
Appeal Decision

Hearing held on 6 and 7 January 2016

Site visit made on 8 January 2016

by Peter Rose BA MRTPI DMS MCM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 March 2016

Appeal Ref: APP/Q1445/W/15/3130514

Land south of Ovingdean Road, Ovingdean, 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: BH2014/02589, dated 13 August 2014, was refused by notice dated 29 January 2015.
 - The development proposed is outline planning application for the construction of 100 no. 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.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is for outline planning permission, but with all reserved matters submitted for approval except for appearance.
 3. Whilst the originally submitted proposal referred to 100 dwellings, a revised scheme reduced the development to 85 dwellings, and with other alterations. That scheme was formally publicised by the Council as an amendment to the original submission and it forms the basis of the authority's decision.
 4. At the hearing, an agreement made under section 106 of the Town and Country Planning Act 1990 was submitted and has been signed and executed as a deed dated 7 January 2016.
 5. The latest versions of Policies SA4, SA5 and CP10 of the Brighton and Hove Submission City Plan Part One (the City Plan) Proposed Modifications October 2014 were tabled by the Council at the hearing. The appellant also presented revised drawings BRS.4783_45-D Sheets 1 and 2 (Soft Landscape Proposals) to which the Council raised no objection.
 6. In response to the Council's concerns, a number of modifications and updates have also been made since submission of the application to the appellant's original Environmental Statement. These particularly relate to ecology, to transport implications, and to matters of air quality.
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7. The appellant also submitted prior to the hearing a further Air Quality Assessment report dated December 2015.
8. At the hearing, reference was also made by the Council to the expected receipt of the Report on the Examination into the Brighton and Hove City Plan Part One (the Examination Report). This has since been received by the Council dated 5 February 2016. Both the main parties have had the opportunity to comment, and this is a matter to which I also have regard as part of my decision.
9. I consider the appeal on the above basis.

Main Issues

10. The main issues are:

(a) the effect of the proposed development upon the character and appearance of the appeal site and the surrounding area. More particularly, this issue concerns the scale of development proposed and the extent of site coverage as it relates to the setting of the South Downs National Park, to local landscape character, and in relation to possible over-development;

(b) the effect of the proposed development in relation to ecology;

(c) the effect of the proposed development in relation to air quality, and with particular regard to the Rottingdean Air Quality Management Area (the AQMA);

(d) whether the Council is able to demonstrate a five-year housing land supply, and:

(e) the related matter of whether, with reference to the National Planning Policy Framework (the Framework), the scheme would constitute sustainable development.

11. Whilst not constituting a reason for the Council's refusal of planning permission or subsequent objection, significant representations were made to the appeal by third parties in relation to whether the scheme would be harmful to local traffic conditions. Given the scale of that concern, I consider this matter as a further main issue.

Reasons

Character and appearance

Setting of the South Downs National Park

12. The appeal site comprises a field some 3.72 hectares in area occupied for the keeping and grazing of horses. The site is located on the north-east edge of Ovingdean, north of Rottingdean, south of Woodingdean. It is bounded to the west by an unadopted road, The Vale, which serves large dwellings with frontages facing towards the appeal site. To the south are playingfields, to the east is Falmer Road (the B2123). Access to the site is provided from Ovingdean Road. The immediately surrounding land use is a combination of housing to the north and west, and predominantly open land to the south and east. The open land beyond to the north and to the east forms part of a wider context of the South Downs National Park (the SDNP).

13. The site slopes from east to west and is a visible feature from both Ovingdean Road and Falmer Road. It is also visible from a range of publicly accessible areas around, including from higher land to the north-west, and is visible from other land to the east.
14. The site does not form part of the SDNP but is, nonetheless, adjacent to it. Whilst the Framework states that National Parks should enjoy the highest status of protection in relation to landscape and scenic beauty, little direct reference is made to setting. Nevertheless, the government's Planning Practice Guidance (the Guidance) advises that regard should be given to development proposals outside the National Park boundaries which might have an impact on the setting of the protected area.
15. I note that a number of surrounding settlements are enclosed by the wider boundaries of the SDNP, not only Ovingdean, and it appears not unusual for the edge of the SDNP to extend up to residential development.
16. Further, the scheme would include significant planted areas along its eastern, northern and western boundaries. Existing landscape elements and features, including trees and hedgerows, would be retained as integral components of the scheme and would be supplemented by further planting. The site is set at a low level relative to the surrounding higher levels of the SDNP and, whilst there would be inter-visibility between parts of the SDNP and the development, the scheme would be more widely viewed in the context of the existing settlements of Ovingdean and Woodingdean, and would reflect a similar relationship to the SDNP as existing elsewhere.
17. I am also conscious that the Brighton and Hove: Further Assessment of Urban Fringe Sites 2015 - Landscape and Ecological Assessments (the Fringe Assessment) identifies the appeal site as forming part of Urban Fringe Site 42. Site 42 has a total area of some 7.4 hectares, of which some 1.75 hectares is identified as having development potential for 45 dwellings.
18. Significantly, the development area of Site 42 includes the western portion of the appeal site. A similar recommendation was also set out in an earlier iteration of the Fringe Assessment dated June 2014 which found the site was not in a location that would appear uncharacteristic for housing development but identified key constraints as ecology and open space. The 2015 Fringe Assessment found there was no particular sensitivity associated with the physical character of the potential development area within Site 42.
19. Notwithstanding caveats in relation to ecology and open space, I consider these documents give significant endorsement to the principle of residential development within part of Site 42 and necessarily reflect its location relative to the SDNP.

Landscape character

20. The appeal site is a rural grassland, essentially open in character except for a number of small incidental structures, and forming part of a wider rolling historic downland setting which also contains some built form, including the adjacent settlement of Ovingdean.
21. The site comprises part of the South Downs National Character Area (Profile 125). This profile is defined at a high strategic level, and key characteristics

- include a broad elevated east-west chalk ridge, but inclusive of roads, villages and towns.
22. More locally, the South Downs Integrated Landscape Assessment (2005, updated 2011) identifies the nearby area of the Adur to Ouse Open Downs (Ref: A2), and refers to an abrupt boundary with the area to the south.
 23. More specifically, the Brighton and Hove Urban Characterisation Study January 2009 (the UCS) identifies the site as forming part of The Vale Character Area comprising very low density housing on the ridge of a valley slope and surrounded by mature planting which gives it a rural feel. The UCS also describes the predominant land use in Ovingdean as residential.
 24. The Framework states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. In this context, I note the evidence and representations of the Deans Preservation Group, and of other interested third parties. I am also mindful of the Minister of State for Housing and Planning's affirmation by letter dated 27 March 2015 of the importance of the impact of development upon landscapes outside designated areas. I have noted extensive public opposition to development from the local community, and I accept that 'valued' does not necessarily just equate to designated landscapes, and that most open land adjacent to residential areas may have a value to local residents. Nevertheless, I am not persuaded on the evidence before me that the appeal site itself has particular features or quality as a physical entity that would place it in the category of being a valued local landscape in the sense intended by the Framework.
 25. Although not physically abutting, I accept the site forms part of a context of wider open downland and extending along Happy Valley but, aside from the site's essentially open character, I do not find the appeal site has intrinsic landscape characteristics or features which would be lost to the development.

Over-development

26. The Fringe Assessment recommends development of 45 dwellings at a low density of some 25 dwellings per hectare. The proposed scheme would be of similar character, and would involve an average net density across the application site of some 23 dwellings per hectare, or some 35 dwellings excluding areas of public open space.
27. Whilst the scheme is larger than the north-west portion of Site 42 identified for development by the Fringe Assessment, the housing would sit within an enclosed landscaped setting.
28. I also find the eastern boundary of the development site identified in the Fringe Assessment, and beyond which the appeal proposal would extend, to be relatively arbitrary. The existing site does not contain natural landscape features or any particular grain which might readily define a logical eastern extent of development, and I have regard to the various findings set out in the appellant's Landscape and Visual Amenity Assessment (the LVAA).
29. Nevertheless, and notwithstanding the limited inherent landscape quality of the appeal site, its existing open form and character are significant features in contributing to a distinctiveness of the setting. In particular, the site presents strong open frontages to both the main eastern and northern boundaries with

views through, and is consistent with surrounding open land as identified by the various character assessments described. The appeal site adjoins open land to the south and east and is adjacent to, and is enclosed by, the nearby rolling downs of the SDNP.

30. The predominant pattern of land-use in the surrounding area is one of settlements and other buildings set within open countryside. It is a reasonably balanced pattern of land use within which built form, whilst present, has a generally secondary, subservient contribution to a predominant character of open land. The appeal site contributes significantly to that pattern through its open form and character and so contributes to a distinct open setting in this main approach to Ovingdean from the north-east.
31. The particular composition of the appeal proposal would change the character of the appeal site and, in turn, would change its contribution to the character of its wider setting. The eastern boundary of development defined by the Fringe Assessment may well be arbitrary, but it does serve to define a reasonable balance of land-use between built form and open land by sympathetically reflecting the surrounding sweep of open land to which the appeal site both contributes and draws similar character.
32. Whilst the scheme would include significant landscaping along the northern and eastern frontages to the site, the predominant character and appearance of the site would be of a residential development and relatively open views across the site would be lost. The extent and form of landscaping would appear as a feature incidental and secondary to the housing. Although I accept the site clearly has capacity to accommodate significant residential development to the west, I find that the particular extent of residential development proposed in this instance would introduce an unduly urbanised built form to the east at variance with, and at the expense of, the more open, rural distinctiveness of the site and its relationship to its surroundings. The scheme, by reason of its scale, would appear visually intrusive to the immediate setting and unduly dominant.
33. The overall planning character of the site would thereby change in a way harmful to its character and appearance. The scheme would read rather more as a large self-contained estate, rather than as a subordinate extension to an existing settlement retaining and respecting the distinct balanced character and appearance of the setting.
34. The evidence of the appellant's wider Screened Zone of Theoretical Visibility shows a relatively marginal additional exposure of the development beyond that anticipated by the residential development identified in the Fringe Assessment. Even so, the additional 40 dwellings proposed over and above that identified would materially change the immediate character and appearance of the appeal site from a more balanced, integral and sensitive response to the distinctiveness of the setting, to a visually discordant over-development.

Other implications for character and appearance

35. Although it is suggested that the site forms a green gap and land bridge 'crossover site' between Happy Valley and the SDNP, the site carries no such formal designation. The site faces housing on two sides and is enclosed by Ovingdean Road and Falmer Road. Given the location of the site, I also do not

see any implications of the development for coalescence between Ovingdean and Woodingdean, or for it to have any significant impact upon views south towards the coast.

Character and appearance: summary of impact

36. I therefore conclude that, with particular regard to the scale of development proposed and the extent of site coverage, the development would be harmful to the character and appearance of the appeal site and its surroundings through over-development and associated loss of local open landscape character. Whilst the setting of the National Park is a relevant aspect of the context which directly informs local character and appearance and provides a backdrop to the site, I do not find the scheme would be significantly harmful to the wider National Park itself. Accordingly, the scheme would not be contrary to Policy NC8 of the Brighton and Hove Local Plan (the Local Plan) or to Policy SA5 of the City Plan, but would be contrary to Policy SA4.
37. Policy NC8 of the Local Plan states that development will not be permitted within the setting of the South Downs AONB if it would be unduly prominent or would detract from views into or out of the AONB. Policy SA5 of the City Plan seeks to ensure that development within the setting of the SDNP should be consistent with the purposes of the National Park and that any adverse impacts must be minimised and appropriate mitigation included.
38. Policy SA4 of the City Plan states that development within the urban fringe will not be permitted except where it can be clearly demonstrated that the proposal has had regard to the downland landscape setting of the city and any adverse impacts of development are minimised and appropriately mitigated. I consider the adverse implications arising from the particular extent of built form proposed means the development would fall short of these requirements.
39. I have had careful regard to the appellant's LVAA, and particularly findings regarding assessment of the specific impacts upon the sensitivity of landscape character and likely magnitude of change. Nevertheless, I find the development would not be consistent with the expectations of the Framework for the reasons described. The Framework makes clear that it is proper for planning to seek to promote or reinforce local distinctiveness and identifies a core principle for planning to take account of the different roles and character of different areas.

Ecology

40. The site is not covered by any designations, statutory or non-statutory, for nature conservation interest, but sites of nature conservation importance are located nearby, and I note references made to the Brighton and Hove Local Biodiversity Action Plan.
41. The Council's concern is that it has been unable to address the likely impacts of the development, and the likely effectiveness of mitigation, due to an absence of information. Particular issues relate to the possible status of the site as Lowland Calcareous Grassland, implications for a number of plants including Red-Star thistle, Corky-fruited Water-dropwort, and Cut-leaved Selfheal, and impacts upon reptiles, and upon invertebrates including the Hornet Robberfly.
42. The Framework advises that the planning system should minimise impacts on biodiversity and provide net gains where possible. Planning policies should

- promote the preservation, restoration and re-creation of priority habitats and the protection and recovery of priority species. When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by refusing planning permission if significant harm from a development cannot be adequately mitigated, and by encouraging opportunities to incorporate biodiversity in and around developments.
43. I am also mindful of the duty upon a public authority under section 40(1) of the Natural Environment and Rural Communities Act 2006, 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.
 44. Further, I also have regard to the Secretary of State's 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 Lowland Calcareous Grassland and the Hornet Robberfly.
 45. The Council and interested third parties draw upon various evidence, particularly historical records, and highlight the generally rare occurrences of Red-Star thistle, of the Corky-fruited Water-dropwort, and of Cut-leaved and Hybrid Selfheal, and the noted presence of the Hornet Robberfly. Reference is also made to a number of species supportive of the site's disputed status as Lowland Calcareous Grassland. I also particularly note the evidence set out in the Biodiversity Case submitted by the Deans Preservation Group, including accompanying survey references.
 46. In response to the Council's concerns, the appellant has presented evidence drawing upon extensive site-specific survey work undertaken in 2014 and 2015. Broadly, the appellant's findings in 2015 appear to be consistent with those in 2014, and I note that aspects of the findings also have some similarity with other parties' survey evidence submitted.
 47. The appellant's evidence finds the site to be dominated by horse-grazed, semi-improved grassland of variable quality and species-richness. Whilst the site does have a calcareous character, the number of indicator species present was found to be low and considered by the appellant to be insufficient to identify the land as Priority Habitat Lowland Calcareous Grassland. The appellant concludes, on the basis of its recent surveys, that the site is more accurately characterised as semi-improved neutral grassland. I also note that the recent Fringe Assessment similarly identifies the site to be largely semi-improved, neutral grassland.
 48. In relation to notable plant species, the surveys identified the presence and distribution of Red-Star thistle, and of Cut-leaved Selfheal. I also note that, in relation to Corky-fruited Water-dropwort, the species has not been identified at the site in the appellant's survey work.
 49. The appellant's surveys identified the eastern side of the site to be moderately species-rich. This area accommodates the main concentrations of Cut-leaved Selfheal and much of the area would lie beyond the main areas of built form proposed. The main concentrations of Red-Star thistle would lie on the western side of the site, but largely within the same area for development as identified by the Fringe Assessment.

50. In relation to the Hornet Robberfly, the appellant's survey work does not support any significant populations of this or other protected, rare or notable species, although there is a recognised association of Hornet Robberfly with grazing animals and a previous recording is noted. A limited presence was identified of reptiles, and various other conclusions reached in relation birds, bats and other species.
51. Based upon the surveys, the appellant has proposed a range of mitigation and accompanying plans. These would include retention and improvement of all grassland outside the development footprint, and translocation of Red-Star thistle. The scheme is seen as an opportunity to improve and safeguard the long-term ecological value of the site through appropriate habitat enhancement and creation, and through an appropriate management plan. This would encompass enhanced habitat conditions for invertebrates and habitat manipulation for reptiles. Translocation would also be considered in relation to existing nearby land already within the appellant's control.
52. I have noted the concerns raised by the Council in relation to the mitigation proposed, including the absence of evidence of successful translocation of the Red Star thistle, and the suitability of other sites. Concerns are also raised towards transfer to existing host sites, but the fact that such sites may already contain species would still seem to suggest a likely degree of suitability. Should permission be granted, however, I consider that detailed aspects of all species treatment and management and of all associated arrangements and actions would need to be fully and satisfactorily addressed by way of suitably robust planning conditions, and these would need to be set within the specific terms of a wider, overall landscape and ecological management plan as proposed.
53. I note that the section 106 agreement also includes measures in Schedule 6 for the identification of biodiversity protection zones to safeguard the ecological value of the site during construction. The zones would include areas where Red-Star thistle would be retained, and reptile receptor areas.

Ecology: summary of impact

54. Notwithstanding other submissions, the specific, detailed evidence of the appellant's surveys supports a view that the site is of limited overall ecological value. It is also relevant to consider the significance of two related fallback positions as identified.
55. Firstly, reference has been made to the future of the identified species in a scenario of no development, and I have little evidence of the extent to which the existing overall ecological interest of the site will persist in the absence of proactive, sympathetic management as proposed to accompany the development.
56. Secondly, I find the appellant's up-to-date surveys raise doubt that the site can still be formally regarded as Priority Habitat Lowland Calcareous Grassland. Nevertheless, and in any event, whilst the Fringe Assessment identifies ecology as a constraint to future development of the appeal site, the document also indicates the suitability of the site for development of 45 dwellings. Notwithstanding the existing ecological value of the site and its disputed grassland status, the likelihood is therefore that the existing ecological

character of the site will be significantly impacted by some form of future development.

57. Whilst the appeal scheme would be accompanied by a significant reduction in the existing area of grassland, the development would have the benefit of an active programme of ecological improvement and management to elevate and secure the quality of the remaining habitat. The scheme proposes mitigation both to safeguard existing ecological features within the site, and to offer a managed long-term future for its ecological significance.
58. Overall, whilst the Council considers the ecological value of the site has been under-estimated and that impacts would be either harmful or remain to be established, I am satisfied that the site-specific evidence presented by the appellant is sufficiently detailed and up-to-date to enable a robust in-principle assessment to be made of the ecological value of the site and of the general implications of the development proposed.
59. I therefore conclude that, subject to full and further details of proposed mitigation consistent with such measures as indicated by the Fringe Assessment, the proposed development would not be harmful to the ecological significance of the site. Accordingly, the scheme would not be contrary to Policy QD17 or to Policy QD18 of the Local Plan, to Policy CP10 of the City Plan, or to the Council's Supplementary Planning Document 11 Nature Conservation and Development (SPD11).
60. Policy QD17 of the Local Plan states that development proposals affecting nature conservation features outside protected sites will be granted planning permission provided that conditions can be imposed to prevent damaging impacts or the impact is minimised. Policy QD18 requires regard to be given to protected species and for measures to be taken to avoid any harmful impact. Permission will not be granted liable to cause demonstrable harm to such species and their habitats. Policy CP10 makes similar commitments to promote biodiversity. SPD11 seeks, amongst other matters, to ensure key national principles of biodiversity and nature conservation are met locally.
61. I also find the scheme broadly consistent with the expectations of the Framework which seeks to avoid significant harm to biodiversity arising from development.

Air quality

62. The Framework advises that planning decisions should ensure that any new development in AQMA's is consistent with the local air quality action plan and, in this regard, I note references made to the Brighton and Hove City Council Air Quality Action Plan.
63. In refusing planning permission, the Council considered it was unable to fully assess the likely impacts upon air quality with regard to the Rottingdean AQMA which lies some 1.45 km to the south of the application site.
64. The Guidance advises that it is important that the potential impact of new development on air quality is taken into account where the national assessment indicates that relevant limits have been exceeded or are near the limit. Mitigation options, where necessary, will be locationally specific, will depend on the proposed development, and should be proportionate to the likely impact.

65. In response, the appellant submitted a further Air Quality Assessment report dated December 2015 and, following discussions with the Council, additional sensitivity testing was undertaken and with reference to the Environmental Protection UK and the Institute of Air Quality Management guidelines, Land-Use Planning & Development Control: Planning For Air Quality (the EPUK and IAQM Guidance). The results of that work show a negligible impact arising from the development with regard to absolute and relative changes in Nitrogen Dioxide concentrations within the AQMA as a consequence of the development. This assessment is accepted by the Council and, accordingly, the authority is now satisfied that the scheme would not be harmful to local air quality.
66. A range of concerns have been raised by third parties, however, including details relating to the methodology of the assessment, to underlying traffic data, and to the relevance of local physical characteristics, such as the local road pattern and attendant features, and these were identified at the hearing. The appellant's methodology has been broadly explained, and no objections are raised by the Council. The assessment follows national guidelines and the most up-to-date Defra toolkit, and reflects the cumulative effects of other development within Brighton and Hove City. The Council also accepts existing traffic data for Rottingdean High Street as a basis for the assessment, and data for additional daily trip generation into the AQMA. I have also had regard to recent decisions and actions relating to the UK's non-compliance with the Ambient Air Quality Directive 2008/50/EC.
67. The development would be accompanied by a range of mitigation, which would include various measures to promote sustainable transport and to reduce private vehicle trips. The section 106 agreement includes in Schedule 4 significant measures to promote sustainable transport in connection with occupation of the development, including financial contributions for purchases of bicycles, provision of temporary bus season tickets, promotion of a car club, and provision of general information relating to local public transport, walking and cycling. The section 106 agreement also includes a walkways agreement to safeguard public pedestrian access to and through the site. Should the development be acceptable, planning conditions may also be considered in relation to cycle parking and other matters.
68. A related issue has also been raised regarding the impact of construction traffic. Construction traffic is an inevitable consequence of most schemes and imposes particular short-term challenges as a necessary consequence of development. Although I do not find that the principle of such temporary impacts would in itself necessarily be sufficient reason to refuse outline planning permission in this instance, it is relevant to the sensitivities of the appeal site relative to the AQMA. Construction traffic would involve a materially different pattern of vehicle generation to that set out in the evidence submitted to date. The full implications are not before this appeal and would require wider assessment.
69. The section 106 agreement includes in Schedule 6 a requirement for a Construction Environmental Management Plan (the CEMP). The agreement would require the Council's written approval to the CEMP and its subsequent implementation during the construction period. The CEMP would include a plan showing construction traffic routes (point viii) and a requirement for practical measures (point xii) to mitigate impacts during construction. Further, I note the CEMP is not conceived through a planning condition but comprises part of a

planning obligation and should thereby be a particularly robust means to enforce such requirements, particularly where, as in the case of construction traffic, it may relate to matters beyond the immediate application site.

70. Whilst full details of construction traffic remain to be assessed, I am satisfied that, in principle, an agreed CEMP would provide an effective and reasonable means to suitably minimise its impact upon air quality for the temporary duration of the works should the development otherwise be found to be acceptable.

Air quality: summary of impact

71. I therefore conclude that the proposed development would not be harmful to air quality. Accordingly, the scheme would not be contrary to Policy SU9, or to the expectations of the Framework. Policy SU9 states, amongst other matters, that development liable to cause air pollution will only be permitted where human health and related matters are not put at risk, where it does not reduce the authority's ability to meet relevant air quality targets, and where it does not negatively impact upon the existing pollution situation. It also refers to development within an air quality management hotspot, although the appeal site actually lies outside the AQMA. I have also had regard to county guidance set out in the Air Quality and Emissions Mitigation Guidance for Sussex Authorities 2013 which seeks to ensure that the air quality in AQMA's is not worsened and which recommends that planning permission be refused if, after mitigation, high to very high air quality impacts remain.

Traffic

72. I note significant evidence of existing problems of traffic congestion on routes to and from the appeal site.
73. The application is accompanied by a full transport assessment as expected by the Framework. The scope of that assessment was agreed with the local highway authority, and I heard that subsequent stages and progress of the assessment have been submitted to and been broadly endorsed by the authority, and that the conclusions have been assessed by suitably qualified and experienced staff. The conclusions of the submitted expert evidence are that, subject to appropriate mitigation, the scheme should not give rise to a material impact upon the safety and operation of the local highway network. Such mitigation would be largely as already outlined.
74. A number of concerns have been directed towards the assessment by third parties, however, including the robustness of the modelling and data inputs. A number of specific features are also questioned, including treatment of peak hour periods, junction capacities, traffic speeds, survey details, the effectiveness of mitigation, and issues of topography. These, and other matters, were identified at the hearing and responded to by the appellant. The appellant generally explained how the assessment is based upon established, industry standard modelling techniques, including for trip assignment, and draws upon a number of software packages. Specialist traffic surveys have been undertaken, and allowances made for relevant committed developments within the authority area. The original assessment is also based upon a higher number of dwellings proposed, and has been informed by the local knowledge and expertise of the highway authority.

75. Whilst the highway authority does not accept all aspects of the modelling approach, the results are broadly as it expected and no objection to the development is raised on that basis.
76. I accept there will also always be limitations to such assessments and forecasts, but I am generally satisfied in overall terms that the submitted transport assessment is sufficiently thorough and fit-for purpose and that it adequately addresses the relevant matters set out in the Framework. Further, no comprehensive alternative, competing assessment is before me. I also acknowledge the existing traffic difficulties in the wider area, but my decision is not about wider consideration of such matters but about the specific marginal impact which the additional dwellings proposed may have in that regard.

Traffic: summary of impact

77. The Framework seeks to ensure safe and suitable access for all people, and advises that proposals for development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Given the scale of the scheme, and the detailed evidence and overall conclusions of the transport assessment, I find the likely impact would not be severe, and that the scheme would accord with this key test of the Framework.
78. I therefore conclude that the proposed development would not be harmful to local traffic conditions and would accord with the expectations of the Framework.

Five-year housing land supply

79. It was agreed common ground at the hearing that, in the absence of an up-to-date development plan, the Council was unable to demonstrate a five year housing land supply relative to a full objectively assessed need for 30,120 homes for the period of 2010-2030 as identified in the City Plan.
80. Nevertheless, the City Plan sets a housing requirement figure of 13,200 dwellings and the Council considers it can demonstrate a five-year supply of land to meet this target. The Council does not use conventional methodologies, but an alternative, trajectory-based approach to supply.
81. The Examination Report has since been received. The Report refers to the significant physical and environmental constraints facing the Council in finding land for new development. In all the circumstances, the Report finds the Council's trajectory to be an ambitious but realistic expectation of housing delivery and that it is an acceptable basis for the five year housing requirement. Whilst concluding that the Council can demonstrate a housing land supply of 5.0 years according to this methodology, the Examination found very little flexibility. Although the Inspector did not find this weakness to be sufficient to render the whole plan unsound, it is a matter to which the Report suggests very close consideration be given through the preparation of the City Plan Part Two.
82. The Report notes that the City Plan Part One, as proposed to be modified, seeks to meet only 44% of the objectively assessed need for housing and that this represents a very significant shortfall which has important implications for the social dimension of affordable housing. The target of 13,200 is expressed as a minimum offering scope for that number to be increased.

83. The Examination Report also states that the 2014 Urban Fringe Assessment provides a robust evidence base to guide the strategic level policy in the City Plan Part One, and notes the Council's intention to undertake a more detailed assessment of sites through the preparation of Part Two of the City Plan.

Section 106 agreement

84. Aside from those matters already discussed, the section 106 agreement makes various further commitments, including to affordable housing, to primary and secondary education, to local recreation facilities, to supporting local jobs, and to a work of public art.

85. The Council has provided evidence of compliance with the relevant statutory provisions set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 and this is not disputed. I have also had regard to the Framework, and to the relevant advice of both of the Guidance, and of the Planning Inspectorate's Procedural Guide Planning Appeals - England, published July 2015, and I find the deed to be generally fit-for-purpose.

86. Accordingly, I take the commitments set out in the section 106 agreement into account as considerations of my decision.

Other Matters

87. I have carefully considered all other matters raised, both at the hearing and in written submissions, including implications for tourism, public transport, local amenities, flooding and heritage. Beyond the mitigation set out in the section 106 agreement these are not identified as matters for objection by the local planning authority, and I have little reason to conclude otherwise.

88. Other planning decisions have been noted, and I have also had regard to references made to local opinion, to previous consultation exercises, and to pre-application discussions between the main parties. References have also been made to the history of designation of the SDNP and of its relevance to the appeal site.

89. I have noted that, whilst discussions are proceeding regarding a Neighbourhood Plan, no document has yet been published for formal public consideration.

90. The suggestion has also been made that a grant of planning permission would be premature in the absence of an adopted City Plan. Such a view would be contrary to the advice set in the Guidance and, further, the emerging status of the City Plan is, in any case, given due weight as part of my decision in accordance with paragraphs 215 and 216 of the Framework.

91. I have noted the scheme has been assessed as to involve Environmental Impact Assessment (EIA) development.

Sustainable development

92. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development.

93. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a

whole. At the heart of the Framework in paragraph 14 is a presumption in favour of sustainable development. The Framework further identifies economic, social and environmental dimensions to sustainable development.

94. The scheme would undoubtedly provide considerable housing benefits, and not just in terms of affordable housing, but also in terms of market provision, and such benefits would be consistent with the social dimension of sustainable development. The scheme would provide 85 dwellings addressing a range of housing needs. The scheme would also accord with Policy HO2 of the Local Plan which seeks to secure a 40% element of affordable housing. The contribution of the scheme is further underlined by the references to the City's outstanding housing needs made in the Examination Report.
95. The investment represented by the development would also be consistent with the economic dimension. The undisputed economic benefits would include investment in construction and related employment for its duration. The section 106 agreement includes in Schedule 5 a significant Construction Training and Employment Strategy which, amongst other matters, seeks to encourage employment of local workers during construction and demolition. This sets a target of at least 20% of job opportunities to be taken by the Brighton and Hove workforce. Benefits would also include an increase in local household spending and demand for services, and financial contributions to the Council through New Homes Bonus payments.
96. There is also no dispute between the main parties that the location is, in principle, one potentially benefitting from reasonably sustainable modes of transport as proposed.
97. In environmental terms, however, given the implications of the scale of development proposed for local character and appearance, I find that the scheme would be harmful for the reasons described. The Council considers some residential development of the site to be sustainable, and I agree, but not to the degree proposed by the appeal scheme which is substantially beyond the extent of built form reasonably acknowledged by the Fringe Assessment and with the accompanying harmful implications identified.

Sustainable development: summary

98. Notwithstanding the significant benefits of the scheme, I find the scale of the adverse impact upon local character and appearance would be such that, having regard to paragraphs 18 to 219 of the Framework as a whole, the proposed scheme would not constitute sustainable development. As well landscaped as the site might be, the scheme would not appear as a sensitive addition to Ovingdean, but as an incongruous intrusion of over-development at the expense of the existing distinct open character and appearance of both the appeal site and the surrounding area.

Summary

99. The Fringe Assessment responds directly to the Local Plan Inspector's concerns regarding housing need. The Council describes the document as a positive and robust assessment of the potential for urban fringe land to contribute to the City's housing requirements, and that would include part of the appeal site. The implications of the Fringe Assessment are that a substantial part of the appeal site is likely to be developed.

100. Nevertheless, for the reasons described, I consider that the significant extent of residential development proposed beyond that identified by the Fringe Assessment, a further 40 dwellings, would introduce an unduly urbanised built form to the site in contrast with the more open, rural distinctiveness of the setting. The excessive extent of the built form 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. The scheme, by reason of its extent, would not represent a sympathetic response to the site's otherwise predominantly open, countryside character and its relationship to Ovingdean at a significant approach to the settlement from the B2123.
101. Further, and in any event, the adverse impact of the scheme upon character and appearance arising from the extent of development proposed would significantly and demonstrably out-weigh the benefits, when assessed against the policies in the Framework taken as a whole, and with regard to the development plan as a whole.

Conclusion

102. Section 38(6) of the Planning and Compulsory Purchase Act, 2004, requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise.
103. Accordingly, having regard to the development plan and to the Framework as a whole, and with regard to all other material considerations and matters raised, the appeal is dismissed.

Peter Rose
INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|-----------------|------------------------------|
| Liz Arnold | Principal Planning Officer |
| Hilary Woodward | Senior Planning Solicitor |
| Sandra Rogers | Principal Planning Officer |
| Samuel Rouse | Environmental Health Officer |
| Virginia Pullan | County Landscape Architect |
| Dr Kate Cole | County Ecologist |

FOR THE APPELLANT:

Christopher Boyle
of Queen's Counsel-
instructed by Pegasus Planning

| | |
|----------------|-------------------------------|
| Daniel Weaver | Pegasus Planning |
| Andrew Cook | Pegasus Group |
| Dr Dan Simpson | Aspect Ecology |
| Laurence Caird | Air Quality Consultants |
| Anthony Jones | Transport Planning Associates |

OTHER INTERESTED PERSONS:

| | |
|---------------------------|---|
| Councillor Heather Butler | Chair of Parish Council Planning Sub-Committee |
| Councillor Mary Mears | Ward Councillor |
| Russell Smith | Chair of Ovingdean Residents and Preservation Society |
| James Wright | Deans Preservation Group |
| Sean Flanagan | Chairman for Safe Rottingdean |
| Kia Trainor | Campaign to Protect Rural England (Sussex branch) |
| Rob Shepherd | Local resident |
| John Parsons | Local resident |
| Suzanne Ancell | Local resident |

DOCUMENTS SUBMITTED TO THE HEARING:

BY THE LOCAL PLANNING AUTHORITY:

1. Hearing notification letters dated 18 August 2015 and 24 November 2015
2. Application notification letter dated 5 December 2014
3. Policy SU9 of the Local Plan
4. Policies SA4, SA5 and CP10 of the Brighton and Hove Submission City Plan Part One Proposed Modifications October 2014
5. Residential Monitoring 2014/15 - Key Statistics
6. LPA commentary on compliance of s106 with CIL Regulations 122 and 123

BY THE APPELLANT:

7. Layout drawing Ref: BRS.4783_20S dated 16 December 2015
8. Soft Landscape Proposals- drawings Ref: BRS.4783_45-D Sheets 1 and 2
9. Extracts from EPUK and IAQM Guidance, Planning for Air Quality
10. Updated modelling results for Tables 1-3 Air Quality Assessment: Rottingdean High Street December 2015
11. Tables setting out areas of disagreement on position of five year housing land supply for Brighton and Hove City Council
12. Brighton and Hove: Further Assessment of Urban Fringe Sites 2015 - Landscape and Ecological Assessments, LUC, December 2015
13. Screened Zone of Theoretical Visibility dated 23 December 2015
14. Site 42: Additional Land Ownership

JOINTLY BY THE LOCAL PLANNING AUTHORITY AND THE APPELLANT:

15. Section 106 agreement dated 7 January 2016

BY THIRD PARTIES:

16. Statements from Mr Flanagan- A) Questions, and B) Presentation of principles covering Air Quality
17. Letter from Mr Flanagan dated 6 January 2016
18. Statement by Deans Preservation Group

