



Appeal Decision

Inquiry opened on 24 April 2018

Site visit made on 27 April 2018

by Lesley Coffey BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2018

Appeal Ref: APP/Q1445/W/17/3177606 Land South of Ovingdean Road, Brighton BN2 7AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Lightwood Strategic against the decision of Brighton & Hove City Council.
- The application Ref BH2016/05530, dated 30 September 2016, was refused by notice dated 23 May 2017.
- The development proposed is the construction of 45 one, two, three, four and five bedroom dwellings with associated garages, parking, estate roads, footways, pedestrian linkages, public open space and strategic landscaping. New vehicular access from Ovingdean Road and junction improvements.

Decision

1. The appeal is allowed and planning permission is granted for the construction of 45 one, two, three, four and five bedroom dwellings with associated garages, parking, estate roads, footways, pedestrian linkages, public open space and strategic landscaping. New vehicular access from Ovingdean Road and junction improvements at Land South of Ovingdean Road, Brighton BN2 7AA in accordance with the terms of the application, Ref BH2016/05530, dated 30 September 2016, subject to the conditions in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Lightwood Strategic against Brighton & Hove City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The inquiry sat for 4 days from 24 April 2018 and closed on 27 April. There was an accompanied site visit on 27 April.
4. The application is made in outline with access, scale, layout and landscaping to be determined. Appearance is a reserved matter for future determination.
5. The decision notice includes four reasons for refusal. Following legal advice, at a meeting on 7 February 2018, the Council decided to withdraw the second and third reasons for refusal. The second reason for refusal concerned the effect of the proposal on the gap between the villages of Ovingdean and Rottingdean, and the adverse effect on the setting of the Ovingdean and Rottingdean

Conservation Areas. The third reason for refusal concerned the effect of the proposal on the Rottingdean Air Quality Management Area. The Council considered that there would still be harm in terms of the impact of the proposal on the character and appearance of the area, and the ecology and biodiversity of the appeal site, but it balanced these harms against the benefits of the proposal and decided not to defend the appeal.

6. The Deans Preservation Group (DPG) was granted Rule 6 party status, but chose not to defend either the second or the third reasons for refusal.
7. The appellant submitted a signed Agreement under section 106 of the Town and Country Planning Act 1990 (as amended). This covenants to make financial contributions towards education, recreation, an Artistic Component and a Construction Training and Employment Strategy. It also covenants to provide affordable housing, a Travel Plan, a Walkways Agreement and an Open Space Management Scheme. I return to this matter below.
8. Following the close of the inquiry, the Appellant amended the soft landscaping plans in respect of the species of some of the trees proposed. On the basis of these revisions the Council confirmed it was satisfied with the soft landscaping proposals, and further details in relation to this matter would not be required. I have taken the submitted plans into account in reaching my decision and consider that no interests would be prejudiced from my doing so.

Main Issues

9. I consider the main issues to be:
 - The effect of the proposal on the landscape character and appearance of the surrounding area, including the setting of the South Downs National Park (SDNP);
 - The effect of the proposal on the biodiversity and ecology of the appeal site; and
 - The overall planning balance having regard to the Council's position in respect of its five-year supply of housing land, and other material considerations.

Reasons

Background

10. A previous appeal in respect of the site was dismissed in March 2016¹. The proposal differed from the current scheme in that it was for 85 dwellings and extended much closer to the eastern boundary with Falmer Road. The Inspector found that the proposal would not give rise to significant harm to biodiversity, air quality, local traffic conditions, or the setting of the SDNP. Notwithstanding this, he found that due to the excessive extent of the built form, the proposal would appear as a discordant intrusion into the immediate balanced relationship of open land to built form, and would thereby be seriously harmful to the character and appearance of the appeal site and its surroundings. He concluded that this harm significantly outweighed the benefits of the proposal.

¹ APP/Q1445/W/15/3130514

11. Whilst the previous decision is a material consideration in respect of this appeal, there are significant differences in terms of the number of dwellings proposed and the extent of the developed area. Additional evidence was also submitted in relation to ecological and landscape matters, and I have taken this into account in reaching my decision.

Development Plan Context

12. The development plan includes the saved policies of the Brighton and Hove Local Plan (adopted 2005), the City Plan Part One and the Adopted Policies Map (adopted March 2016). The City Plan Part One contains the over-arching planning policies and strategic allocations for the area. The emerging City Plan Part Two will contain the remaining detailed allocations and development management policies. However, it is still at an early stage and the weight to be afforded to the policies and allocations within it is limited.
13. The City Plan Part One identifies a number of Urban Fringe Sites, including the appeal site (part of Site 42). These are areas of land that lie between the defined built-up urban area boundary and the boundary of the SDNP. Policy SA4 sets out a number of objectives in relation to the Urban Fringe. These include the protection and enhancement of its wider landscape role and the setting of the SDNP. It states that development within the urban fringe will not be permitted except where a site has been allocated in a development plan document, or the countryside location can be justified. It requires such proposals to have regard to the downland setting of the City and to minimise and appropriately mitigate any adverse impacts of development. It also states that the May 2014 Urban Fringe Assessment (UFA) will be a material consideration in the determination of applications for residential development within the urban fringe that come forward prior to the adoption of Part Two of the City Plan. The 2014 UFA identifies the site as a potential location for development and formed part of the evidence base for the City Plan Part One.
14. The Brighton and Hove: Further Assessment of Urban Fringe Sites 2015 - Landscape and Ecological Assessments provides an update to the 2014 Assessment and is intended to inform the preparation of the City Plan Part Two. It includes more detailed landscape and ecological assessments. It concludes that although it would be challenging to avoid significant landscape and ecological impacts in the potential development area, housing could be delivered with reduced impacts assuming careful design and that robust mitigation measures are developed and implemented.
15. The previous Inspector considered that the UFA gave significant endorsement to the principle of residential development. Whilst the UFA does not allocate the site for housing, it does however provide a strong indication that, despite the landscape and ecological constraints, a level of housing could be accommodated on the appeal site. It is a material consideration in respect of this appeal and I afford it significant weight.

Character and Appearance

16. The appeal site is located on the north-east edge of Ovingdean, a short distance north of Rottingdean and south of Woodingdean. It comprises a field about 3.72 hectares in area and is currently used for the keeping and grazing of horses. The site slopes from east to west and is a visible feature from both Ovingdean Road and Falmer Road.

17. The immediately surrounding area is a combination of housing to the north and west, and predominantly open land to the south and east. The site is bounded to the west by The Vale, which serves dwellings situated within large gardens that extend up the wooded hillside to the rear. The residential development within Ovingdean Road and Ovingdean Close lies to the north of the site. Longhill School and playing fields adjoin the southern boundary. The open land to the north and to the east forms part of the SDNP.
18. The proposed dwellings would be located towards the western part of the site and would occupy an area of about 1.68 hectares. The remainder of the site would be retained for horse grazing and informal open space. A new pedestrian footpath would link the southern part of the proposed development with Falmer Road. The dwellings would comprise detached and semi-detached properties. It is intended that they would be 2 storeys high and would follow the contours of the site. Access to the site would be from Ovingdean Road.
19. The appeal site is not subject to any landscape designations. At the inquiry DPG acknowledged that it had mistakenly believed that the site had previously formed part of the Area of Outstanding Natural Beauty(AONB).
20. The landscape character of the locality has been assessed at national, district, and local level. It comes within the South Downs National Character Area. This is an extensive area extending from Winchester in the west to Eastbourne in the east. The appeal site lies within the Eastern Open Downs sub-area. Due to its extent the characteristics of this area are varied. These include open arable fields with an absence of woodland and hedgerow boundaries, semi-natural chalk grasslands, and roads and villages largely concentrated within the river valleys. These features are evident in the surrounding area.
21. At district level the area comes within the A2 Adur to Ouse Open Downs as defined by the South Downs Integrated Landscape Character Assessment. The characteristics of this landscape area include large scale fields with open boundaries, unimproved chalk grassland, scrub and woodland on the steeper slopes and dry valleys with rounded coombs. It notes that the location of Brighton on the edge of this area means that this character area has been influenced, on its edges, by urban fringe features such as road cuttings and traffic.
22. DPG considers the appeal site and its surroundings to be highly representative of the A2 Character type. I acknowledge that it includes some characteristics of this typology such as the large scale fields and unimproved chalk grassland, as well as access to public rights of way, however, other characteristics are less evident.
23. More locally, the Brighton and Hove Urban Character Study Area characterises Ovingdean as a downland settlement. The dominant landscape elements of these areas include low rise historic developments nestled along the valley floors and low rise residential suburbs, farming characterised by large scale fields with very few and degraded hedgerows, species-rich chalk grassland and pockets of deciduous woodland and limited public access in the form of roads, tracks and footpaths.
24. The landscape in the vicinity of the appeal site exhibits many of these characteristics, with the older development generally located towards the valley floor, and the more recent suburban development extending up the sides of the

valley. The large scale fields are consistent with the surrounding SDNP. The wooded backdrop to The Vale and species-rich chalkland are also characteristic of the locality. The detailed assessment of Ovingdean predominantly focusses on the built environment which it divides into 3 distinct areas, Old Village, Longhill and The Vale. The areas closest to the appeal site are characterised as very low density suburban style housing. Although in general the buildings are not of any significant architectural merit and lack any unifying features, the generally spacious setting and wider landscape, including the SDNP combine to provide an attractive environment. Overall, I consider that the appeal site, together with its surroundings, has an urban fringe character.

Valued Landscape

25. DPG suggests that the site forms part of a valued landscape for the purposes of paragraph 109 of the National Planning Policy Framework (the Framework). This matter was considered at the time of the previous appeal. The Inspector concluded that the appeal site itself did not have any particular features or quality that would place it in the category of being a valued landscape in the sense intended by the Framework.
26. DPG relies on the criteria at Box 5.1 of Guidelines for Landscape and Visual Impact Assessment, Third Edition. Although this does not define a valued landscape for the purposes of the Framework, it nevertheless provides a useful starting point. DPG considers that the appeal site has high scenic quality, relative wildness, and tranquillity along The Vale. In addition, it is submitted that it includes rare chalk downland habitats and is intact in that it retains its sloping topography.
27. I disagree that the site has a high scenic quality comparable to the SDNP. The SDNP is characterised by the open downland landscape, whereas the appeal site is contained by the surrounding residential development, the wooded hillside, and Falmer Road. This view is reinforced by the fact that the site was considered at the public inquiry in relation to the designation of the SDNP, and it was concluded that it should not be included within the SDNP.
28. When assessing what constitutes a valued landscape I consider it important to examine the value of the wider setting and the contribution which the appeal site makes to that setting. On behalf of DPG, Ms Noel suggested that the site together with Happy Valley formed part of a valued landscape. However, the surrounding landscape as a whole includes the residential settlements of Ovingdean, Woodingdean and Rottingdean, all of which are visible from the appeal site.
29. There is a perception of tranquillity along The Vale, although background traffic noise is discernible along its length. Ms Noel stated that The Vale was used by school children, many of whom were dropped off at the junction with Ovingdean Road. Therefore, whilst at some times The Vale is a quiet and pleasant environment it would seem that at others it is less so. I accept that there is a sense of tranquillity when walking within the SDNP, but the area as a whole is crossed by roads and includes a considerable number of dwellings. In addition, the Happy Valley includes a recreation ground and car park, whilst Falmer Road, which adjoins the appeal site carries a frequent flow of traffic. Therefore, I do not consider that the landscape as a whole, or the appeal site, benefits from tranquillity.

30. The appeal site is a grazed field and although it is open in character it does not benefit from wildness. Whilst this quality could be attributed to parts of the SDNP, it does not reflect the landscape character of the appeal site or the surrounding area.
31. There are some valued elements within the landscape, but nothing to lift it above the ordinary. In reaching this conclusion I have taken account of the ecological interest on the site, and whilst this may have consequences for the biodiversity of the site, it does not in my view impact on its character or appearance. I conclude that the appeal site does not form an integral part of any wider valued landscape for the purposes of paragraph 109 of the Framework.

Setting of SDNP

32. The appeal site is situated adjacent to the SDNP. Policy SA5 of the City Plan states that proposals within the setting of the Park must have regard to the impact on it, including the purposes of the SDNP and the ability of the SDNP Authority to deliver its duty. This reflects the duty under Section 11A(2) of the National Parks and Access to the Countryside Act 1949. The purposes of the Park are to conserve and enhance the natural beauty, wildlife and cultural heritage, and promote opportunities for the understanding and enjoyment of the special qualities of national parks by the public.
33. The effect of the proposal on the setting of the SDNP was considered at the time of the previous appeal. The Inspector noted that a number of the surrounding settlements were enclosed by the wider boundaries of the Park, and that it was not unusual for the boundaries of the SDNP to extend up to residential development. He concluded that having regard to the low level of the site relative to the higher ground within the Park that whilst there would be some inter-visibility between the two, the appeal scheme would be more widely viewed in the context of existing settlements of Ovingdean and Woodingdean and would reflect a similar relationship to the SDNP to that which exists elsewhere.
34. This appeal is for a much reduced number of dwellings and they would occupy a reduced area of the appeal site relative to the previous scheme. Having regard to the evidence submitted to this inquiry, I agree with the conclusions of the previous Inspector, and I am satisfied that the proposal would not be harmful to the setting of the SDNP or conflict with policy SA5.

Happy Valley

35. The appeal site forms part of a dry valley known as the Happy Valley. This extends from the western edge of Woodingdean to Mount Pleasant and to the Rottingdean settlement area. Although the Happy Valley landform remains largely intact it is subject to a number of urban influences. These include the car park and recreational facilities to the north of the appeal site and the residential development at Ovingdean Road and Ovingdean Close which extend along part of the valley.
36. The appeal site is situated within the valley at a point where the presence and perception of the settlement fringes is commonplace, with parts of Woodingdean, Ovingdean and Rottingdean all visible to some extent. The appeal proposal would occupy the lower ground within the site and the valley,

as such it would be consistent with the existing settlement boundaries and would not undermine the integrity of the valley landscape as a whole.

Impact on Character

37. The character of the site would change from equestrian grazing to mixed use residential and grazing. The proposed dwellings would occupy the lower part of the site but would maintain the urban fringe relationship with surrounding countryside in a similar manner to the properties at The Vale and Ovingdean Road.
38. Although a large proportion of the site would remain open, part of it would be more formal in character reflecting the residential development to the western part of the site.
39. Whilst there may be some additional noise associated with future residents, there is no reason to suppose that this would be excessive, or cause disturbance to existing residents within the area. The appeal site is not situated in a remote or isolated area and there would be no significant effect on tranquillity.

Visual Impact

40. The appellant's Landscape and Visual Impact Assessment included several viewpoints located some distance from the east and west of the appeal site. These were intended to reflect the views from Public Rights of Way within the SDNP. DPG suggested that the most significant views would be those closest to the appeal site, including the views from footpaths in the vicinity of Mount Pleasant which lies within the SDNP. Although I viewed the site from a number of other locations, I agree with DPG that these would be the most significant views.
41. From Mount Pleasant the most extensive views of the site would be from the upper footpath. In these views the proposed dwellings would be noticeable, but would be seen in the context of Longhill High School to the south of the site and Woodingdean. In the context of these views the proposal would be seen as a minor extension to the existing suburban development. Therefore, whilst the proposed dwellings would be noticeable, any harm would be very limited. In other views from Mount Pleasant it would be largely the eastern part of the site that would be visible. It is intended that this part of the site would be used for horse paddocks, consequently many of these views would not alter to a significant extent.
42. The proposed dwellings would be visible from The Vale. The views from the northern part of The Vale would be filtered by the existing trees on land known as The Paddocks. Further to the south of the Vale, where the screening is provided by hedgerows, the proposal would occupy the foreground, but would not obscure views of the SDNP. Many of these views would be of short duration as pedestrians pass the site.
43. Access to the site would be from Ovingdean Road. The proposed dwellings would be visible from the access, but they would be seen in the context of the suburban development on the opposite side of the road and to the north. The existing vegetation to this boundary would provide some limited screening.

The soft landscape proposals include additional planting between the proposed dwellings and Falmer Road. This would filter views of the proposed dwellings.

44. Due to the existing vegetation to the south, views of the site from Falmer Road are largely confined to the part of the footpath and carriageway adjacent to the boundary with the site. These views would be across the open paddocks towards the proposed dwellings which would occupy lower land.
45. Overall, most views of the proposal would be very localised, and although the scheme would alter the immediate setting of the site and its surroundings, it would not alter the character of the area overall. I therefore conclude that the proposal would not harm the landscape character and appearance of the surrounding area, or the setting of the SDNP. It would therefore not conflict with policy SA4 of the City Plan Part One which amongst other matters, seeks to protect the landscape role of the urban fringe and the setting of the SDNP.

Biodiversity and Ecology

46. Policy CP10 of the City Plan Part One requires development proposals to conserve existing biodiversity, and protect it from the negative indirect effects of development, including noise and light pollution; provide net gains for biodiversity wherever possible; and to contribute positively to ecosystem services, by minimising any negative impacts. It also states that the Council will set criteria-based policies against which development proposals affecting designated sites, protected species, and biodiversity in the wider environment will be judged. These policies will form part of the City Plan Part Two.
47. Policy QD18 of the Brighton and Hove Local Plan 2005 states that where a proposal could directly or indirectly affect a species of animal or plant, or its habitat protected under national legislation, European legislation or categorised as 'a declining breeder', 'endangered', 'extinct', 'rare' or 'vulnerable' in the British 'Red Data' books, measures will be required to avoid any harmful impact of a proposed development on such species and their habitats. It confirms that permission will not be granted for any development that would be liable to cause demonstrable harm to such species and their habitats.
48. The appeal site is not subject to any statutory or non-statutory nature conservation designations, but Sites of Nature Conservation Importance are located nearby. DPG states that the site meets the criteria for a Local Wildlife Site, and if it remains undeveloped is likely to be designated as such as part of the City Plan Part Two due to the Red Star Thistle (RST) population on the site. In support of this view DPG refers to correspondence with Council Officers and the County Ecologist in which it is stated that the site meets the criteria for designation. Whether the site is designated as a Local Wildlife Site will be a matter for the City Plan Part Two Examination, as will the criteria-based policies for the protection of such sites. Consequently, even if the site is designated as a Local Wildlife Site it does not necessarily follow that all development on the site would be unacceptable.
49. Section 40(1) of the Natural Environment and Rural Communities Act 2006, requires a public authority in exercising its functions to have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. The Secretary of State has published lists under section 41(1) of living organisms and types of habitat which, in the Secretary of State's opinion, are of principal importance for the purpose of conserving

diversity. It is common ground that a number of such entries have been identified within the application site, including the Hornet Robberfly and the RST.

50. As part of the proposals the appellant submitted a Draft Management Plan and a Red Star Thistle (RST) Mitigation Strategy. The Management Plan proposes that the grassland in the east of the appeal site would be retained, and the majority would continue to be grazed by horses at a stocking density equivalent to that which occurs at present.

Hornet Robberfly

51. The Hornet Robberfly is a 'species of principal importance for the purpose of conserving biodiversity' under section 41 (England) of the Natural Environment and Rural Communities Act (2006). The Brighton & Hove Local Biodiversity Action Plan (2012) (LBAP) identifies it as a species that has specialist needs and includes an action plan for it.
52. The LBAP notes that although there are no known records for the species outside of its core Racehill Valley habitat, it may occur in pony paddocks anywhere around the urban fringe of Brighton and Hove. The LBAP aims to strengthen the population by increasing the availability of suitable breeding sites across the City. It sets out a range of measures to achieve this, including the management and awareness of the needs of the species.
53. The Hornet Robberfly feeds on a range of insects including grasshoppers, beetles, and flies. Adults range over distances of 500m or more from their breeding sites. Pasture management, including overgrazing, can affect the success of the Hornet Robberfly which uses drying, undisturbed dung mounds for egg laying and perching. It is thought that the larvae of the dung beetle are an important source of food for the larvae and adult flies. Routine treatment of the livestock with persistent parasite treatments (ivermectin wormers) can restrict the dung beetle larvae.
54. The appeal site was visited 14 times between June 2014 and August 2016 as part of the invertebrate survey submitted by DPG. The Hornet Robberfly was recorded on two occasions in August 2014 and on one occasion in August 2016. In the latter case there was one adult on the site. Having regard to the number and timing of surveys, I do not consider that the submitted evidence indicates that the appeal site supports any significant population of the Hornet Robberfly.
55. I understand that the horses that currently graze the site are not treated with ivermectin wormers and this contributes to the suitability of the site for the Hornet Robberfly. However there is no certainty that the site would continue to be managed in the same manner in the future. The proposal seeks to retain grazing on the eastern part of the site and the Management Plan would take account of the requirements of the Hornet Robberfly, ensuring some horse dung is left within the pasture between early July and mid-September to coincide with emergence and egg-laying times of the Hornet Robberfly. The County Ecologist is satisfied that this would ensure that there is no loss of habitat continuity between the appeal site and nearby horse grazing pasture for this species.

56. Having regard to the Mitigation Strategy, including the proposed Management Plan, I am satisfied that the proposal would not have a significant effect on the Hornet Robberfly.

Red Star Thistle

57. The plant species on the site include the RST, a critically endangered species in the Vascular Plant Red Data List for Great Britain 2006. It is considered to be facing an extremely high risk of extinction in the wild.

58. The surveys submitted by the parties differ as to the distribution of the RST across the site, but it is agreed that the majority of it is found in patches to the west of the track that crosses the site. DPG disputed the distribution of the RST as shown on the appellant's survey. However, the appellant submitted evidence to show that the surveys submitted by, and on behalf of, DPG show the access track in the incorrect position. Once this is corrected the discrepancy between the various surveys is reduced. Moreover, both parties acknowledge that the distribution of RST varies over time. I therefore have no reason to doubt the distribution shown by either party.

59. The appellant acknowledges that as a consequence of the proposal almost 70% of the existing RST would be lost from the site. Whilst 27% would be retained within the horse-grazed pasture, a further 5% would be retained in the north-western corner of the site. The proposed development would therefore result in a reduced population of RST and a smaller area in which to disperse.

60. The submitted RST Mitigation Strategy and Management Plan for the site adopts a varied approach. It is proposed to preserve the RST on the site, both in situ and through transplanting young plants and seeds within the turfs to the eastern part of the site. In addition, it seeks to increase the number of sites that support RST thereby expanding the existing population of RST within the locality, as well as the collection and potential future sowing of seeds.

61. The heavy horse grazing that currently occurs at the site is essential to the maintenance of the RST, in that it exposes large areas of bare ground and provides the ideal conditions for the germination and establishment of the plants. The mitigation strategy proposes to continue horse grazing on the eastern part of the site at a similar density to that which occurs at present.

62. DPG is critical of the Mitigation Strategy for a number of reasons. It suggests that the concentration of the RST towards the western part the site is due to different site conditions, in particular the depth of the topsoil, which it considers could impact on the PH, drainage rates and other properties of the soil. For this reason it considers that the translocation of the RST to a part of the site where the soil is deeper is unlikely to be successful.

63. The soil survey on behalf of DPG did not indicate any difference in the type of soil or its PH. The essential differences were its depth and the amount of vegetation present. The reason why RST is less prolific on the western part of the site is unclear. However, it is not entirely absent from this part of the site which is less disturbed by comparison with the land adjacent to the track and the stables. Although the RST is rare within the UK, it is found in many other countries worldwide. In some locations it is considered to be a noxious weed. There is evidence that the RST depends on disturbed ground and lack of competition from other plants. Evidence submitted by the appellant indicates

that it can establish on most soil types provided it is not in shade. There is insufficient evidence to persuade me that the depth of the soil is the critical factor in the distribution of the RST.

64. The translocation of the RST to new sites outside of the appeal site would satisfy one of the aims of the LBAP, namely to establish new populations of the plant at sites where it is not currently present.
65. The appellant has provided examples of where translocation using turfs has been successful. These examples generally relate to species-rich grassland rather than one specific species. The DPG states that there are no precedents for translocation of single species turfs and no trials have been undertaken to establish whether it would be successful. DPG submitted a letter from the Collections Co-ordinator of the Millennium Seed Bank who states that they were unaware of any occasion when RST has been successfully translocated to any site. However, this does not indicate that translocation would be unsuccessful, but simply that the Collections Co-ordinator is unaware of any examples. Equally, there is no substantive evidence to indicate that translocation would be unsuccessful in the case of the RST.
66. It is common ground that the seeds are short lived and can only survive for about three years. I agree with DPG that the collection and storage of seed would be unlikely to provide adequate mitigation in itself. Nonetheless, it could be useful as part of the overall mitigation strategy and could also further the objectives of the LBAP in terms of improving the understanding of the importance and management needs of the plant.
67. Whilst the existing grazing patterns are clearly beneficial to the RST, there is no management plan in place to ensure that the existing pattern of grazing would persist. Should the existing grazing regime be relaxed this is likely to result in the loss of RST from the site. Moreover, future occupants of the site could choose to clear and re-seed it to provide improved grazing. Whilst there is no evidence to suggest that if the appeal scheme were dismissed there would be a change of occupant, or the manner in which the site is managed, but it remains a possibility at some point in the future.
68. The appeal scheme would preserve the RST on the site both in situ and through translocation. Accordingly, the Management Plan would help to ensure the presence of the RST on the site in the long-term. Taken together with the translocation of the RST to other sites, and the collection of seed, I consider that the mitigation proposals represent a positive response to the LBAP objectives in relation to the RST. Whilst it is likely that there would be a reduction in the population of the RST on the appeal site, given that smaller populations of this species are able to persist in the local area, and management through horse grazing would continue, I am satisfied that RST would continue to grow on the site should the appeal be allowed. Although the extent of the RST on the site would be reduced, the proposal would make a positive contribution to the long-term survival of the RST.

Grassland Habitat

69. It is common ground between the parties that the appeal site supports good botanical and invertebrate diversity. The Arbeco survey, submitted on behalf of DPG, categorises it as Priority Habitat Unimproved Lowland Meadow within National Vegetation Classification (NVC) type MG5b. This differs from the view

- of DPG at the time of the previous appeal where it maintained that the site comprised lowland calcareous grassland. DPG's previous objection was informed by a number of surveys and other information, including a survey by Mr Tony Spiers, a botanist.
70. The appellant does not dispute the results of the Arbeco survey but disagrees with the conclusions of the report. On behalf of the appellant Dr Simpson suggests that the grassland on the appeal site falls between various classifications, and that the true character of the grassland is disguised, at least in part, by overgrazing and/or nutrient enrichment.
71. He submits that the similarity coefficients within the Arbeco survey indicate a 'poor fit' and that several communities are more or less equally matched. The survey divided the site into 9 paddocks. Within these MG5b had a coefficient of between 42.6 and 50. Based on the goodness of fit ratios this would indicate a rating of either 'very poor' or 'poor'. The evidence suggests that with the exception of paddocks C3 and C4, all of the paddocks had grassland communities with a better fit, however, none of the grassland communities present had a coefficient greater than 52.9. Therefore all of the habitats on the appeal site would come within the 'poor' to 'very poor' goodness of fit ratio.
72. The submitted evidence has also been reviewed by the County Ecologist. She notes the dispute over the exact nature of the grassland but states that it is species-rich and shows good botanical and invertebrate interest. She advised that the Management Plan should provide for a suitable conservation grazing regime to restore the grassland to a Priority Habitat and maintain suitable conditions for the notable plant and invertebrate species on site.
73. The site has been extensively surveyed, both in the context of this appeal and the previous appeal, as well as the emerging City Plan Part Two. It is evident that there is no consensus as to the grassland type. The County Ecologist reviewed the submitted evidence, including the Arbeco Report, but did not identify the appeal site as falling within the MG5b classification. On the basis of the evidence submitted to the inquiry, I share the appellant's view that the site is a poor match for any specific vegetation type and is not Priority Habitat.
74. Whilst I note that the Sussex Biodiversity Records Centre has re-mapped the site to show lowland meadow, the weight to be afforded to this is limited in that the re-mapping was based on Ms Thompson's report for DPG.
75. Ms Thompson confirmed that the area with the greatest botanical interest is the eastern part of the site. This area would be undeveloped and the proposed mitigation strategy would maintain a range of habitats and conditions that would continue to support the species recorded on the site.
76. The site is not a Priority Habitat at the present time, the mitigation strategy would maintain the grassland which would continue to be grazed by horses, based on a conservation grazing regime. The strategy also includes the enhancement of an off-site area of grassland to compensate for the loss of the grassland in the west of the site.

Wildlife Corridor

77. Local residents consider the site to be part of a wildlife corridor. They state that birds and butterflies recorded on the site are also found at Beacon Hill Nature Reserve.
78. Surveys show that the site is used by foraging and commuting bats, particularly along the vegetated boundaries. These boundaries would be retained and a sensitive lighting scheme is proposed to avoid the illumination of these areas. In addition, a dark corridor is proposed along the southern boundary between the eastern edge of the off-site woodland and the eastern site boundary. The Biodiversity Construction Environmental Management Plan will include measures to avoid illumination of boundary hedgerows and vegetation during the construction phase.
79. Mitigation measures include a band of tree and shrub planting along the western edge of the pasture. This would provide a new potential commuting route through the site increasing connectivity between the playing fields to the south and areas to the north. Overall, whilst there would be some reduction in the extent of the foraging area on the site, the landscaping proposal would provide improved foraging areas and roosting opportunities would be provided by the proposed bat boxes. Therefore the proposal would be likely to have a beneficial effect on the use of the site as a commuting corridor by bats.
80. The site is used by badgers for foraging, particularly the rough grassland in the east of the site, with further signs of activity in localised areas of rough grassland and damper soil elsewhere in the site. The proposal would be likely to result in a reduction in foraging habitat within the immediate vicinity of the off-site outlier sett, although suitable foraging habitat would be retained in the east of the site, where the majority of the badger activity was recorded. Within the site, loss of grassland would be compensated to some extent through the incorporation of fruit and nut yielding species within the landscaping scheme. There is no substantive evidence to indicate that the proposal would have an adverse effect on the badger population in the general locality of the appeal site.
81. Evidence submitted by local residents indicates that the site is used by a variety of birds including swallows, swifts and house martins. The site provides some nesting potential and good foraging opportunities for birds. The proposal would result in the loss of areas of grassland. Balanced against this, the proposed tree and shrub planting would, in the long-term, increase nesting opportunities within the site for a range of bird species. Bird species associated with gardens would be likely to continue to use the site post-development, including the gardens and amenity area. The proposal would also provide additional nesting opportunities through the installation of bird boxes to attract house martin, swift, swallow and starling. Overall I consider that, subject to appropriate mitigation, the proposal would not have a significant effect on the local bird population.
82. Low populations of slow-worm and common lizard were recorded within the site. Suitable habitat for reptiles within the site is largely limited to the rough grassland around the edges of the pasture, narrow strips between paddocks, and rested areas within the paddocks.

83. The proposed development of the site would result in the loss of about 0.2ha of permanent suitable reptile habitat. This would be mitigated by increasing the width of the retained rough grassland habitat, and through management of the grassland around the new western and southern edges of the horse-grazed pasture in the east of the site. Rested areas of the retained horse-grazed pasture would continue to provide larger areas for temporary use by reptiles.
84. Mitigation measures include the creation of holes within the fences between proposed plots 7 to 12, and 25 to 30 where they abut the southern and western boundaries to provide dispersal routes for reptiles, including slow-worms, and would thereby maintain connectivity throughout the site. The proposal also includes the construction of hibernacula to provide places of shelter and protection from cats and reduce the risk of predation. Therefore, in the light of the proposed mitigation scheme the proposal would be unlikely to have a significant effect on reptiles on the site.
85. I appreciate that the appeal site may serve an important function as part of a wildlife corridor, and that the Framework seeks to minimise the effect of development on such features. Having regard to the submitted evidence and the proposed mitigation features, I consider that the proposal would not have an adverse effect on the wildlife corridor. However, these mitigation features and the enhancements proposed should be secured by an appropriate condition.
86. I have found above that the proposal would not have an adverse impact on the Hornet Robberfly or the use of the site as a wildlife corridor. However, there would be a loss of species-rich grassland and a reduction in the extent of the habitat available to the invertebrates recorded on the appeal site. There would also be a reduction in the extent of the RST on the appeal site. The mitigation strategy seeks to minimise the extent of these harms in accordance with policy CP10 and paragraph 118 of the Framework. The proposal would also provide benefits in terms of the translocation of the RST to other locations in pursuance of LBAP objectives and enhancement measures such as the provision of bird and bat boxes, and the landscape proposals. Notwithstanding the Mitigation Strategy and benefits of the proposal in terms of ecology and biodiversity, overall the proposal would give rise to some limited harm to biodiversity and ecology contrary to policy CP10 of the City Plan Part One and Local Plan policy QD18.

Five Year Housing Land Supply

87. Policy CP1 of the City Plan Part One aims to deliver at least 13,200 dwellings over the period from 2010-2030. This is equivalent to an annualised target of 660 dwellings per annum (dpa). Annual completions in the first four years of the plan period (2010 – 2014) were below this figure giving rise to a shortfall of 1,238 dwellings. At the time at which the plan was adopted the housing trajectory anticipated that annual completions would almost meet the annualised target from 2014 to 2019 (655 dpa) and would then exceed it for the five years through to 2024 (856 dpa). It was then expected that the delivery rate would fall to 712 dpa. This trajectory was endorsed by the City Plan Examining Inspector.
88. Although there was no shortfall relative to the trajectory at the time of adoption, there is a cumulative shortfall of 358 dwellings for the period 2014/15 to 2016/17. Based on the phased delivery shown in the City Plan,

- when the five year requirement is adjusted to take account of under-delivery and a 5% buffer is added, the five year requirement equates to 4,448 dwellings. The trajectory has been amended to require 863 dpa for the period 2017/18 up to 2026/27.
89. The appellant considers that the Council has a record of persistent under-delivery and therefore the buffer should be increased from 5% to 20%. The City Plan Inspector noted that a good rate of housing delivery was achieved between the mid-1990s through to 2007. She considered that the lower rate of housing delivery since then was largely related to poor market conditions, and did not consider that the Council had a record of persistent under-delivery. She concluded that a 5% buffer was appropriate.
90. Since her report was published in February 2016, there have been two further years of completions. There was a small surplus in 2015/16 and a substantial shortfall in 2016/17. At the present time there is a shortfall of 358 dwellings against the trajectory. Although the shortfall for 2016/17 is considerable, on the basis of the evidence submitted to the inquiry, I am not convinced that the under-delivery in 2016/17 is such that it tips the balance towards a record of persistent under-delivery. I therefore conclude that the appropriate buffer is 5%.
91. I turn now to the housing land supply. The appellant submitted a correction to the supply figures within the Strategic Housing Land Availability Assessment (SHLAA). This removed 30 dwellings from the supply. Although the Council did not present housing land supply evidence to the inquiry, it confirmed that it did not dispute this correction. Based on the amended figures within the SHLAA the Council is able to demonstrate a five year housing land supply, but the position is very marginal with a surplus of just 4 dwellings. The appellant disputes the delivery on Sackville Trading Estate and Toads Hole Valley.
92. Only limited information in relation to these sites was submitted to the inquiry, moreover the SHLAA only provides anticipated delivery rates for five year periods, rather than annual projections.
93. Sackville Trading Estate is expected to deliver 550 dwellings over the plan period, with 200 dwellings delivered in the first five years. The SHLAA states that the scheme is still at pre-application stage, however, there is no indication as to when an application is likely to be submitted, or when it is anticipated that the first homes on the site will be delivered. The businesses that currently occupy the site are still trading. The site comes within the Hove Station Area development boundary and whilst it is possible that some dwellings will be delivered within the remainder of the five year period, the 200 dwellings indicated would appear to be overly ambitious. A planning application would need to be submitted and approved, a s106 completed and the leases of the existing traders terminated. Footnote 11 of the Framework states that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing would be delivered on the site within five years, and in particular that development of the site is viable. It is evident that the site is not available now and on the basis of the limited information available I conclude that it should be excluded from the five year housing land supply.
94. Toads Hole Valley is a strategic allocation within the City Plan Part One. It is intended that it will be developed for a mixed use scheme comprising a

minimum of 700 residential units, B1 employment space, a new secondary school, a multi-use community facility and ancillary supporting uses and that it would be an exemplar of sustainable development. The SHLAA indicates that the site would deliver 769 dwellings over the plan period, including 149 dwellings between 2017-2022. Planning permission was granted in March 2017 for 69 flats, but no application has been submitted for the remainder of the site. The appellant accepts that the 69 dwellings with planning permission would be delivered within the five year period, but is critical of the remaining 80 which do not have planning permission.

95. No evidence was submitted to suggest that the site is not available, and given that it is a strategic allocation it offers a suitable location for development. I consider that in the light of the complexity of the scheme that it could take almost two years for the determination of any forthcoming planning application, including the reserved matters and any s106 required. No evidence has been submitted to suggest that the scheme would not be viable. On balance, based on the limited information available, I consider that the site could deliver the 149 dwellings indicated by the SHLAA, although this would be an ambitious target.
96. The SHLAA includes several UFA sites where planning applications have not yet been submitted. Whilst it is probable that some of these sites will make a contribution towards housing land supply over the plan period, since they have not been subject to detailed scrutiny either as part of the plan making process, or in the context of an application, I have reservations as to the number of dwellings they are likely to deliver in the remainder of the five year period.
97. Overall, I conclude that the Council is unable to demonstrate a 5 year supply of housing land. Due to the limited information available the precise extent of the shortfall is unclear, but on the basis of the submitted evidence I conclude that the shortfall would be at least 200 dwellings, but is probably greater. DPG suggests that if the housing land supply is assessed against the 'Liverpool' method, where the shortfall is distributed across the remaining years of the plan period, the Council would be able to demonstrate a five year housing land supply. The Council's approach to its housing trajectory was subject to examination, and is a blend of the Sedgefield and Liverpool methodologies. On the basis of the evidence submitted to the inquiry I see no justification to depart from the agreed trajectory.

Other Matters

UFA

98. The UFA indicates that about 1.4 hectares of the site could be developed and 45 dwellings could be provided on part of site 42. The line that defines the developable area essentially follows the track across the site. It excludes the school playing fields and the wooded area to the south west.
99. The proposed developed area extends marginally beyond the eastern boundary of the area identified within the UFA. However, the UFA is not a policy document; it was prepared to inform the site allocations within the emerging City Plan Part Two (Site Allocations and Development Management Policies). Nonetheless, as confirmed by policy CP10 of the City Plan Part One, it is a material consideration in relation to this appeal.

100. The 2015 UFA sought to advise whether the 2014 UFA sites as identified, and the specific potential development areas, were broadly correct, and whether the suggested density of development, and the potential mitigation measures which may be required to address potential landscape and ecological impacts would be appropriate.
101. The UFA is clear that proposals for the Study Areas should be informed by updated landscape and ecology inputs to inform design development, enabling the identification of impacts associated with specific schemes and the incorporation of appropriate mitigation proposals. Consequently the developable area boundary within the UFA aims to provide a broad indication of the area with development potential and does not delineate an inflexible boundary. Indeed, the developable area could decrease or increase dependent on the precise circumstances of an individual site and the nature of the proposal.
102. The majority of the proposed dwellings would be within the area of development indicated by the UFA. The dwellings in the southernmost corner of the appeal site would lie outside of this boundary, as would part of the dwellings near the access to the site. These would be screened by additional planting. Both would be separated from Falmer Road by a considerable distance, and would not have an unacceptable effect on the character of the area or surrounding landscape. Therefore the fact that some dwellings would extend beyond this boundary does not mean that the proposal is unacceptable in principle.
103. Figures submitted by DPG suggest that the appeal proposal would have a density of about 26.79 dpa. DPG is concerned that this is considerably higher than either the surrounding residential development, or the density suggested within the UFA (25dpa). Policy CP14 of the City Plan Part One requires residential development to be of a density that is appropriate to the character of the neighbourhood and states that it should be determined on a case by case basis. It states that in order to make full, efficient and sustainable use of the land available, new residential development is generally expected to achieve a minimum net density of 50 dwellings per hectare (dph). However, it recognises that lower densities may be necessary in order to reflect the positive characteristics of the neighbourhood in which it is located.
104. The very low density of the dwellings within The Vale is due to the wooded escarpment that forms the back gardens to these dwellings. The dwellings within The Vale have generous front gardens and wide plots. Although the other areas are also shown as very low density they do not appear to benefit from unusually large plot widths or gardens, and would seem to be typical of suburban/urban edge development. The proposed scheme would be consistent with these properties in terms of the form and size of dwellings proposed as well as the separation between them. Whilst the proposed gardens may be smaller than some within the locality, they would be larger than others. I consider that the layout and form of the proposed dwellings would be compatible with the character of the surrounding area. Therefore, although the density of the proposed scheme is marginally higher than that suggested by the UFA, it accords with the aim of policy CP14, in that it would be appropriate to the character of the neighbourhood and makes full, efficient and sustainable use of the land available.

105. I am aware that a planning appeal has recently been submitted in relation to the residential development of the adjoining site known as 'The Paddocks', which also forms part of Site 42. I am conscious of residents' concerns that should the appeal in relation to The Paddocks be allowed in addition to this appeal, the suggested density within the UFA for Site 42 would be exceeded to a greater extent. As explained above, I have found the appeal scheme to be acceptable in terms of its impact on the character and appearance of the surrounding area. The UFA seeks to provide broad guidance as to the scale of development acceptable, together with the constraints, on any given site, rather than provide an inflexible approach to the number of dwellings that an individual site could accommodate. Therefore the fact that an appeal has been submitted in respect of the development of an adjoining site does not alter my conclusions above.

Air Quality and other considerations

106. Councillor Miller considered that the increased traffic arising from the proposal would have an adverse effect on air quality within Rottingdean. He was critical of some of the assumptions and data used in the appellant's modelling.

107. The air quality assessment submitted by the appellant found that there would be a negligible increase in nitrogen dioxide concentrations (less than 0.5%) The modelling used a base date and traffic data provided by the Council. The assessment found the overall level of emissions would be lower than at the time of the 2013 base date. The Council's Air Quality Officer agrees with the results of the report and does not consider that the appeal scheme would lead to a deterioration in air quality. This matter was also considered at the time of the previous appeal, which was for a greater number of dwellings. The Inspector concluded that the proposed development would not be harmful to air quality.

108. Whilst I appreciate Councillor Miller's concerns in relation to air quality at Rottingdean High Street, no substantive evidence was submitted to indicate that the approach adopted by the Council's Air Quality Officer or the appellant is incorrect. I am therefore satisfied that the proposal would have a negligible effect on air quality within Rottingdean High Street.

109. It was suggested by Councillor Mears that the housing land supply figures relied upon by the appellant are not up-to-date and that there are a large number of dwellings within the planning pipeline, including a joint venture scheme for 1,000 homes. The figures relied upon by the appellant are based on the most recent SHLAA which was published in February 2018. and no alternative figures were submitted to the inquiry. Dwellings currently under construction would contribute to the housing completions for the current year, and the residual housing requirement would need to be adjusted to take account of any over or under-supply.

110. Residents suggest that the local GP surgeries do not have any additional capacity. I do not doubt that the existing surgeries are busy and under pressure. However, there is no evidence from the Health Authority to indicate that the appeal scheme would add unacceptably to the demands on health services in the area.

111. I am aware that Rottingdean Parish Council is in the process of preparing a Neighbourhood Plan. However, this is at a very early stage in the plan-making process and I am therefore unable to afford it any weight.
112. Councillor Butler was concerned that the supply of dwellings within Rottingdean had outstripped demand. She explained that the parish of Rottingdean had been subject to a 12% increase in dwellings, compared to 6% within Brighton and Hove as a whole. Moreover, only 158 dwellings were necessary to meet the housing needs of Rottingdean for the period up to 2030.
113. There is a considerable need for housing within Brighton and Hove as a whole. The housing requirement at policy CP1 of the City Plan Part One is a minimum figure, and only meets the need for about 44% of the Objectively Assessed Need for housing within Brighton and Hove. As noted by the City Plan Inspector, this is a very significant shortfall which has important implications for the social dimension of sustainable development. She also noted that the City is subject to significant constraints in finding land for new development. In these circumstances, whilst the need for additional housing within Rottingdean may not be as great as elsewhere in Brighton and Hove, there remains a considerable unmet need for housing overall, and the appeal proposal would make an important contribution towards this need.
114. Ovingdean Road provides a link with local bridleways and I understand that there are about 7 horse yards within the vicinity. The proposal would lead to an increase in traffic and there was concern that riders using Ovingdean Road would become more vulnerable in terms of road safety, particularly during the construction period. The Highway Authority is satisfied that subject to the proposed improvements the proposal would not have an adverse effect on highway safety, and I have no substantive evidence to the contrary.

Planning Obligations

115. The Community Infrastructure Levy (CIL) Regulation 122 provides that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms; is directly related to the development; and is fairly and reasonably related in scale and kind to the development. This is echoed in paragraph 204 of the Framework.
116. The proposal would add to the demand for school places in the area. The contribution towards primary education would be spent at the closest primary schools to the appeal site, namely, Saltdean Primary School, Our Lady of Lourdes RC Primary School, St Margaret's C E Primary School, Rudyard Kipling Primary School and/or Woodingdean Primary School. It would be used to fund additional places and maintain parental choice. The secondary education contribution would be used at Longhill School which is located adjacent to the site. Although there is sufficient capacity at present, the growth in the number of primary aged children would add to the demand for places in the near future. I am satisfied that this planning obligation would meet the statutory tests.
117. The Council's Open Space Standards require a range of open spaces within a 10 -15 minute walk of the site. The proposal provides for open space within the site which is situated a short distance from the SDNP. On the basis of the evidence submitted to the inquiry there does not appear to be a justification for

a financial contribution towards open space. The proposal would however add to the pressure on indoor and outdoor sports facilities. Therefore the contribution would be necessary to make the development acceptable in planning terms and would also be directly related to the development. On balance, I consider that it is fairly and reasonably related in scale and kind to the development. The management and maintenance plan for the horse paddocks is necessary in order to safeguard the biodiversity of the grazing land and the management and maintenance of the open space. I am therefore satisfied that this obligation as a whole would meet the tests within the Framework.

118. The Agreement includes a contribution of £45,000 towards an Artistic component. The Council explained that the contribution would be used to provide public art. I accept that in some circumstances financial contributions toward public art in accordance with policy CP7 may be appropriate. The appeal site is an urban fringe site, and much of the site would be retained for grazing. I do not consider that public art in this location is necessary to make the development acceptable. I am therefore unable to take this obligation into account.
119. The proposal would provide affordable housing in accordance with policy CP20 of the City Plan Part One which requires 40% of on-site affordable housing provision on sites of 15 or more dwellings. The tenure, size and mix of dwellings has been agreed with the Council. There is a clearly identified need for affordable housing within Brighton and Hove and the proposed dwellings would assist with meeting that need, including the need for wheelchair accessible housing. I am therefore satisfied that the proposal meets the relevant tests.
120. Policy CP9 encourages the use of sustainable transport. Policy TR4 of the Local Plan requires travel plans for developments that are likely to have significant transport implications, including where a travel plan would alleviate local traffic or air quality problems, associated with traffic generated by the proposed development. A Travel Plan would encourage the use of sustainable transport in accordance with policy CP9 and would help to ensure that the proposal would not add to existing traffic problems in the locality. I am therefore satisfied that the requirement for a Travel Plan would meet the tests within the Framework.
121. The obligation in relation to a Construction Training and Employment Strategy requires a financial contribution towards a local employment scheme and the submission of an employment strategy to encourage the employment of local construction workers and education and training opportunities in construction, including a commitment to use 20% local employment during the construction phase. Policy CP2 states that the Council will positively and proactively encourage sustainable economic growth through a number of measures. These include securing apprenticeships, training and job opportunities for local residents through the Brighton & Hove Local Employment Scheme and the linked requirement for contributions from developers from major development schemes towards training.
122. I acknowledge that the provision of training and employment opportunities would be consistent with policy CP2 of the City Plan Part One. It would also be directly related to the development and would contribute towards the social

dimension of sustainability. However, in order to comply with the statutory tests at Regulation 122, the contribution must be necessary to make the development acceptable in planning terms and I am not persuaded that this is the case. The delivery of housing is addressed by policy CP1 and this does not include a requirement for a financial contribution towards a local employment scheme, or the use of local labour. Whilst policy CP2 encourages such provision, it is not a requirement of that policy. Therefore, I am not convinced that this obligation complies with the tests at regulation 122 and I am unable to take it into account.

123. I am satisfied that a Walkways Agreement is necessary in order to provide pedestrian permeability through the site, and would comply with the relevant tests.

Overall Planning Balance

124. I have found above that the proposal would not harm the character and appearance of the surrounding landscape or the setting of the SDNP. It would however give rise to some harm to the ecology and biodiversity of the site, although having regard to the proposed mitigation strategies, the level of harm would be limited.

125. The proposal would deliver a number of benefits, in particular the delivery of affordable and market housing, together with wheelchair accessible housing. This would contribute to the social dimension of sustainability and would help to meet the needs of present and future generations for housing. This would be a significant benefit of the proposal, particularly in the light of the constraints on housing land within Brighton and Hove. The proposal would secure the future management of the site for the benefit of the RST and other species. It would provide enhanced habitats for some species through the landscape proposals and the provision of bat and bird boxes. In addition, for the reasons given above, the translocation of the RST to other locations would support the aims of the LBAP.

126. Having regard to the limited harm to biodiversity and ecology, and the considerable benefits of additional housing within an area where the supply of housing land is constrained, I find that the benefits of the proposal outweigh the limited harm. I therefore conclude that the proposal would comply with the development plan considered as a whole.

127. The Council is unable to demonstrate a five year supply of housing land and therefore paragraph 14 of the Framework is engaged. I conclude that the adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole and therefore planning permission should be granted.

Conditions

128. I have considered the suggested conditions in the light of discussions at the inquiry, the advice at paragraphs 203 and 206 of the Framework and the national Planning Practice Guidance (PPG). In some instances I have altered the wording in the interests of clarity or to avoid duplication.

129. Appearance is a reserved matter and therefore details need to be submitted for approval. A condition listing the approved plans is necessary in the interest of clarity. The Council considers a condition restricting the height of the

proposed dwellings to 10.2 metres is necessary to ensure that they are assimilated into their surroundings. It also suggests a further condition in relation to the existing and proposed ground levels of the dwellings. Whilst I appreciate the Council's desire to ensure that the proposed dwellings are compatible with their surroundings in terms of height, I consider that a condition in relation to any changes in level would provide greater accuracy and certainty in this matter, particularly given the sloping nature of the site. This needs to be a pre-commencement condition since it relates to the initial ground works. Therefore a condition restricting the height of the proposed dwellings is unnecessary.

130. Notwithstanding the previously submitted details, an Arboricultural Method Statement incorporating a Tree Protection Plan, and the provision of protective fencing, are necessary to safeguard the existing trees and hedges on and adjacent to the site in the interest of biodiversity and visual amenity. These need to be pre-commencement conditions in order to safeguard the trees and hedgerows on and adjacent to the appeal site.
131. As noted above, the soft landscaping proposals were subject to minor amendments following the close of the inquiry. The Council confirms that these amendments are acceptable, and therefore a condition requiring details of soft landscaping is not necessary. However, a condition requiring the implementation and maintenance of the soft landscape scheme is required in order to help assimilate the scheme into its environment. Details of hard landscaping, and boundary treatment, should be submitted for the same reason.
132. The provision of wheelchair accessible housing would be consistent with policies CP18 and CP19 of the City Plan Part One and HO13 of the Local Plan as well as the social dimension of sustainability. In order to comply with the level of affordable wheelchair housing sought by policy HO13 the proposed wheelchair adaptable units would need to be provided within the affordable housing provision. The submitted s106 agreement requires the provision of wheelchair accessible housing and therefore a condition is not required.
133. The Council seeks the removal of permitted development rights in relation to the proposed dwellings. It explained that this is to safeguard the occupants of nearby properties and the character of the area. The PPG advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. There is sufficient separation between the appeal site and neighbouring properties to avoid any harm to living conditions. I consider that there is some justification to limit permitted development rights in so far as they relate to roof alterations to the dwellings closest to the eastern boundary of the site since these would form the boundary of the urban area. I do not consider that exceptional circumstances exist to justify a similar restriction to the other dwellings within the scheme, or indeed to restrict development under Classes A, D or E in respect of these dwellings. Residents suggested that a similar condition had been imposed on a nearby development. I am unaware of the circumstances of that case, and for the reasons given above, it does not alter my conclusions in relation to this matter.
134. In the interests of biodiversity it is necessary to restrict clearance work during the bird breeding season. For the reasons given above, a Red Star

- Thistle Mitigation Strategy is necessary. Given the detailed nature of the mitigation measures required, I consider that this should be a separate condition. The Strategy should be submitted prior to the commencement of development in order to safeguard the biodiversity of the site.
135. I agree that measures to protect the ecological interests of the site during the construction period, including measures for the protection of reptiles, are required. However, these can be addressed as part of the Biodiversity Construction Environmental Management Plan. I have adjusted the suggested conditions accordingly.
136. For the reasons given above, a Habitat Mitigation and Enhancement Plan is necessary. I agree that levels of external illumination should be controlled in order to safeguard the ecological interest of the site and the SDNP which is a dark skies area. This matter would be addressed as part of the Habitat and Mitigation Enhancement Plan and therefore a separate condition is not necessary.
137. The Council suggests a Landscape and Ecological Management Plan is required. However, the matters it would address, namely the management of the open space and horse paddocks, would come within the scope of the Open Space Management planning obligation. Whilst I agree that these matters are essential to the successful delivery of the development, a further Management Plan in addition to that required by the planning obligation is unnecessary.
138. The appeal site is situated within an Archaeological Notification Area defining an area of prehistoric and Romano-British activity. Whilst the geophysical survey indicates the site does not contain remains of national importance, it identified a number of potential features of archaeological interest. Therefore in the light of the potential for loss of heritage assets, I agree that conditions requiring a programme of archaeological works, together with the appropriate analysis and dissemination of results to safeguard the archaeological and historic interest of the site are necessary. The former needs to be a pre-commencement condition in order to safeguard the archaeological interest of the site.
139. Refuse storage and recycling facilities are necessary to provide satisfactory facilities for future occupants. The proposed highway safety measures and improvements are necessary in the interests of highway and pedestrian safety. I have varied the condition to include an implementation programme, since many of the works are outside of the control of the appellant and may not justify a delay in the occupation of the dwellings. Local residents were concerned that the improvements to the bus stops, including the bus shelters, could encourage children to loiter in the area and were unnecessary due to the frequency of buses. Buses provide a sustainable means of transport and their use should be encouraged in accordance with policy CP9 of the City Plan Part One and national planning policy. The bus stops are situated close to the school, and it is likely that children already use these bus stops. Should the behaviour of children using the bus stops be a problem for nearby residents this could be resolved by other means. The potential for such behaviour does not justify the failure to make reasonable improvements to the bus stops which would benefit both students and the general public, including local residents.
140. The streets, footways and cycle routes should be completed in accordance with submitted details, and provided before the dwellings are occupied, in the

interest of highway safety. I agree that any hard surfaces used for the construction of roads, footpaths and driveways should not add to the risk of flooding. However, details of hard surfaces are required as part of the landscape details and therefore a separate condition is unnecessary.

141. I agree that the proposed parking spaces should be provided prior to the occupation of the dwellings in order to ensure that suitable facilities are available for residents. However, I have adjusted the wording to reflect the layout on the submitted plan. Bicycle storage facilities are necessary in order to encourage the use of sustainable transport. Details of foul and surface water drainage are necessary in order to ensure satisfactory living conditions for future residents and ensure that the development is safe from flooding.
142. I agree a condition precluding the installation of appliances for the burning of solid and liquid fuels within the proposed dwellings is necessary and would be consistent with policy CP8. Such appliances could contribute to ambient levels of particulate and nitrogen dioxide, and adversely affect air quality in the locality, including the Rottingdean Air Quality Management Area. Conditions are required to ensure that the proposal complies with policy CP8 of the City Plan Part One in terms of energy and water efficiency. For the same reason an Energy Strategy is required. Details of electric vehicle charging points should be submitted for approval, in the interests of environmental sustainability.
143. The site is considered to have an overall low, or very low, potential from remnant contamination. However, I understand that a previous report considered that further contaminated land investigation was required given the potential human receptors to contamination. I therefore agree that a condition requiring further investigations and any remedial work necessary is required in the interest of health and such investigations are required prior to the commencement of development.
144. I agree that a Construction Management Plan is necessary in order to safeguard the amenity of surrounding residents and to limit the effect of the proposal on the highway network and ensure that waste is managed appropriately.

Conclusion

145. For the reasons given above, I conclude that the appeal should be allowed.

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Liz Arnold	Principal Planning Officer
Hilary Woodward	Senior Solicitor

FOR THE APPELLANT:

Christopher Boyle QC
Instructed by Pegasus Planning

He called

Dr Daniel Simson	Aspect Ecology
James Atkin	Landscape Consultant Pegasus Planning Group
Daniel Weaver	Planning Consultant Pegasus Planning Group

FOR DEANS PRESERVATION GROUP :

John Richardson	Chairman Deans Preservation Group
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He called

Jacqueline Thompson	Arbeco Ecology
Charmaine Noel	Landvision Landscape Architects
James Wright	

INTERESTED PERSONS:

Councillor Joe Miller	Ward Councillor
Councillor Mary Mears	Ward Councillor
Councillor Heather Butler	Parish Councillor
Annie Gilbert	
Russell Smith	
Mark Richardson	
Tracie Parker	
Suzanna Ancell	
Mr Johnson	CPRE

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Extract from the Lowland Grassland Management Handbook submitted by the appellant
- 2 Extract from Entry Level Stewardship Handbook 2010 submitted by the appellant
- 3 Extract from Urban Fringe Assessment 2015 -Site 42 submitted by the appellant
- 4 Extract from Mavis User Manual submitted by DPG
- 5 Bundle of documents in relation to survey methodology submitted

- by DPG
- 6 Email dated 12 July 2017 from the County Ecologist submitted by DPG
- 7 Map showing the status of the Highway at The Vale submitted by DPG
- 8 Calculation summary in support of John Wright's Proof of Evidence submitted by DPG
- 9 Comparison of descriptive terms within the UFA 2015 in relation to number of dwellings submitted by DPG
- 10 South Downs Wildlife Improvement Area: Local Wildlife Sites Surveys 2012-2014 submitted by DPG
- 11 Extract from Methods of Environmental Impact Assessment submitted by the appellant
- 12 Submission on behalf of Annie Gilbert
- 13 Errata Sheet for James Wright Proof of Evidence
- 14 Plan showing extent of AONB submitted by the appellant
- 15 Email dated 20 October 2014 and attachments in relation to SDNP boundary submitted by DPG
- 16 James Wright Updated Proof of Evidence
- 17 Calculation Summary James Wright proof of Evidence
- 18 Email dated 20 March 2018 from Sussex Biodiversity Record Centre submitted by DPG
- 19 Note from DPG regarding Ms Noel's 2015 Landscape Assessment
- 20 Updated Housing Land Supply Tables submitted by the appellant
- 21 Appeal decision ref: APP/P2935/16/3158266 Land at Highthorn, Widdrington submitted by the appellant

Appeal Ref:APP/Q1445/W/17/3177606

Schedule of Conditions

- 1) Details of appearance, (hereinafter called "the reserved matter") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matter shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall commence not later than 2 years from the date of approval of the reserved matter.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan – Drawing No. BRS.4783_04-1 Revision B received 3 October 2016; Site Layout Plan – Drawing No. BRS.4783_20 Revision AG received 20 April 2017; Proposed Site Access – Drawing No. Figure 4.1 Received 30 September 2016; Soft Landscape Proposals 1 of 3 – Drawing No. BRS4783_64 Revision D received 1 May 2018; Soft Landscape Proposals 2 of 3 – Drawing No. BRS4783_65 Revision D received 1 May 2018; and Soft Landscape Proposals 3 of 3 – Drawing No. BRS4783_66 Revision D received 1 May 2018.
- 5) Details of the existing and proposed ground levels showing any changes to levels, finished ground slab levels, and cross sections to show the buildings adjoining the site, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 6) Prior to the commencement of development, an Arboricultural Method Statement shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. The Arboricultural Method Statement shall include the details of the specification and location of tree and hedgerow protection, shown on a Tree Protection Plan (TPP). The TPP shall also show root protection areas of all retained trees, and details of pruning or removal of trees and hedges both within and overhanging the site. The Arboricultural Method Statement shall provide details of any construction activities that may require works within the protected root areas, including service runs and soakaways. All works shall be carried out in strict accordance with the approved details.
- 7) Prior to the commencement of any works protective fencing in accordance with the approved Tree Protection Plan shall be erected on the site and shall be retained for the duration of the construction period.
- 8) A scheme for hard landscaping, together with a programme of implementation, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
 - a) Details of all hard surfacing; and

b) The positions, height, design, materials and type of all existing and proposed boundary treatments

All hard landscaping and means of enclosure shall be completed in accordance with the approved details and programme of implementation prior to first occupation of the development. The boundary treatments shall be provided in accordance with the approved details prior to first occupation of the development and shall thereafter be retained.

- 9) All planting, seeding or turfing comprised in the scheme of landscaping as set out in the landscaping plans listed in condition 4 shall be carried out in the first planting and seeding seasons following the first occupation of the dwellings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 10) Notwithstanding the provisions of Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no roof alterations or roof extensions shall be erected to the dwellings on plots 2,3,4,28,29,30,31,38,39 and 45.
- 11) No clearance or destruction of any vegetation or structure which may be used as a breeding site shall take place during the bird breeding season, (1 March to 31 August) unless otherwise previously agreed in writing with the Local Planning Authority.
- 12) No development shall take place including any demolition, ground works, or site clearance, until a Red Star Thistle Mitigation Strategy, in accordance with the principles within the Aspect Ecology Red Star Thistle Mitigation Strategy dated March 2017, shall be submitted to and approved in writing by the Local Planning Authority. The Strategy shall provide details of the translocation receptor sites, the long-term management and monitoring arrangements and proposals for remedial action should a decline in the Red Star Thistle population at the retained/translocated receptor areas be detected. The scheme shall be implemented in accordance with the mitigation strategy.
- 13) No development shall take place (including demolition, groundworks, vegetation clearance) until a Biodiversity Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority.

The CEMP (Biodiversity) shall include the following:

- a) Measures for the interim protection of the paddocks and informal open space, with a view to conserving the habitat of the Hornet Robberfly, the Cinnabar Moth and protection of reptiles;
- b) Identification of "biodiversity protection zones";
- c) Practical measures to avoid or reduce impacts during construction;
- d) The location and timing of sensitive works to avoid harm to biodiversity features;
- e) The times during construction when specialist ecologists need to be present on site to oversee and supervise works;

- f) Responsible persons and lines of communication;
- g) The role and responsibilities on site of an Ecological Clerk Of Works or similarly competent person; and
- h) Use of protective fences and exclusion barriers and warning signs;

The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period.

- 14) No development shall commence until a Habitat Mitigation and Enhancement Plan together with a programme for implementation has been submitted to and approved in writing by the Local Planning Authority. The Plan shall generally accord with the measures identified in Section 6.0 of the Aspect Ecology Ecological Appraisal dated September 2016. The approved Plan shall be implemented in full in accordance with the approved programme.
- 15) No development shall take place until a programme of archaeological work has been secured in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority.
- 16) The development hereby permitted shall not be brought into use until the archaeological site investigation and post-investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Archaeological Investigation and provision for analysis, publication and dissemination of results, and archive deposition, has been secured.
- 17) Details of the following highway works, together with a Stage 2 Road Safety Audit and an implementation programme, shall be submitted to and approved in writing by the Local Planning Authority. The works should be in accordance with the principles within the Transport Planning Associates Revised Transport Assessment dated March 2017:
 - a) The access to the site from Ovingdean Road, including the side road entry;
 - b) A vehicular crossover to serve Plot 1;
 - c) The removal of the redundant crossover on Ovingdean Road and reinstatement of the footpath;
 - d) A right turn lane with a pedestrian refuge at the junction of Falmer Road/Ovingdean Road;
 - e) Parking restrictions or measures to prevent parking on Falmer Road and the adjacent verge; and
 - f) Bus shelters, including Real Time Passenger Information signs and Kassell kerbs at the two bus stops on Ovingdean Road directly opposite the site, and the two bus stops closest to the site on Falmer Road.

The scheme shall be implemented in accordance with the approved details and agreed programme.

- 18) Details of the standards to which the streets, footways and cycle routes are to be constructed shall be submitted to and approved in writing by the Local Planning Authority. No dwelling hereby approved shall be

- occupied until the streets, footways and cycle routes have been constructed in accordance with the approved details.
- 19) The dwellings hereby approved shall not be occupied until refuse and recycling storage facilities have been installed to the side or rear of the dwellings and made available for use. These facilities shall thereafter be retained for use at all times.
 - 20) No dwelling shall be occupied until space has been laid out for that dwelling in accordance with drawing no: BRS.4783_20AG for cars to be parked. The parking spaces shall thereafter be kept available at all times for the parking of vehicles by the occupants of the dwellings and visitors.
 - 21) Details of secure cycle parking facilities for the occupants of and visitors to the development, together with a programme of implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved facilities shall be provided in accordance with the approved details and programme of implementation, and shall thereafter be retained.
 - 22) Details of the foul drainage scheme to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented in accordance with the approved details prior to the first occupation of the development.
 - 23) A detailed design and associated management and maintenance plan for surface water drainage works for the site using sustainable drainage methods shall be submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented in accordance with the approved details prior to the first occupation of the development.
 - 24) The development shall not include appliances for solid or liquid fuel burning, and any boilers within the development should be ultra-low NOx gas boilers, details of which are to be submitted to and approved in writing by the Local Planning Authority prior to installation.
 - 25) No dwellings shall be occupied unless it achieves a water efficiency standard using not more than 110 litres per person per day maximum indoor water consumption.
 - 26) Details shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the dwellings hereby permitted shall achieve energy efficiency standards of a minimum of 19% CO₂ improvement over Building Regulations Part L 2013. The scheme shall be implemented in accordance with the approved details.
 - 27) An Energy Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Strategy should include a renewables feasibility study and proposals to install renewable energy generation, a strategy for energy efficiency and a means to achieve the 19% carbon reduction target. The scheme shall be implemented in accordance with the approved details.
 - 28) Details of the number and location of electric vehicle charging points shall be submitted to and approved in writing by the Local Planning Authority. The charging points shall be provided prior to the occupation of the dwellings hereby permitted and shall thereafter be permanently retained.

- 29) Prior to the commencement of development a 'check' contamination analysis shall be undertaken to confirm a conceptual model and allow a generic quantitative risk assessment to be undertaken. If notified in writing by the Local Planning Authority that the results of the risk assessment are such that site remediation is required, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority.
- 30) If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the Local Planning Authority.
- 31) No development shall take place until a Construction Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for:
- i) The phases of the proposed development including the forecast completion dates;
 - ii) A commitment to apply to the Council for Prior Consent under the Control of Pollution Act 1974 and not commence development of until such consent has been obtained;
 - iii) Arrangements to liaise with local residents to ensure that residents are kept aware of site progress and to address any complaints;
 - iv) Measures to control the emission of noise, dust, and vibration;
 - v) Details of the hours of construction including all associated vehicular movements;
 - vi) Details of construction traffic routes which should only access the application site from the north and avoid the Rottingdean Air Quality Management Area; and
 - vii) A scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

