. It demonstrated blind faith in the art of the possible, and was not grounded in reality. Walker and WDC fail to appreciate that the purpose of PPS 3 and its advice is to make realistic assumptions as to delivery. The "Jam Tomorrow" approach will simply no longer do.

4.27. We therefore commend the considered and careful analysis of the three appellants' evidence, and in particular the realistic assessment offered by Mr Woolf, an acknowledged, if not the acknowledged expert on HLS issues in the country. The Appellants assessment of the housing land supply is to be preferred, as its analysis of the requirement. The shortfall is 2793-3163 based on the Structure Plan requirement; and based on the SE Plan PM figures, the shortfall is in the range of 1259-1716 units. On any basis this provides overwhelming justification for releasing greenfield sites which are well connected to the urban area of Uckfield.

4.28. In our submission, there is an overwhelming need for the housing, having regard to the five year supply. In addition, we submit that, for the reasons advanced by Mr Dove QC, the BIE(N) affordable housing provision would make an important contribution to affordable housing in the district in accordance with policy, particularly in view of the

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<sup>10</sup> By Jonathon Clay and Peter Village QC

lamentable provision in recent years. As conceded in cross-examination<sup>11</sup>, Wealden has the largest scale of affordable housing need of any local planning authority in the sub-region. Last year it produced only 34 affordable housing units, 0.04% of the annual requirement.

4.29. Finally, it is important also to note that the existence of a five year supply of housing land is not a reason for refusing consent, particularly where, as in this region, the emerging RSS housing requirements are not to be treated as ceilings. The only way in which affordable housing will be produced is if there is more market housing, and in our submission, the really serious deficiency in affordable housing in the district would be sufficient reason to release BIE(N), even if a five year supply of housing land did exist (which palpably it does not).

## 5. The Case for the Bird-in-Eye North Site

5.1. We now turn to consider the overwhelming case in favour of granting planning permissions for the BIE(N) development; and we start by considering whether there are any site specific planning reasons why the proposed mixed-use development should not take place on the BIE(N) site. It will be recalled that at the start of the inquiry, WDC maintained a series of site specific objections to TW's development proposals. These related to landscape, noise, ecology and highways/transportation. Nonetheless, WDC did not advance any "in principle" objection to major development at the BIE(N) site. That was entirely unsurprising: as the evidence has so clearly demonstrated, the site is well connected to the existing built-up area; it is already partly developed; it is of minimal ecological interest and value; and it lies entirely within the contours of the existing Uck Valley, which forms the landscape setting for Uckfield itself. Given that greenfield developments are required at Uckfield to meet the housing needs, unquestionably BIE(N) is the best location.

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<sup>11</sup> By Ian Dove QC

5.2. The issues raised by the Council related to the specifics of the development as identified principally in the illustrative Masterplan, as it stood at the beginning of the inquiry, in particular Drg. No. L11A<sup>12</sup>. However, during the inquiry discussions took place between the BIE(N) appellants and WDC with a view to resolving the outstanding landscape, noise, ecology and highway issues. As a result of those discussions, amended drawings were produced and agreed which allowed WDC to withdraw all of the site specific objections to development at BIE(N). Thus, assuming that the Secretary of State accepts the appellants' argument on HLS and housing delivery, then it should be recorded that WDC and ESCC advance no objection to development of the BIE(N) site.

5.3. Statements of Common Grounds were produced detailing the agreements reached as follows:

- 5.3.1. Landscape: North 9
- 5.3.2. Ecology: North 12
- 5.3.3. Noise: North 13
- 5.3.4. Highways: WDC 16

5.4. We summarise briefly below the agreements recorded in those Statements of Common Ground and how they have resolved the Council's objections to our clients' proposed development at BIE(N).

#### Landscape

5.5. The proper starting point, we suggest, for an analysis of the visual and landscape issues in the case is to be found in Coo 1, at para 2.9<sup>13</sup>. There, Mr Julian Cooper sets out his argument that development at Uckfield should take place (1) as a priority, within the bowl of Uckfield; (2) be as close to the centre of the town and associated with it as much as possible; and (3) that care should be taken to avoid outward facing development, beyond topographical or woodland boundaries. No witness at the inquiry sought to gainsay this approach. Indeed, Walker, at the

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<sup>12</sup> Coo 1

<sup>13</sup> Co01

inquiry, endorsed the concept of the “bowl”<sup>14</sup>, calling it a “distinctive” feature of Uckfield<sup>15</sup> and agreed that BIE(N) lay within it<sup>16</sup>. Furthermore, he expressly agreed that the BIE sites were well related to the town, and would be viewed as urban extensions adjoining the existing urban area<sup>17</sup>. In addition, he maintained that BIE(N) was contained to a “considerable extent” by the topography<sup>18</sup>.

5.6. Given the positive stance adopted by Walker in his oral evidence at the inquiry to the principle of development at BIE(N), it is unsurprising that there was no “in principle” landscape objection by WDC to development at BIE(N). Instead WDC’s objection on this issue focussed on the landscape impacts associated with the height and layout of the proposed BIE(N) development indicated by the Masterplan Drg. 11A<sup>19</sup>.

5.7. The SCG<sup>20</sup> demonstrates how this issue was resolved by the provision of an amended Masterplan Drg. L11B, which reduced the heights of 3 ½ - 4 storey development to a maximum of 3 storeys, and reduced the height of 2-3 storey development to a maximum of 2 ½ storeys<sup>21</sup>. It was agreed<sup>22</sup> that a high quality urban design and layout will be achieved on the appeal site, with those changes having been made. WDC’s initial concerns relating to the intensity of the development as shown on Drg. L11A were overcome by the revised footprint of buildings shown in Drgs. L13B and L11B attached to the Statement of Common Ground. All of these changes could be made whilst at the same time providing ecological buffers on site, the size of which are acceptable to WDC, thus enabling the Council to withdraw its ecology objection to the development<sup>23</sup>.

5.8. As a result of the design changes to the illustrative Masterplan, the SCG records that the Council’s detailed landscape objection for development of up to 300

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<sup>14</sup> Walker xx by Jonathon Clay

<sup>15</sup> Walker re-x by Christopher Boyle

<sup>16</sup> Walker xx by Peter Village QC; BIE(N) is the only one of the 3 candidate sites that lies wholly within the Uckfield bowl

<sup>17</sup> Walker xx by Jonathon Clay

<sup>18</sup> Walker xx by Jonathon Clay

<sup>19</sup> Walker Volume 4 para.7..

<sup>20</sup> BIEN 9.

<sup>21</sup> See Drawings L14B attached to the SCG.

<sup>22</sup> Walker xx by Peter Village QC

<sup>23</sup> Walker xx by Peter Village QC

houses is no longer pursued. Accordingly, we invite you to report to the Secretary of State that there is no basis on landscape grounds to refuse permission.

### Ecology

5.9. Again, before the inquiry started, the position of WDC was that there was no “in principle” reason on ecological grounds why the BIE(N) development should not be granted planning permission. As WDC’s Ecological Appraisal of the BIE(N) development proposal<sup>24</sup>, dated 7/11/07, identified:

*“Provided a sound ecological plan is implemented with adequate funding, an acceptably high level of biodiversity can be obtained at the site and its surroundings.”*

5.10. The Ecology SCG<sup>25</sup> summarised the outstanding ecology concerns of WDC as contained in Dr Roper’s proof of evidence, and demonstrated how those concerns had been overcome. The original concerns related principally to the provision of adequate buffer zones; the long-term management of the site; and the provision of pedestrian and cycleway access through the ancient woodland in the western part of the site.

5.11. The SCG records<sup>26</sup> that (1) buffer zones can be provided on site in accordance with WDC’s demands, in accordance with policy; (2) that a revised pedestrian cycleway access has been devised that will minimise impacts on the ancient woodland; and (3) a long-term management plan, a draft of which was attached to the SCG, can be devised for the site if development goes ahead.

5.12. The revisions are shown on Masterplan Drg. No. L11B, attached to the SCG. Section 5 of the SCG identifies the conditions which the TW and WDC invite the Secretary of State to impose on the grant of the BIE(N) development to secure the agreed mitigation measures. Section 6 of the SCG records that it is agreed that the

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<sup>24</sup> BIEN 12 App 1.

<sup>25</sup> BIEN 12 Section 3.

<sup>26</sup> Ibid Section 4.

proposed development at BIE(N) will not have ecological impacts, and will comply with the relevant national, regional and local policies. It also records that the ecology reason for refusal has been withdrawn, subject to the imposition of the planning conditions identified in the SCG. We invite the Inspector to recommend to the Secretary of State that the LPA has no ecology objection to our clients' proposed development.

### Noise

5.13. The appeal site surrounds an existing employment site. The issue is whether the presence of this employment site should preclude in principle a mixed-use development on the BIE(N) site. The Masterplan<sup>27</sup> demonstrates that the scheme has been designed so as to protect the new dwellings from any noise impacts of the existing employment units. The design screens the appeal proposals from the employment by the provision of woodland planting and new B1 development which is proposed to be located between the existing employment area and the new housing on the east of the site.

5.14. The SCG<sup>28</sup> records the following key points:

5.14.1. the development would not have any significant adverse impact on existing residential properties as a result of traffic generated by the development;

5.14.2. the mitigation strategy identified at Section 6.5 of the proof of evidence of Dr Cogger was a reasonable and appropriate response to the existing noise environment at the site, and consistent with the guidance given in PPG24;

5.14.3. the noise assessments carried out demonstrate that current uses of the employment site would not preclude residential development for up to 300 houses at BIE(N);

5.14.4. some other potentially noisy activities have been witnessed on site which were not assessed in the noise surveys. However these activities are intermittent and occasional and any adverse effects on occupants of the

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<sup>27</sup> L11B.

<sup>28</sup> North 13

proposed residential properties would be adequately mitigated by separation of residential properties from the existing employment site by the proposed commercial development in the BIE(N) proposals and by the adoption of the mitigation strategy set out in paragraph 6.5 of Dr Cogger’s evidence (supra) for those houses facing the southern and western boundaries of the employment site.

5.15. As a result of the agreements reached in the SCG, the Council withdrew any technical noise objection to the principle of residential development at BIE(N). We draw particular attention to paras 4.2-4.11 of the Noise SoCG. In particular, WDC acknowledges that its noise assessment took account of the events observed by Walker (see paras 4.9 and 4.10).

5.16. Nevertheless, notwithstanding that the very clear advice from WDC’s noise consultant (Mr Leversedge) that there was no basis to object to the BIE(N) development on grounds of noise impact based on the amended Masterplan and having regard to the BS4142 assessment undertaken by Dr Cogger, Walker maintained an objection. The basis of his objection is as set out at para 8.1 of his p/e: “The basis of my case is that the disturbance which will be caused to future residents as a result of the continued operation of the existing commercial operations will be unacceptable”(our underlining).

5.17. In fact, on the basis of the observed activities (ie from the existing operations) this point of concern is covered by para 4.10 of the Noise SoCG, as Walker agreed<sup>29</sup> and adequate mitigation can be provided as set out in para 6.5 of Dr Cogger’s proof of evidence.

5.18. In his evidence in chief, Walker attempted to expand on his purported concerns – not trailed in his proof of evidence – that there was a possibility of intensification of noise at night. However, as he agreed in cross-examination, (and we made a very careful note of his answer “there is no evidence before the inquiry

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<sup>29</sup> XX by Peter Village QC

that the existing level of activity can reasonably be expected to change in the foreseeable future.”

5.19. That answer was vital having regard to the terms of PPG 24, paragraph 12 which states: “Local planning authorities should consider carefully in each case whether proposals for new noise-sensitive development would be incompatible with existing activities. Such development should not normally be permitted in areas which are – or are expected to become subject to unacceptably high levels of noise.. When determining planning applications for development which will be exposed to an existing noise source, LOAs should consider both the likely level of noise exposure at the time of the application and any increase that *may reasonably be expected in the foreseeable future*, for example at an airport” (our italics).

5.20. Walker was very clear in his answer – there was no evidence that any increase in noise could be expected in the foreseeable future. Thus, having regard to the provisions of PPG 24 and the advice contained therein, there was absolutely no basis for any concern that there could be an intensification of the site such as to materially affect the occupiers of proposed dwellings.

5.21. In addition, it is important to understand the planning status of the employment site. The only permission on the site relates to the buildings themselves. The open storage is the subject of a CLEUD, but that is the extent of the permitted use – we emphasise: open storage. Thus, any other use, particularly any industrial process, would require planning permission.

5.22. Finally, and as Walker was driven to concede, even if new uses did commence which caused a noise nuisance, then such nuisance could be controlled through the provisions of S. 80 of the Environmental Protection Act.

5.23. In conclusion on this point, WDC’s noise expert correctly conceded that there was no reason to refuse planning permission by reason of the effect of the employment land on the housing. The Masterplan has been carefully designed to ensure that the employment land will be effectively screened from the residential development by intervening land and structural landscaping. Walker has embarked

on a frolic of his own to contrive a basis of objection which has no basis in fact. His approach is wholly contrary to the policy test which is set out in PPG 24. It is accepted that noise emanating from the existing use of the employment site can be satisfactorily mitigated. There is (as Walker agreed in xx) no evidence to suggest that there will be any change (whether in the foreseeable future or at all) in the nature of the extant land uses within the employment site (or for that matter any material intensification of the uses) such that there would be any harm to proposed residents.

### Highways and Transportation

5.24. TW submits that the most appropriate location within the District to accommodate new housing growth is the settlement of Uckfield. This submission is supported by adopted and emerging development plan policy.

5.25. The adopted Structure Plan identifies a sequential approach to the location of new development. That sequential approach identified the towns of Uckfield, Hailsham and Polegate as the most sustainable locations for further growth<sup>30</sup>.

5.26. Of these, Uckfield is the most sustainable. It serves as a local employment centre<sup>31</sup> and provides a retail and service base for the surrounding rural area. It has good rail connections. It is identified in the Structure Plan for a potential strategic housing allocation to be implemented 2006-2011 and that its functions as a residential, employment, shopping and service centre will be developed<sup>32</sup>.

5.27. The emerging RSS continues the policy support for Uckfield as a preferred location for housing growth. Of the housing directed to Wealden district during the plan period, 600 dwellings should be provided for by means of planning growth at Uckfield<sup>33</sup>. It was confirmed by Walker<sup>34</sup> that the 600 units were in addition to those already permitted within Uckfield.

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<sup>30</sup> Structure Plan paras 4.14 & 6.12

<sup>31</sup> In particular it has two principal business areas at Bellbrook & Ridgewood-see WBP 2

<sup>32</sup> SP Policy 22

<sup>33</sup> RSS Panel Report para 26.41

<sup>34</sup> XX by Peter Village QC

5.28. The Panel identified the sustainability merits of Uckfield as follows:

- It is the only sizeable town outside the AONB;
- It has a relatively high level of local jobs (6,250) and a diverse range of jobs within commuting distance;
- It is identified in the Structure Plan for a potential strategic housing allocation.

5.29. Uckfield, therefore, is to be regarded as the most sustainable town to accommodate new growth. However, there is no available PDL within the town which can accommodate the required level of development. Thus it is inevitable that any new development will be located outside the town's current boundaries.

5.30. The evidence has demonstrated that BIE(N) is a highly sustainable and suitable location to accommodate new mixed-use development within Uckfield. We have already identified the agreement between the BIE(N) appellant and WDC that the appeal site is well related to the existing urban area of Uckfield. As such development at BIE(N) will constitute an appropriate and sustainable urban extension, closely related to the urban centre. The improvements to Framfield Road proposed by the BIE appellants will ensure excellent connectivity to facilities for pedestrians, cyclists, and those wishing to use public transport.

5.31. The SCG<sup>35</sup> demonstrates that, in the event that the Secretary of State concludes that there is a need for housing development at Uckfield to come forward now, there is no highway capacity objection to the development of either of the BIE sites, or both, subject to an overall limit of 500 houses in total. There is agreement that the acceptability of the developments is not dependent on a physical town centre highway scheme being in place.

5.32. Each of the BIE appellants has agreed to fund a very significant package of highway and transportation measures which, it is agreed, will adequately mitigate the impacts of their proposals in line with the principles of Circular 05/05<sup>36</sup>.

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<sup>35</sup> WDC 16.

<sup>36</sup> Ibid para. 1.1.3.

5.33. The agreed package of measures is set out in detail in the SCG and the respective s.106 obligations proffered by the BIE appellants. In summary, these relate to site specific travel plans for each appellant; improvements to Framfield Road parking; “headroom” contributions which are town-wide transportation improvements; provision of the Mallard Drive bus link; bus subsidy for an enhanced town centre service; contributions towards a town centre management scheme, and DDA works to Framfield Road.

5.34. There is, of course, no physical town centre highway scheme in Uckfield in place, or even proposed. However, the SCG demonstrates that, even if no physical town centre scheme was ever delivered by the County Council, that should not be a bar to the development of the BIE sites for 500 houses in total, because an alternative demand management proposal would be implemented by ESCC in place of any physical measures.

5.35. Demand management proposals could comprise the following:

5.35.1. additional travel plan measures to benefit the development sites and the existing community;

5.35.2. continued enhancement of the town centre bus service;

5.35.3. additional town-wide walking and cycling measures;

5.35.4. implementation of a town centre car parking scheme and charging regime to encourage long term shift onto public transport, walking and cycling for local journeys.

5.36. Therefore, even if no physical highway scheme is ever implemented within Wealden, the funding for highway improvements to increase highway capacity raised through developer contributions and LTP funding, will be allotted to other demand management measures. Thus, as the SCG records, “there are therefore no

encumbrances to the full development of the BIE sites providing that the agreed financial contributions are made<sup>37</sup>”.

5.37. The s.106 obligations record how the payments are to be made, and for what purposes. They accord with the policy tests in Circular 05/05. The obligations, and their contents, render the BIE developments acceptable in planning terms<sup>38</sup>.

5.38. It is regrettable that Mr Boyle, in his closing submissions, continued to maintain that permission should be refused for all three sites on the basis of their respective accessibility to services. Whilst such a conclusion is entirely justifiable in respect of the Downlands Farm site, it cannot possibly be maintained in respect of the BIE sites. Indeed, Walker’s own assessment demonstrates that the BIE sites are demonstrably better located than the recently permitted Cysleys Farm. For the reasons already given, there is a clear requirement for more housing, and there is no better located alternative location has been identified by WDC or anyone else.

#### Downlands Objections to BIE(N)

5.39. Notwithstanding this level of agreement reached between BIE(N) and WDC and ESCC, the appropriate planning authorities, Downlands continued to raise issues of purported concern about development at BIE(N) in respect of landscape, ecology and highways. The desperate nature of the objections merely serve to emphasise the inadequacies of the Downlands proposal itself.

#### Landscape

5.40. The starting point is Russell-Vick’s concession that there would be no justification for refusing planning permission at BIE(N) on landscape grounds.<sup>39</sup> We invite you to concur and to report this agreement to the Secretary of State. In addition we ask you to note the following areas of agreement between the BIE(N) appellant and Russell-Vick:

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<sup>37</sup> *ibid* para. 3.5.7.

<sup>38</sup> Circular 05/05 para.

<sup>39</sup> Expressly agreed by PR-V in xx by Peter Village QC.

5.40.1. both BIE sites are below the major ridgeline to the east of Uckfield;

5.40.2. by contrast, Downlands Farm lies above the major ridgeline to the west of the town;

5.40.3. both BIE sites are on sloping sites facing back into the town;

5.40.4. by contrast, the Downlands site faces out away from the town in an area where there has been little development in the past;

5.40.5. the BIE(N) site is genuinely part of the Uck valley;

5.40.6. the Downlands site does not form part of the Uck valley.<sup>40</sup>

5.41. In the light of those concessions, it is difficult to see how there could be any remaining landscape issues over the proposed development at BIE(N). Nonetheless, Russell-Vick maintained that development would be conspicuous from views from within the town, and from the south of the town albeit his opinion was that “these are not in themselves attractive views because of the presence of the town”.<sup>41</sup> Notwithstanding this, he sought to draw unfavourable comparisons between BIE locations and Downlands, which, being remote from the town, is not so conspicuous from views within it.

5.42. Russell-Vick’s argument was ludicrous. First, his ZVI plan (Fig PRV 17) was demonstrably false. It purported to suggest that development on the BIE(N) site would be seen from the High Street and within the built up area to the east and west of the High Street. A simple site inspection demonstrates that such a suggestion is utterly wrong. One has to ask why Russell-Vick thought it appropriate to give such entirely misleading and false evidence.

5.43. Second, his arguments were further addressed, and met, by the evidence of Cooper and Walker on behalf of WDC. Walker’s compelling point was that

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<sup>40</sup> All concessions given by Russell-Vick in cross-examination by either Peter Village QC or Ian Dove QC

<sup>41</sup> RV2 p16 paragraph 4.2.

because the BIE sites are sufficiently well connected to the centre of Uckfield, to the extent that development could be seen it would be seen (by definition) in the context of other views of the town. In Walker's opinion<sup>42</sup>, that is a virtue of development at BIE, which is to be contrasted with the position at Downlands Farm. These views of the appeal site from within the town would be more limited, but that is because of its relative lack of connection with the town and its location on slopes facing outwards, away from the town. By contrast, views of Downlands from the open countryside would be of much greater significance. This is an issue to which we return later.

- 5.44. Russell-Vick also had a concern that development at BIE would lead to further eastwards expansion of Uckfield, over the ridgeline, with greater landscape impacts. Little weight should be attached to this argument; there are no proposals for such outward expansion of Uckfield. In any event, Walker covered this point by noting that such development would lie outside the bowl, and that WDC would look to carefully monitor any proposed development outside the bowl or spilling over it.<sup>43</sup>

### Ecology

- 5.45. Again, there was expressly no in principle objection to development at BIE(N) on ecology grounds raised by Mr Colebourn. His principal concern was the "inadequacy" of the BIE(N) survey and mapping work, as expressed by him in his CO2A, and, in particular, the failure to analyse the "zone of influence" for habitat significance and impacts beyond the appeal site. These criticisms of Dr Wray's methodology were not advanced by WDC or Natural England or the Sussex Wildlife Trust.
- 5.46. This criticism was emphatically rejected by Dr Wray in her rebuttal evidence.<sup>44</sup> In that evidence, she acknowledged that she did not use the term "zone of influence", but that did not mean that she had not assessed off-site impacts. On

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<sup>42</sup> and Mr Cooper's

<sup>43</sup> Walker Re-x-by C. Boyle

<sup>44</sup> WR2.

the contrary, she expressly set out the extent to which off-site receptors had been fully considered in the BIE(N) ES and her evidence.

5.47. For the reasons given by her, in that document, and in her oral evidence at the inquiry, Colebourn's criticisms of the approach and methodology adopted by Dr Wray and her team should be rejected.

#### Highways and Transportation

5.48. The criticisms advanced by Downlands in respect of the Framfield Road works must be considered in the light of the fact that the scheme has been developed in conjunction with East Sussex County Council and that it meets all legal, safety and DDA requirements. There is no evidence that the highway authority has acted improperly, or inadequately, in assessing the safety of the BIE schemes. Absent such evidence, the Inspector is requested to reject the Downlands' criticisms of the safety of the BIE schemes.

5.49. Each of the issues raised by the Downlands team has been the subject of assessment by the BIE teams and the highway authority. To take one example, the lack of provision of a footway on Framfield Road adjacent to the BIE sites. This is raised by Brown (for Downlands) as a "significant" safety failure. Yet this stretch of footway was removed by the BIE teams at the request of the ESCC in order to encourage pedestrians and cyclists to use the other, dedicated, routes into the site. It is inconceivable that the body responsible for highway safety could have requested its removal had they considered it unsafe.

5.50. The same is true with the proposed Framfield Road parking measures. The Inspector is referred to the drawings in App.3 of WDC 16. These are illustrative, not engineering, drawings demonstrating the improvements that can be made, and will be implemented if planning permission is granted. The highway authority is satisfied that they can be delivered within the highway boundary, and, vitally, that they will be safe. Mr Brown has not produced any evidence which demonstrates otherwise.

5.51. In conclusion, therefore, there is nothing contained in the evidence of the Downlands' witnesses which should persuade the Secretary of State to depart from the conclusion reached by the relevant planning authorities, namely that there are no site specific reasons why planning permission should not be granted for the BIE(N) development.

## 6. The Case against Downlands Farm

6.1. Having considered all of the evidence, we strongly submit that the Downlands Farm appeal proposals are utterly misconceived, and have been unreasonably promoted. The Downlands Farm site is wholly inappropriate to accommodate any, let alone the scale of development proposed by the Downlands Farm Appellants.

6.2. In this respect, we have read the closing submissions of Mr Boyle on behalf of WDC and Mr Walton on behalf of the Woodlands Trust; and we have also had the advantage of reading in draft the closing submissions of Mr Ian Dove QC on behalf of BIE(S). We concur with, and adopt as our own, all their site specific observations in respect of the clear deficiencies of the Downlands Farm site.

6.3. We therefore confine our submissions to a few additional points made by the BIE(N) witnesses.

6.4. We start by making the obvious point that there is no express need identified for the scale of housing development proposed by Downlands Farm site. Of the 780 homes for which planning approval is sought, only 400 can be delivered in the first five years.<sup>45</sup> Thus it is simply not possible for an argument to be credibly mounted based on a submission that the need for the development outweighs the harm caused by the development.<sup>46</sup>

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<sup>45</sup> T1 para.84.

<sup>46</sup> It was precisely this argument that was made by Mr Russell-Vick on stating that the need for the development outweighed any harm to the landscape.

6.5. In any event, it is our submission that the environmental effects caused by development of such scale at Downlands Farm will be far reaching and severe, in particular in respect of landscape impact and ecological damage.

### Landscape Impact

6.6. The impact on landscape character would be severe. In particular, we rely on the evidence of Mr Cooper, primarily contained in his COO 2<sup>47</sup>. We remind the Inspector of Mr Cooper's oral evidence that the "DF site is one of the most attractive sites that I have ever assessed for development or walked upon". He contrasted the landscape character to the north west of Uckfield with that character pertaining to the east at BIE. Visually, he stated, BIE forms part of the town of Uckfield, whereas the landscape character to the north/west of Uckfield is "intact, important and should be kept".

6.7. Mr Cooper supplemented his assessment of the visual impact of Downlands Farm in North 10. He explained to the inquiry that North 10 was a structural analysis of the visual issues. His methodology is transparent, and as a result the judgments reached by him can be followed step-by-step. His assessments had been audited by an outside consultant.<sup>48</sup> The Cooper approach is to be contrasted with PR-V's Down 9, which is not transparent and represents a mistaken use of Mr Cooper's methodology.

6.8. In terms of the viewpoints identified in North 10, Mr Cooper focussed in particular on viewpoints 1, 4 and 8.

6.9. His evidence was that the view from 1 is "close to unique". In this cone of view there are virtually no buildings, which in Mr Cooper's view is both "interesting and important". As he remarked, this "could be a view from 100 years ago". Viewpoint 1 is from within the AONB. We respectfully agree with the answer given by Mr Walker to the Inspector's question whether the Downlands Farm development

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<sup>47</sup> Including COO2, L17.

<sup>48</sup> Cooper xx by J. Clay.

would have an adverse impact on the setting of the AONB. He indicated that it would be because of the following factors:

- 6.9.1. the importance/sensitivity of the location;
- 6.9.2. the height from which the viewer is looking;
- 6.9.3. the extent to which the fields at Downlands Farm, on which built development will be located, are visible;
- 6.9.4. the extent to which the viewer is unaware of the presence of Uckfield.

6.10. As Mr Walker said, this is an exceptional combination of circumstances, which heightens the sensitivity of the setting, and greatly magnifies the harmful effect of development at this location.

6.11. On a similar theme, Mr Cooper referred to the sensitivity of viewpoints 4 and 8. At present Uckfield is not visible from these viewpoints, but in each case development at Downlands Farm will spill over the ridge and impact on the largely untouched low Weald landscape character. They are highly sensitive viewpoints. They demonstrate that development at Downlands Farm will have a significant adverse impact upon landscape character.

6.12. For all the reasons given above, and contained in the evidence of the witnesses, the landscape impacts of the Downlands Farm development will be profound. The proposals are contrary to policies EN2 and S1(j) of the Structure Plan and EN6 of the adopted Local Plan. As Mr Cooper put it, the landscape objection to DF is absolute. The impacts are severe. The development at Downlands Farm should not be permitted to take place, irrespective of the need.

### Ecological Impacts

6.13. In addition to the points made by others on this debate which raged over many issues and several days at the inquiry, we rely on the careful evidence of Dr Wray, as contained in Wr1 and Wr2. She focused on what she considered to be the under-reporting and under-valuing of the protected species present on the DF site

as contained in the Downlands Farm ES. There is thus doubt in her mind as to the robustness of the conclusions reached in that ES.

6.14. This manifested itself particularly in the way that the Downlands Farm team assessed the impact of development on bats. The DF team conclude that the site is of “local/parish” value for bats. But this judgement is simply not supported by the evidence, which demonstrated the site to be of greater significance. All bats are European protected species, protected by legislation. It is agreed that the DF site contains 10 out of the 13 species of bats found in the south-east of England. In addition the site is one where bats are known to roost.<sup>49</sup> In addition, it is likely that the site contains other “high-value roosts sites” unnoticed by the surveyors.<sup>50</sup>

6.15. Furthermore, because the surveyors have not inspected all trees or even all stocks of woodland in the site, it is impossible for the SS to come to a firm conclusion about the full effect of the development on bats and their roosts. In the absence of knowing how many roosts may be affected by the development, it is impossible to ascertain the likelihood of a licence being granted by EN.

*Impact on bat foraging areas and bat commuter routes*

6.16. The key bat foraging areas and commuter routes across the DF site are identified in App. 15 of CO4. As is apparent from the Downlands Masterplan, many of the foraging areas will be lost to built development. There will be significant fragmentation of the commuter routes by the new internal roads, including the intended bus route. These routes will need to be lit, increasing the impact on the bat population.<sup>51</sup> There are no replacement foraging areas or commuter routes to mitigate for those lost.

6.17. In summary, the DF proposals are harmful to bats. It will lead to the removal of an unknown quality of bat roosts; it will destroy much of their existing

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<sup>49</sup> See DF ES Vol. 1 Tab 6 paras. 6.120 and 6.121.

<sup>50</sup> DF ES Vol. 2 Tab 6 Bat Survey para. 4.2.1.

<sup>51</sup> DF ES Vol.2 Tab 6 Bat Report section 7 p.24.

foraging areas on the site, and it will sever their community routes and foraging areas.

### Conclusion in respect of Downlands Farm

6.18. Notwithstanding the claims made by its professional advisers, the Downlands Farm proposals will have severe, profound and very harmful environmental impacts. It is astonishing that the appeal was maintained by the Downlands Farm Appellant. On the basis of any objective assessment, planning permission for the Downlands Farm proposal should be refused. It is a development proposal wholly devoid of merit.

## **7. Overall Conclusion**

7.1. There is an overwhelming housing land supply case in favour of releasing the BIE sites. In addition, and independently of the very strong housing need case, the BIE sites will make a valuable contribution to the provision of affordable housing. Uckfield has been identified as being an appropriate location for more housing by the SS, and the BIE(N) site is an entirely suitable site in order to deliver a high quality development, sympathetic to the character of the town.

7.2. So far as BIE(N) is concerned, there is no landscape objection maintained by WDC; there is no ecological objection; there is no highways objection; and there is no sustainable noise objection. If and to the extent that a choice was required to be made between BIE(N) and BIE(S), we would urge that BIE(N) is preferred, first because it represents a more logical urban extension in the event of only one site coming forward and second because it is more contained than the BIE(S) site.

7.3. There are no constraints to the immediate delivery of the BIE(N) site to meet the housing needs of the district and accordingly we respectfully request that the Inspector recommends that planning permission be granted. The submitted S.106 planning obligation has been agreed with WDC and ESCC.

7.4. Accordingly, we respectfully request that the planning permission is granted for development of the BIE(N) site.

**PETER VILLAGE QC**

**ROBERT WHITE**

**21 September 2008**

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