



Homes
England

Horsham District Local Plan 2023-2040 Examination in Public

Matter 3 – Climate Change and Water

Hearing Statement

Date: November 2024



Issue 2 – Whether the approach to water neutrality and flooding is justified, effective, consistent with national policy and positively prepared?

Introduction

- 1.1 This statement has been prepared by Homes England in its capacity as landowner and promoter of West of Ifield, Horsham, identified as a strategic site HA2 in the Horsham Local Plan 2023-2040.
- 1.2 This statement supplements Homes England’s previous representations to the Horsham District Local Plan Regulation 19 consultation. Where relevant separate submissions will be made in relation to Homes England’s other land interests.

Q1 - Is Strategic Policy 9: Water Neutrality sound?

- 1.3 Strategic Policy 9 sets out the requirement that all development within the Sussex North Water Resource Zone will need to demonstrate water neutrality through water efficient design and offsetting of any net additional water use of the development. While this is accepted, the draft Local Plan should be clear that there is an agreed strategic plan¹ to address the issue of water neutrality and that over the Local Plan period every effort should be made to bring forward the strategic solution (and explore what more can be achieved) in a timely manner. In doing so, the Local Plan should also identify the trigger events that will necessitate a Local Plan review, which as well as assessing the impacts on housing delivery, could also review the expectations of Policy SP9 in terms of the need for onsite solutions.
- 1.4 Overall, the approach and principles of Policy 9 to secure water neutrality are fundamentally supported and recently accepted through the Secretary of State’s decision to the Kilnwood Vale Reserved Matters proposals (**Appendix 1**), and the recently adopted Crawley Borough Local Plan (2024-2040) (Inspector’s Report provided at **Appendix 2**).

¹ Doc CC16 Sussex North Offsetting Water Scheme (SNOWS) Project review – May 2024

- 1.5 Policy 9 requires new residential development to be designed to utilize no more than 85 litres of mains supplied water per person per day (l/p/d). This is an ambitious but reasonable and justified target for new residential development. The 85 l/p/d target has recently been accepted within the Crawley Borough Local Plan 2024-2040 with the Inspectors concluding that these standards have been properly tested as demonstrated within the Water Neutrality Study – Part C (CC11). Going beyond this figure may unnecessarily restrict the amenities of future occupiers and impair the viability of developments. Paragraph 255 of the Part C Study (CC11) notes that going further to 80 l/p/d would significantly increase per dwelling costs. We are, therefore, supportive of this aspect of the policy and are confident that Policy HA2 West of Ifield could meet this target.
- 1.6 Homes England would also strongly object to the assertions in some Regulation 19 representations that the West of Ifield site should be excluded from the strategic offsetting scheme. There is no justification for this approach, and it is correct that the policy as drafted is applied to all new residential development across the WRZ.
- 1.7 Notwithstanding this, and recognising the current position, Homes England objects to the current wording as a number of changes are required to Policy SP9 to ensure that it provides sufficient flexibility to allow the full range of site specific solutions to be identified to enable housing delivery in the short term.
- 1.8 The current drafting of Policy SP9 (6) states:
- “Where an alternative water supply is to be provided, the water neutrality statement will need to demonstrate that no water is utilised from sources that supply the Sussex North WRZ. The wider acceptability and certainty of delivery for alternative water supplies will be considered on a case-by-case basis.”*
- 1.9 This is considered to be overly restrictive and likely to impact on the effectiveness of the Local Plan as there may be limited circumstances where an alternative water supply may reduce the demand on the public water supply but not eliminate such a demand completely. For example, on strategic sites such as West of Ifield, there is unlikely to be a single solution to water neutrality, with a need for a package of measures to be applied to reduce demand, re-use water onsite, utilise alternative supplies and offset use. It may also be necessary to apply different solutions on a phase by phase basis.
- 1.10 One example would be where the alternative (groundwater) supply is of a quality that requires blending to achieve the drinking water standards set by the Drinking Water Inspectorate. While blending may be preferentially achieved using harvested

rainwater, it would be necessary to have a back-up supply from the public network for situations in which rainwater isn't sufficient (potentially in a dry summer). This arrangement would be necessary to maintain continuity of the alternative supply. Any water taken from the public supply for blending (or other purposes) would of course need to be mitigated through the purchase of SNOWS credits or must be otherwise offset. Having an outright prohibition on the use of any water from the public supply, in conjunction with an alternative water supply, would be overly restrictive and could prejudice otherwise suitable solutions that would beneficially reduce the demand in Sussex North WRZ. It is noted that the conditions within the Kilnwood Vale Secretary of State decision provided at **Appendix 1** do not include this restriction. Suggested alternative wording is as follows:

“Where an alternative water supply is to be provided, the water neutrality statement will need to demonstrate the reduction in demand or that no water is utilised from sources that supply the Sussex North WRZ. If a residual demand on the sources that supply the Sussex North WRZ is still required (for example, for blending groundwater to achieve drinking water standards) the water neutrality statement will need to state how this will be offset or mitigated. The wider acceptability and certainty of delivery for alternative water supplies will be considered on a case-by-case basis.”

- 1.11 On the basis of the above it is considered that proposed policy should be altered to be considered positively prepared and effective.

Appendix 1



Ministry of Housing,
Communities &
Local Government

Mr Peter Warren
Savills
Mountbatten House
1 Grosvenor Square
Southampton
SQ15 2BZ

Our ref: APP/Z3825/W/23/3333968

Your ref: DC/23/0856

25 October 2024

Dear Peter Warren,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY CREST NICHOLSON OPERATIONS LIMITED
KILNWOOD VALE SUB-PHASE 3DEFG, KILNWOOD VALE, CRAWLEY ROAD,
FAYGATE, HORSHAM, WEST SUSSEX, RH12 0DB
APPLICATION REF: DC/23/0856**

This decision was made by the Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Darren McCreery MA BA (Hons) MRTPI, who held a public local inquiry on 11-14 March 2024 and 18 March 2024 into your client's appeal against the failure of Horsham District Council to determine your client's application for reserved matters approval for layout, appearance, landscaping, and scale (in accordance with DC/15/2813) for Phase 3DEFG of the Kilnwood Vale development, comprising 280 dwellings with associated landscaping, access and parking, in accordance with application Ref. DC/23/0856, dated 28 April 2023.
2. On 8 April 2024, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the reserved matters should be approved.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. She has decided to approve the reserved matters. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing Communities & Local Government
Laura Webster, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Email: PCC@communities.gov.uk

Environmental Statement

5. An Environmental Statement (ES) was submitted with the outline application (DC/10/1612) under the Town and Country Planning (Environmental Impact Assessment) Regulations 1999, and an addendum to the ES was submitted in support of the S73 application (DC/15/2813) under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011(as amended). The Secretary of State is satisfied that the environmental information already before her is adequate to assess the significant effects of the development on the environment. In reaching her decision the Secretary of State has taken this information into consideration.

Matters arising since the close of the inquiry

6. A list of representations which have been received since the inquiry is at Annex A. The Secretary of State is satisfied that the issues raised do not affect her decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.
7. On 30 July 2024, the Written Ministerial Statement (WMS) 'Building the Homes we Need' (UIN HCWS48) was published. On that same date, the government launched a consultation to reform the National Planning Policy Framework (the Framework). The Secretary of State does not consider that publication of the WMS and the consultation on the existing Framework raise any matters that would require her to refer back to the parties for further representations prior to reaching her decision on this appeal, and she is satisfied that no interests have thereby been prejudiced.

Policy and statutory considerations

8. In reaching her decision, the Secretary of State has considered this proposal within the context of the Outline Planning Permission that these reserved matters are pursuant to.
9. In this case a hybrid planning application, including a masterplan for the site, was approved in 2011 (DC/10/1612) for "Outline approval for the development of approximately 2500 dwellings, new access from A264 and a secondary access from A264, neighbourhood centre, comprising retail, community building with library facility, public house, primary care centre and care home, main pumping station, land for primary school and nursery, land for employment uses, new rail station, energy centre and associated amenity space. Full planning permission for engineering operations associated with landfill remediation and associated infrastructure including pumping station. Full permission for the development of Phase 1 of 291 dwellings, internal roads, garages, driveways, 756 parking spaces, pathways, sub-station, flood attenuation ponds and associated amenity space. Full permission for the construction of a 3 to 6 metre high (above ground level) noise attenuation landform for approximately 700 metres, associated landscaping, pedestrian/cycleway and service provision (land known as Kilnwood Vale)". The permission was varied in 2016 by application reference DC/15/2813 for the "Variation of conditions 3, 4, 7, 8, 9, and 10 of hybrid planning application DC/10/1612 to enable the reconfiguration of the neighbourhood centre, community facilities and open space".
10. The Secretary of State has had regard to the relevant policies within the development plan. In this case the development plan consists of Horsham District Planning Framework (HDPF) (27 November 2015), Horsham District Council Site Specific Allocations of Land

(November 2007) and Horsham District and Crawley Borough Local Development Frameworks West of Bewbush Joint Area Action Plan (JAAP) (July 2009).

The Secretary of State considers that relevant development plan policies include those set out at IR5.5-IR5.14.

11. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance ('the Guidance'), as well as the matters set out in IR5.25-IR5.26.

Emerging plan

12. The Horsham District Local Plan 2023-2040 was published for consultation under regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 on 19 January 2024 and was formally submitted to the Planning Inspectorate on Friday 26 July 2024 after the close of the Inquiry. The Secretary of State notes the Inspector's comment at IR5.4 that the draft plan continues to rely on delivery at Kilnwood Vale as a source of housing supply.
13. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes that the Local Plan has been submitted for examination since the close of the Inquiry. The Inspector concludes at IR5.4 that the emerging Local Plan does not attract weight, however, having regard to the stage of preparation she considers that the emerging Local Plan should be given limited weight.

Main issues

Whether a Habitats Regulations compliant appropriate assessment can be concluded and, if so, on what basis.

14. The Secretary of State has taken into account the legal principles underpinning appropriate assessment summarised by the Inspector at IR10.3-IR10.10, the Inspector's conclusion in respect of Imperative Reasons of Overriding Public Benefit (IROPI) set out at IR10.11 and his consideration of proportionality in applying the precautionary principle set out at IR10.12-IR10.19 and agrees with the Inspector's approach.
15. For the reasons set out at IR10.20-IR10.90 the Secretary of State agrees with the Inspector's conclusions at IR10.85-IR10.90 that it cannot be ascertained (with reasonable certainty) that the proposal will not adversely affect the integrity of the Arun Valley Sites.
16. In relation to likely significant effects, she agrees that as the Water Supply Zone includes supplies from groundwater abstraction it cannot, with certainty, be concluded that there will be no adverse impact on the Arun Valley Sites for the reasons set out at IR10.24-IR10.27. For the reasons set out at IR10.28-IR10.32 she agrees that the concept of Water Neutrality is not of central relevance to the question of whether a favourable appropriate assessment can be concluded.
17. In relation to the effects on the site's nature conservation objectives, the Secretary of State agrees with the Inspector at IR10.37 that the qualifying interest affected by the issue in the NE Position Statement cannot be narrowed to the Lesser Ramshorn Whirlpool Snail, for the reasons set out at IR10.33-IR10.39.

18. The Secretary of State has considered matters arising in relation to reliance of other regulatory regimes (IR10.41-IR10.45); Southern Water Voluntary Minimisation and Environment Agency action following the Sustainability Review (IR10.46-IR10.57); The WRMP 2024 (IR10.58-IR10.69); Alternative Sources of Supply (IR10.70-IR10.75); and Demand Management Savings (IR10.76-IR10.84). For the reasons set out at IR10.40-IR10.91, she agrees with the Inspector's conclusions at IR10.85-IR10.91, and agrees that based on the Appellant's evidence of avoidance/mitigation it cannot be ascertained (with reasonable certainty) that the proposal will not adversely affect the integrity of the Arun Valley Sites (IR10.90).
19. In considering whether compliance with conditions or other restrictions enable it to be ascertained that the proposal would not adversely affect the integrity of the site, for the reasons set out at IR10.92-IR10.112 the Secretary of State agrees with the Inspector's proposed amendments to the Council's suggested Sussex North Offsetting Water Scheme (SNOWS) condition set out at IR10.111 and his conclusion at IR10.112 that compliance with conditions enables her to ascertain that the proposal would not adversely affect the integrity of the Arun Valley sites.
20. The Secretary of State agrees with the Inspector's conclusion at IR10.113 that subject to compliance with conditions, she is able to ascertain with reasonable certainty that the proposal would not adversely affect the integrity of the Arun Valley Sites. She further agrees that she is able to conclude a favourable appropriate assessment and discharge her duty under Regulation 63(5) of the Habitat Regulations. The Secretary of State adopts IR10.3-IR10.114 as the necessary Appropriate Assessment in her role as the Competent Authority on this matter.
21. Like the Inspector at IR10.114 in fulfilling her duty, the Secretary of State has had regard to the representations made by Natural England, as the appropriate nature conservation body for the purposes of Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017.

Whether the evidence otherwise indicates that the reserved matters should be approved

22. For the reasons set out at IR10.115, the Secretary of State agrees that the proposal accords with the parameter plans, the s.106 under the Outline Permission, and accords with the relevant policies identified in paragraph 10 of this decision letter.
23. For the reasons set out at IR 10.115-IR10.119, the Secretary of State agrees with the Inspector's conclusion at IR10.120 and agrees with the assessment of matters unrelated to habitat effects provided by the Council. She further agrees with the Inspector at IR10.127 that the benefits listed in the appellant's statement of case (housing, affordable housing, employment, economic benefits, provision of open space, remediation of landfill and biodiversity benefits), are collectively significant material considerations and she gives these benefits significant weight.

Planning conditions

24. The Secretary of State had regard to the Inspector's analysis at IR10.90-IR10.112 and IR11.1-IR11.4, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. She is satisfied that the conditions recommended by the Inspector, including Condition 6, comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of her decision.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the Outline Permission and the relevant policies of the HDPF and of the JAAP and is in accordance with the development plan as it relates to the reserved matters under consideration. She has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the relevant development plan policies.
26. Weighing in favour of the proposal are housing, affordable housing, employment, economic benefits, provision of open space, remediation of landfill and biodiversity benefits. The Secretary of State gives these benefits significant weight.
27. Overall, the Secretary of State considers that the accordance with the outline planning permission and relevant development plan policies, and the material considerations in this case indicate that the reserved matters should be approved.
28. The Secretary of State therefore concludes that the reserved matters should be approved subject to the conditions set out in Annex B.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows your client's appeal and approves the reserved matters subject to the conditions set out in Annex B of this decision letter for reserved matters approval for layout, appearance, landscaping, and scale (in accordance with DC/15/2813) for Phase 3DEFG of the Kilnwood Vale development, comprising 280 dwellings with associated landscaping, access and parking, in accordance with application Ref. DC/23/0856, dated 28 April 2023.
30. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than the approval of reserved matters subsequent to outline planning permission granted under section 57 of the TCPA 1990.

Right to challenge the decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.
32. A copy of this letter has been sent to Horsham District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully,

Laura Webster

Laura Webster
Decision officer

This decision was made by the Minister of State for Housing and Planning, Matthew Pennycook MP, on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

General representations

Party	Date
Kevin Curd	3 September 2024

Annex B List of conditions

1. The development hereby permitted shall be carried out in accordance with the approved plans listed in Appendix 1 of the Statement of Common Ground between Horsham District Council and Crest Nicholson Operations Limited dated 18 March 2024.
2. No development above ground floor-slab level shall commence until a schedule of materials, finishes and colours to be utilised for the external walls, windows and roofs of the approved buildings, has been submitted to and approved by the Local Planning Authority in writing. All materials to be utilised in the construction of the approved buildings shall, thereafter, conform to those approved.
3. No development shall commence above ground floor-slab level, until full details of underground services, including locations, dimensions and depths of all service facilities and required ground excavations, have been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out as per the approved details and coordinated with the approved Residential Landscape Masterplan (ref: 30125-5 DR-5000 S4-P12), Softworks Proposals (3015-5-DR-5001-P9, 3015-5-DR-5002-P9, 3015-5-DR-5003-P6, 3015-5-DR-5004-P6, 3015-5-DR-5005-P6, 3015-5-DR-5006-P10, 3015-5-DR-5007-P10, 3015-5-DR-5007-P10 and 3015-5-DR-5008-P9) and Preliminary Surface and Foul Water Drainage Strategy (refs: 2107120-002 G and 2107120-003 G).
4. No development shall commence above ground floor-slab level, until full details of any street-furniture to be installed, which can include any lighting columns, public cycle stands and bollards have been submitted to and approved by the Local Planning Authority in writing. The development shall be implemented in accordance with the approved details.
5. No development above ground floor slab level shall commence until full details of the water efficiency measures required to achieve a maximum of 91.4 l/p/d have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include the specification of all fixtures and fittings to be included in all dwellings, and a completed Part G calculator confirming the targeted water consumption is achieved.
 - i) No dwelling hereby permitted shall be occupied until the approved water efficiency measures to serve that dwelling have been installed and made available for use in accordance with approved details, with evidence of installation submitted to and approved in writing by the Local Planning Authority.
 - ii) The installed water efficiency measures, or any subsequent replacement of measures over the lifetime of the development, shall achieve equivalent or higher standards of water efficiency to those approved unless otherwise agreed in writing with the Local Planning Authority.
6. No dwelling hereby permitted shall be first occupied until written agreement from the Local Planning Authority has been provided that either:
 - i) A water neutrality mitigation scheme has been secured via Horsham District Council's adopted Offsetting Scheme (in line with the recommendations of

the Sussex North Water Neutrality Study: Part C – Mitigation Strategy, Final Report, December 2022). OR

- ii) A site-specific water neutrality mitigation scheme has been (a) agreed in writing with the Local Planning Authority as being equivalent to Horsham District Council's adopted Offsetting Scheme AND (b) implemented in full.

7. All approved soft/ hard landscaping and boundary treatments within the curtilage of an approved building shall be implemented prior to the first occupation of that dwelling, in accordance with the approved soft/hard landscaping drawings, unless alternative hard and soft landscaping details and/or boundary treatments are submitted to and been approved in writing by the Local Planning Authority prior to the commencement of development above ground-floor slab level.
8. All soft landscaping outside of the curtilage of an approved dwelling shall be carried out in the first planting and seeding season, following the first occupation of the relevant buildings or the completion of the development, whichever is the sooner. Any trees or plants detailed on the approved landscaping strategy which die, are removed, become seriously damaged or diseased, within a period of five years following the completion of the development shall be replaced with new planting of a similar size and species.
9. Prior to the first occupation of any part of the development, a landscape management responsibilities plan (delineating areas of ownership and maintenance responsibility) for all communal landscape areas shall be submitted to and approved in writing by the Local Planning Authority. The landscape areas shall be managed and maintained in accordance with the approved details.
10. No dwelling hereby permitted shall be occupied until secure covered cycle parking facilities to serve that dwelling have been constructed and made available for use in accordance with approved drawings. The cycle parking facilities shall thereafter be retained as such for their designated use.
11. No dwelling hereby permitted shall be occupied until the car parking spaces serving the respective dwellings have been constructed and made available for use in perpetuity. All unallocated (visitor) parking spaces shall be completed and made available for use prior to the completion of the development and shall, thereafter, remain available only for use as visitor parking.
12. No part of the development shall be occupied until details of the proposed solar PV apparatus, including locations and amounts, have been submitted to and approved in writing by the Local Planning Authority. The equipment shall, be installed prior to the first occupation of each respective dwelling in accordance with the approved details.
13. No dwelling shall be first occupied until secure covered provision for the storage of refuse and recycling has been made for that dwelling in accordance with the submitted plans. The refuse and facilities shall thereafter be retained for use at all times.
14. No dwelling shall be first occupied until confirmation has been provided to the Local Planning Authority that either:- 1. All foul water network upgrades required to accommodate the additional flows from the development have been completed; or- 2. A development and infrastructure phasing plan has been agreed with the Local Authority in consultation with Thames Water to allow development to be occupied. Where a

development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

15. No dwelling shall be first occupied until details showing the location of fire hydrants and method of installation and maintenance in perpetuity have been submitted to and approved in writing by the Local Planning Authority, in consultation with West Sussex County Council's Fire and Rescue Service. The development shall be carried out in accordance with the approved details and retained as such, unless a variation is agreed with the Local Planning Authority.
16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking, amending and/or re-enacting that Order), no roof extensions falling within Class B, Part 1, Schedule 2 of the Order shall be erected, constructed and/or installed to any dwelling hereby approved without express planning permission from the Local Planning Authority first being obtained.
17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking, amending and/or re-enacting that Order), all garages hereby permitted shall be used only as private domestic garages for the parking of vehicles incidental to the use of the properties as dwellings and for no other purpose.



Report to the Secretary of State for Housing, Communities and Local Government

by Darren McCreery MA BA (Hons) MRTPI

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

Date 30 July 2024

TOWN AND COUNTRY PLANNING ACT

Horsham District Council

APPEAL BY

Crest Nicholson Operations Limited

Inquiry opened on 11 March 2024

Kilnwood Vale Sub-Phase 3DEFG, Kilnwood Vale, Crawley Road, Faygate, Horsham, West Sussex,
RH12 0DB

File Ref: APP/Z3825/W/23/3333968

Contents

	Page
1.0 Preliminary matters	3
2.0 The site and planning history	4
3.0 The proposal	5
4.0 Agreed matters and extent of dispute	6
5.0 Planning policy and guidance	7
6.0 Background to water neutrality and legal principles	10
7.0 The case for the Appellant (Crest Nicholson Operations Limited)	12
8.0 The case for the Council	26
9.0 Written representations	39
10.0 Inspector's assessment	44
11.0 Conditions	68
12.0 Recommendation	68
Annex 1: Appearances	69
Annex 2: Core Documents	70
Annex 3: Inquiry documents	76
Annex 4: Recommended conditions	77

Abbreviations

1990 Act	Town and Country Planning Act 1990 (as amended)
LLFA	Lead Local Flood Authority
The Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HDPF	Horsham District Planning Framework (2015)
HRA	Habitats Regulations Assessment
JAAP	West of Bewbush Joint Area Action Plan (2009)
l/p/d	Litres per person per day
ml/d	Millions of litres per day
NE Advice Note	Natural England's Advice Note dated February 2022
NE Position Statement	Natural England's Position Statement dated September 2021
The Outline Permission	Permission reference DC/10/1612, as varied by DC/15/2813
SAC	Special Areas of Conservation
SOCG	Statement of Common Ground
SPA	Special Protection Areas
SSSI	Sites of Special Scientific Interest
WSZ	Southern Water's Sussex North Water Resource/ Supply Zones
WRMP	Southern Water's Water Resource Management Plan

File Ref: APP/Z3825/W/23/3333968

Kilnwood Vale Sub-Phase 3DEFG, Kilnwood Vale, Crawley Road, Faygate, Horsham, West Sussex, RH12 0DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for reserved matters attached to an outline planning permission.
- The appeal is made by Crest Nicholson Operations Limited against Horsham District Council.
- The application Ref DC/23/0856, dated 28 April 2023, sought approval pursuant to condition No 5 of permission Ref DC/15/2813 granted on 28 April 2016 (related to original outline planning permission Ref DC/10/1612 granted on 17 October 2011).
- The development proposed is reserved matters approval sought for layout, appearance, landscaping, and scale (in accordance with DC/15/2813) for Phase 3DEFG of the Kilnwood Vale development, comprising 280 dwellings with associated landscaping, access and parking.

Summary of recommendation: the reserved matters should be APPROVED.

1 Preliminary matters

- 1.1 I held a case management conference virtually on 30 January 2024 with the Appellant and the Council. No other party joined the conference. An agreed note was published shortly after¹ which at paragraph 3.1.1 included what the parties felt was the main issue of the appeal, which has not changed, namely:
- 'The effect of the proposed development on the integrity of the Arun Valley Special Conservation Area, Special Protection Area and Ramsar sites, with particular reference to water abstraction.'*
- 1.2 The inquiry webpage² includes the Core Documents [prefix **CD**], agreed between the parties ahead of opening, and Inquiry Documents [prefix **ID**] added after opening. The list of documents is at Annex 2 and Annex 3 and I use the referencing throughout (i.e. [**CDXX**] or [**IDXX**]).
- 1.3 With the agreement of the Appellant, the description of development has been amended from what was on the application form to remove reference to access. This reflects the position that access was approved as part of earlier consents and corrects what appears to be an error in the interests of clarity. [**ID12**] explains the position.
- 1.4 The Inquiry opened on 11 March 2024 and sat in person for 4 days, before adjourning. We resumed virtually on 18 March 2024 to hear closing submissions and closed the same day. I carried out an unaccompanied site visit on 14 March 2024. Other than the Appellant and the Council, no party gave oral evidence during the Inquiry. No applications for costs were made.

¹ <https://docs.google.com/document/d/1sJSJgW2T2KHb69bhM3XSXWqYAiVCNdvw/edit>

² <https://drive.google.com/drive/folders/1zhZRfzTYH0MgSjv2mkThvgWKibRmBx0t?usp=sharing>

- 1.5 The Statement of Common Ground (SOCG) between the Appellant and the Council was signed on 18 March 2024 [ID11]. It was updated prior to the close of the Inquiry to reflect an agreed position on drainage and conditions.
- 1.6 On 28 March 2024, following the close of the Inquiry, I wrote to Natural England. The need to do so was agreed by all parties at the Inquiry in light of the relevant legal duties³. Natural England's response dated 19 April 2024 [ID13] is summarised in section 9 of this report. The Appellant's comments on the Natural England response are dated 3 May 2024 [ID14].
- 1.7 By notification dated 8 April 2024, the direction under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 (1990 Act) recovers the appeal for the Secretary of State's own determination. The reason given is that the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

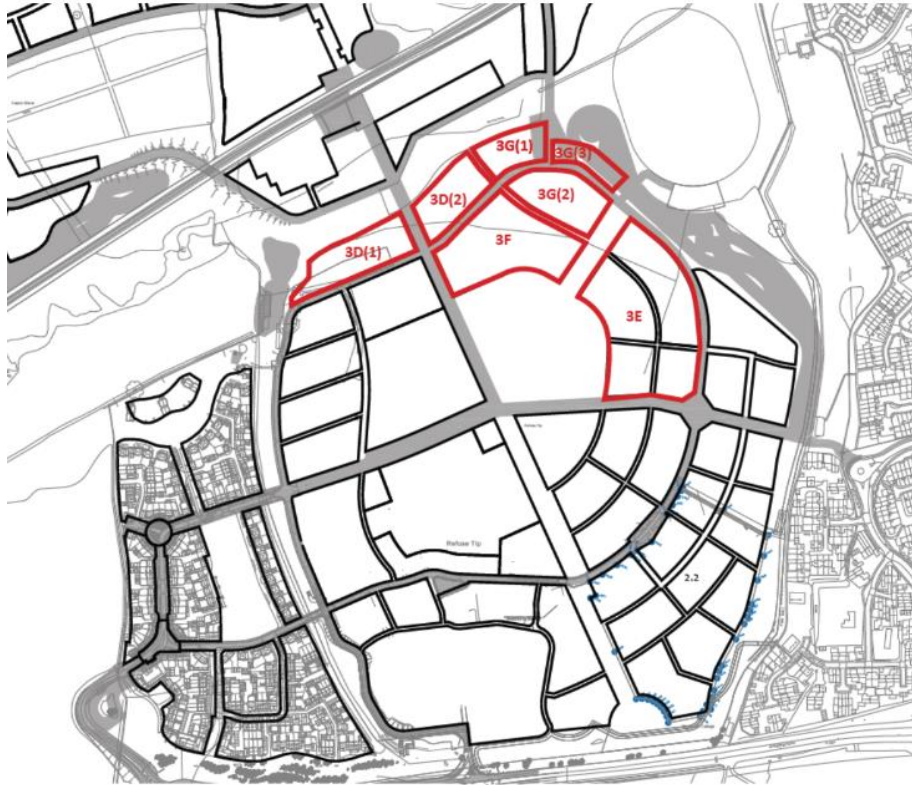
2 The site and planning history

- 2.1 The site, surroundings, and detailed planning history are at sections 2 and 3 of the SOCG [ID11]. In summary, Kilnwood Vale is a strategic development located on the western edge of Crawley to the north of the A264, west of Bewbush and east of Faygate. It is identified in the West of Bewbush Joint Area Action Plan (2009)⁴ (JAAP) to create a new neighbourhood of around 2500 homes with associated social, environmental, and transport infrastructure. It was subsequently taken forward in the Horsham District Planning Framework (HDPF), adopted in 2015 [CD4 1.01].
- 2.2 A hybrid planning application, including a masterplan for the site, was approved in 2011 (DC/10/1612) and varied in 2016 (DC/15/2813), resulting in an amended parameter plan. I refer to these consent's collectively as the Outline Permission. Of the four parts in the Outline Permission, Parts C and D are complete (which included 291 homes). For Parts A and B, 1318 homes have detailed consent and are either occupied/complete or under construction. This sits alongside infrastructure investment, including a new primary school which opened in 2019.
- 2.3 Sub phase 3DEFG, the subject of this appeal, is located towards the eastern section of Kilnwood Vale. It sits within the wider development context described above and within Part A of the Outline Permission. It includes an area of land identified for a leisure park (secured separately through S106 agreement attached to the Outline Permission) and is to the northeast of the new primary school.

³ Regulation 63(3), The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations)

⁴ https://www.horsham.gov.uk/__data/assets/pdf_file/0010/69526/West-of-Bewbush-Joint-Area-Action-Plan.pdf

- 2.4 The drawing below is from the Council's Statement of Case [**CD7 1.02a**]. It shows the site in context. Sub phase 3DEFG can be seen in red alongside the wider strategic site in bold black. The A264 is in the bottom right corner and the railway line is towards the top. On the right of the drawing is the residential area of Bewbush, which is at the edge of Crawley.



3 The proposal

- 3.1 The application is for reserved matters approval, described as:

'Reserved matters approval sought for Layout, Appearance, Landscaping, and Scale (in accordance with DC/15/2813) for Phase 3 D, E, F and G of the Kilwood Vale development, comprising 280 dwellings with associated landscaping, access and parking'.

- 3.2 Section 5 of the Appellant's Statement of Case [**CD7 1.01**] sets out the appeal proposals in detail. Condition 3 of the Outline Permission (specifically DC/15/2813) requires the reserved matters to be in substantial compliance with the parameter plans specified in the condition. Namely the:
- Land use plan
 - Residential density plan
 - Buildings height plan
 - Pedestrian and cycle movement plan

- e. Vehicular movement plan
 - f. Landscape and open space plan
- 3.3 The parameter plans can be seen at Appendix 2 of the Council's Statement of Case [**CD7 1.02a**].
- 3.4 There is a Section 106 agreement governing the wider development that was not before the Inquiry. Section 5 of the Appellant's Statement of Case [**CD7 1.01**] explains how the proposal is said to accord with both the Section 106 agreement and the parameter plans.
- 3.5 The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (1990 Act) as the Council did not give notice of their decision on the application within the prescribed period.

4 Agreed matters and extent of dispute

- 4.1 The SOCG [**ID11**] agrees between the Appellant and the Council that:
- a. the information before the Council was sufficient to enable each of the reserved matters to be determined, in accordance with validation requirements and the relevant conditions of the Outline Permission.
 - b. the reserved matters are in substantial accordance with the parameter plans agreed in the Outline Permission (as required by condition 3 of DC/15/2813).
 - c. the other matters agreed as being material to the reserved matters detailed at paragraphs 6.11-6.26 of the SOCG are acceptable.
 - d. the issue of drainage capacity that led to a holding objection from the Lead Local Flood Authority (LLFA) has been addressed.
- 4.2 The extent of dispute is on a single matter relating to water neutrality. It is set out at paragraph 7.1 of the SOCG:

'Whether a further condition is necessary to restrict development to ensure compliance with Regulations 63(5) and 70(3) of the Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations) and, if so, whether it is necessary for the condition to restrict development until such time that access into the Council's Water Offsetting Scheme (SNOWS) has been secured'.

5 Planning policy and guidance

- 5.1 The agreed development plan position is at Section 4 of the SOCG [**ID11**]. It comprises:
- a. Horsham District Planning Framework (HDPF) (27 November 2015)
 - b. Horsham District Council Site Specific Allocations of Land (November 2007)
 - c. Horsham District and Crawley Borough Local Development Frameworks West of Bewbush Joint Area Action Plan (JAAP) (July 2009)
- 5.2 The Outline Permission was decided against the now superseded Horsham District Council Core Strategy (2 February 2007) and General Development Control Policies (21 December 2007). They identified Kilnwood Vale as a key strategic site and a major contributor to Horsham's planned housing delivery.
- 5.3 The JAAP remains extant and relevant.
- 5.4 The Horsham District Local Plan 2023-2040 was published for Regulation 19 consultation on 19 January 2024. It does not attract weight in planning decisions due to its infancy. However, it is noteworthy that the draft plan continues to rely on delivery at Kilnwood Vale as a source of housing supply.

Horsham District Planning Framework (HDPF) [CD4 1.01]

- 5.5 Policy 31 (Green Infrastructure and Biodiversity) says that development proposals will be required to contribute to the enhancement of existing biodiversity and should create and manage new habitats where appropriate (Policy 31(2)). Under 31(4)(a) and (b), particular consideration will be given to the hierarchy of sites and habitats in the district as follows:
- a. Special Protection Areas (SPA) and Special Areas of Conservation (SAC)
 - b. Sites of Special Scientific Interest (SSSIs) and National Nature Reserves
 - c. Sites of Nature Conservation Importance, Local Nature Reserves and any areas of ancient woodland, local geodiversity
- 5.6 Policy 31(4) goes on to say that development anticipated to have a direct or indirect adverse impact on sites or features will be refused unless it can be demonstrated that the reason for the development clearly outweighs the need to protect the value of the site and appropriate mitigation and compensation measures are provided. Policy 31(5) says that any development with the potential to impact the Arun Valley SPA will be subject to a Habitats Regulations Assessment to determine the need for an appropriate assessment.
- 5.7 Policies 32 (Quality of New Development) and 33 (Development Principles) require development to be of a high standard of design and layout. They must be locally distinctive in character and respect the surroundings. Where relevant, the scale, massing and appearance of development is required to relate sympathetically with its built-surroundings, landscape, open spaces and to consider any impact on the skyline and important views.

- 5.8 Policy 37 (Sustainable Construction) requires proposals to seek to improve the sustainability of development and incorporate measures that includes limiting water use to 110 l/p/d.
- 5.9 Policy 40 (Sustainable Transport) says that proposals promoting an improved and integrated transport network, with a re-balancing in favour of non-car modes as a means of access to jobs, homes, services, and facilities, will be encouraged and supported. Policy 40 (1-10) sets out the detailed policy criteria for achieving this, including being integrated with the wider network of routes, including public rights of way and cycle paths, and minimising the distance people need to travel and conflicts between traffic, cyclists and pedestrians.
- 5.10 Policy 41 (Parking) says that adequate parking and facilities must be provided within developments to meet the needs of anticipated users. Consideration should be given to the needs of cycle parking, motorcycle parking, charging plug-in or other low emission vehicles and the mobility impaired.

West of Bewbush Joint Area Action Plan (JAAP)⁵

- 5.11 The separate adopted core strategies for Horsham and Crawley in force at the time set out the key principles for the development of 2,500 homes and other uses to the west and north-west of Crawley. The JAAP allocates the land (under Policy WB1) and expands on the principles to provide a detailed policy framework for the development that would become known as Kilnwood Vale.
- 5.12 Policy WB4 (Design) establishes the design principles. It says that design and layout should reflect design principles for the new neighbourhood detailed within a design and access statement, achieve high-quality, inclusive, and safe design. It says that development should address the street, create streetscape variety and interest with natural surveillance of open-spaces, paths, and communal areas.
- 5.13 In relation to market housing, Policy WB10 (Dwelling Mix) says that there should be a mix of dwelling sizes and types within each core phase of the development and that, for each core phase, it should be demonstrated how a mix is to be delivered.
- 5.14 For affordable housing, Policy WB10 (Affordable Housing) sets a target of 40% for the whole neighbourhood. Each phase should contain between 30% and 50% affordable housing, with the precise proportion determining individually. A tenure split of 70% social rented and 30% intermediate tenure should be provided across the whole neighbourhood.

The National Planning Policy Framework, December 2023 (the Framework)

- 5.15 The Framework aims to achieve locally prepared plans that provide for sufficient housing and other development in a sustainable manner. It outlines a presumption in favour of sustainable development. It also identifies that achieving sustainable development means that the planning system has three overarching objectives – economic, social, and environmental.

⁵ https://www.horsham.gov.uk/__data/assets/pdf_file/0010/69526/West-of-Bewbush-Joint-Area-Action-Plan.pdf

- 5.16 At Paragraph 11, the Framework sets out how the presumption is to be applied. It indicates that development proposals that accord with an up-to-date development plan should be approved without delay. It goes on to say that where no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, (including those relating to habitats sites and/or designated as Sites of Special Scientific Interest) provides a clear reason for refusing the development proposed or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 5.17 The Framework indicates that, for applications which involve the provision of housing where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, as is the case in this instance, the policies which are most important for determining the application are out-of-date for Para 11 purposes. In this case it is common ground that the Council cannot demonstrate a five-year supply, with the latest Authority Monitoring Report data equating to a 2.9 year supply of new homes [**CD4 1.04a**].
- 5.18 In relation to delivering a sufficient supply of homes (Framework, Section 5) Paragraph 60 says that it is important that a sufficient amount and variety of land can come forward where it is needed. This is to support the Government's objective of significantly boosting the supply of homes. Paragraph 74 highlights that a supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as significant extensions to existing villages and towns. At Paragraph 74(c) it supports setting clear expectations for the quality of places.
- 5.19 Turning to conserving and enhancing the natural environment (Framework, Section 15), Paragraph 180 says that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan).
- 5.20 The Framework defines a habitats site as any site which would be included within the definition at Regulation 8 of the Habitats Regulations for the purpose of those regulations. Paragraph 187 says that listed Ramsar sites should be given the same protection as habitats sites. Paragraph 188 says that the presumption in favour of sustainable development does not apply where project is likely to have a significant effect on a habitats site (either alone or in combination) unless an appropriate assessment has concluded that the project will not adversely affect the integrity of the habitats site.
- 5.21 Whilst not falling within the definition of habitats sites (or the extension provided by Paragraph 187), Paragraph 186 includes separate policy for development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination).

- 5.22 Such development should not normally be permitted. The only exception being where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network.
- 5.23 Although I have considered the Framework in its entirety, the following sections are also relevant to this case:
- 4 - Decision-making
 - 8 - Promoting healthy and safe communities
 - 9 - Promoting sustainable transport
 - 11 - Making effective use of land
 - 12 - Achieving well-designed and beautiful places
 - 14 - Meeting the challenge of climate change, flooding, and coastal change.
- 5.24 Although a weighty material consideration, the Framework does not change the statutory status of the development plan. Nor does it override other legal duties, including those imposed by the Habitats Regulations.

National Planning Guidance and other guidance

- 5.25 National Planning Guidance on appropriate assessment⁶ provides advice for those required to undertake Habitats Regulations Assessment (HRA) in accordance with the Habitats Regulations. Defra's guidance⁷ (Habitats Regulations Assessments: Protecting a European Site) gives more information on carrying out an HRA.
- 5.26 The main source of evidence relating to the HRA originates from the Appellant's Shadow HRA [**CD1 1.01**] and HRA Addendum [**CD1 1.02**]. In addition to the guidance set out above, at paragraph 2.2.1 the Shadow HRA refers to ODPM/DEFRA Circular (ODPM 06/2005, DEFRA 01/2005)⁸. Whilst of some vintage, this document appears to be extant and includes a helpful flowchart that summarises the HRA process that is also included at Appendix 5 of the Appellant's Shadow HRA.

6 Background to water neutrality

Water neutrality

- 6.1 Horsham is within Southern Water's Sussex North Water Resource Zone and includes supply from groundwater abstraction on the river Arun, close to Pulborough (referred interchangeably throughout the evidence as 'Hardham' or 'Pulborough').
- 6.2 The abstraction site is located close to a group of nature conservation sites known as the Arun Valley Sites, that are nationally or internationally designated for their rare and protected habitats. The sites are The Arun Valley SPA, SAC, and Ramsar site. Overlapping is the Pulborough Brooks and Amberley Wild Brooks SSSI.

⁶ <https://www.gov.uk/guidance/appropriate-assessment>

⁷ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

⁸ <https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>

- 6.3 In September 2021, Natural England published a Position Statement giving advice for all applications falling within the Water Supply Zone (WSZ)⁹ [**CD8 1.15**] (NE Position Statement). It advises that that as the WSZ includes supplies from groundwater abstraction which cannot, with certainty, conclude no adverse effect on the integrity of the Arun Valley Sites. As existing abstraction cannot be concluded as not having an impact on the sites, they advise that developments within the WSZ must not add to it. One way of achieving this is to demonstrate water neutrality.
- 6.4 The NE Position Statement advises resolving the matter through a strategic approach delivered through the Local Plans of the relevant Local Planning Authorities (including Horsham) with engagement from Natural England. Ahead of the strategic approach it is advised that any application needs to demonstrate water neutrality in line with the interim approach set out.
- 6.5 Natural England published an Advice Note in February 2022 (NE Advice Note) [**CD8 1.16**] to expand on the NE Position Statement. The note continues to refer to the strategic approach as being a longer-term strategy to integrate water neutrality into the relevant Local Plans, working closely with the relevant local authorities, the Environment Agency and Southern Water. While the strategic approach remains in development, Natural England propose integrating the concept of water neutrality into individual planning decisions to ensure that future development can proceed and not further adversely affect the Arun Valley Sites.
- 6.6 The strategic approach of relevance to Horsham includes the mitigation strategy described in detail in the Sussex North Water Neutrality Study: Part C – Mitigation Strategy (Part C report) [**CD8 1.14c**]. It is endorsed by Natural England [**CD8 1.22**]. The proposals in the mitigation strategy are threefold; (1) reducing water demand through defined water efficiency requirements for new development, (2) water company demand management delivery, and (3) a Local Planning Authority led offsetting scheme. The offsetting scheme known as SNOWS will, according to the Council, become operational later in 2024.

⁹ the evidence refers to both the Water Resource Zone (WRZ) and the Water Supply Zone (WSZ). They are technically different things but may be the same, or similar, areas. In this report I have consistently used WSZ for ease of reference and as distinguishing between them makes no difference to my findings.

7. The case for the Appellant (Crest Nicholson Operations Limited)

7.1 The case for the Appellant is set out in the evidence before the Inquiry¹⁰. It is important that the evidence, together with the application and supplementary material, is considered in full to gain a proper understanding of the case. To assist, what follows is a summary based on the case presented in closing [ID10].

Introduction

- 7.2 The site comprises part of the land benefiting from the Outline Permission, originally granted in 2011, that will deliver the Kilnwood Vale strategic allocation. To date, some 1318 dwellings have been consented under earlier phases, which are now either occupied or under construction. The appeal proposal is a sub phase of 280 dwellings as part of the balance of 1182 dwellings, with the local centre awaiting separate determination to complete the strategic development as planned.
- 7.3 The SOCG [ID11] records that there are no matters in dispute on the planning merits of the application, it accords with the Outline Permission and the development plan. The only issue relates to the outstanding concern by Natural England in respect of the impact on a protected site. Had the Council been able to undertake a favourable appropriate assessment under Regulation 63 of the Habitats Regulations it would have granted approval. This is evidenced by the SOCG and was confirmed by Mr Smith for the Council under cross examination at the Inquiry.
- 7.4 The Appellant characterises the Council's position as being that acceptable determination of the appeal rests on the imposition of a Grampian condition to ensure that the proposal is water neutral. This is necessary to reach a favourable appropriate assessment under Regulation 63 of the Habitats Regulations.
- 7.5 The Appellants position, by contrast, is that such a condition would fail the test of necessity as there is no need for the development to demonstrate water neutrality to conclude a favourable appropriate assessment.

Background to water neutrality

7.6 The NE Position Statement [CD8 1.15] says it is Natural England's view that it cannot be concluded with sufficient certainty that groundwater abstraction in the WSZ is not having an adverse effect on the integrity of the Arun Valley sites. The Appellant highlights that the statement says that new development 'must not add to this impact' and that 'one way' of doing so is to show water neutrality. Water neutrality is defined in the NE Position Statement as '*the use of water in the supply area before the development is the same or lower after the development is in place*'. The Appellant places emphasis on the word 'use'.

¹⁰ Including CD7 1.01, CD10 1.01-4, ID1, ID10

7.7 Although the statement expressly states that demonstrating water neutrality is 'one way' of not adding to the potential impact, it then focuses only on what Council's need to do to secure water neutrality, i.e. joint working at a strategic level and integrating water neutrality in to Local Plans. It also expressly states that '*Natural England advises that any application needs to demonstrate water neutrality*'.

7.8 Turning to the NE Advice Note [**CD8 1.16**], the Appellant highlights the following paragraphs (with their emphasis underlined):

'Natural England is also concerned that the Sussex North Water Supply Zone is likely to be subject to significant future development pressures. These will necessitate increased abstraction within the region and are likely to further exacerbate any existing impacts on the Habitats Sites.'

'... if further development were to be consented in this region (with the requirement for additional abstraction) such development [would be] likely to have an adverse effect on the Habitats Sites.'

Natural England is closely involved with the relevant local authorities, the Environment Agency and Southern Water in developing a longer-term strategy to integrate Water Neutrality into the relevant Local Plans. However, while this broader strategy remains in development, Natural England are seeking to propose mechanisms whereby the concept of Water Neutrality can be integrated into individual planning decisions to ensure that future development can proceed in a manner that does not further adversely affect the Habitats Sites, notwithstanding these pressures'.

7.9 It is the Appellant's view that, as groundwater abstraction at Hardham cannot be excluded from harm, development not adding to it is an uncontroversial stance for the NE Position Statement to take. However, page 2 of the statement and NE Advice Note focuses on demonstrating water neutrality in the sense of not increasing water usage in the WSZ. No increase in use is a mischaracterisation of the issue. The crucial matter is, instead, about not increasing ground water abstraction at Hardham. The mischaracterisation seems to be unrecognised by Natural England.

7.10 The Council's response to the NE Position Statement, encouraged by Natural England, has been to develop a water neutrality mitigation strategy accompanied by policies requiring compliance with it (or an equivalent scheme) in their emerging Local Plans (i.e. SNOWS). In the meantime, the Council's approach has been to refuse (or, in this case fail to determine) permission unless the development can demonstrate water neutrality either through application of the still emerging SNOWS or bespoke means.

- 7.11 SNOWS is being developed in the context of the jointly commissioned Part C Report [**CD8 1.14c**]. The report is expressly concerned with informing the evidence base in emerging Local Plans¹¹ and establishing a strategy to achieve water neutrality. It uses a definition of water neutrality consistent with the one utilised by Natural England, (i.e. concerning total water use in the WSZ)¹².
- 7.12 The Appellant notes the responsibilities and action of other bodies in the wider process beyond planning. The Environment Agency is the regulator for potable water supply and the licencing of water abstraction. Southern Water is the statutory undertaker for potable water supply in the WSZ and the licence holder for Hardham.
- 7.13 The Environment Agency and Southern Water are subject to their own Habitats Regulations duties, both under Regulation 9 when exercising their statutory functions and under Regulation 63 as competent authorities when approving plans or projects. There is no allegation from any party that either body is in breach of their statutory obligations.
- 7.14 In response to Natural England's concerns about potential effects of groundwater abstraction at Hardham, the Appellant notes that the Environment Agency is undertaking a Sustainability Review of the licence. The aim of this is to establish what, if any, groundwater abstraction can be excluded from a likelihood of adverse effects on the integrity of the sites. The Sustainability Review will report in 2025 and inform what, if any, exercise of powers under s.52 of the Water Resources Act 1991 is required in relation to the abstraction licence at Hardham. Possible outcomes are revocation of the licence, amendment of it, of that it will remain unamended.
- 7.15 Until the outcome of the Sustainability Review is known, the Environment Agency and Southern Water accept that there is currently no known level of groundwater abstraction at Hardham that can be excluded from having an effect. This is evidenced by the Environment Agency and Southern Water correspondence at Appendix B and C of Mr Aitkins proof for the Appellant [**CD10.1 02a**]. Consequently, at least until the review reports, the Environment Agency has secured a voluntary commitment from Southern Water to reduce the groundwater abstraction at Hardham from around 12 ml/d (millions of litres per day) average to 5M l/d, extending to at least the completion of the Sustainability Review in 2025¹³.

Law and policy

- 7.16 It is the Appellant's view that the correct application of the law and policy is not materially in dispute. A summary of the key legislation is at Section 2 of the Shadow HRA Addendum [**CD1 1.03**] and at Section 4 of their witness, Mr Aitkins's proof [**CD10.1 02**].

¹¹ page v, Part C Report

¹² page iv, Ibid

¹³ see Southern Water's letter of 7 July 2023, at Appendix C of [CD10 1.02a]

- 7.17 In relation to Regulation 63 of the Habitats Regulations, where an appropriate assessment is required, it must be undertaken in respect of the development's impacts both alone and in combination with other plans and projects. For the assessment to be favourable, adverse impacts on the integrity of the protected site must be able to be excluded on a test of certainty 'beyond reasonable scientific doubt'. A competent authority can only approve a plan or project where that test is met. This is in the absence of an overriding public interest argument (IROPI), which the Appellant says is not applicable here as it only applies in the absence of alternatives.
- 7.18 In relation to supply of potable water, s.37 of the Water Industry Act 1991 places Southern Water under a duty to supply water to the level demanded, regulated by bodies that include the Environment Agency. Sections 37A-37D of the same Act requires Southern Water to prepare and maintain a Water Resource Management Plan (WRMP) on a rolling 5 year basis to show how supply will be maintained. The current WRMP is from 2019 and the next will be in 2024.
- 7.19 Paragraph 6.3 of the Water Resources Planning Guidance [**CDS 1.08**] says that WRMP must not constrain planned growth. The Council's witness, Mr Kleiman, agreed in cross examination that the proposal constitutes planned growth.
- 7.20 Regulation 9 of the Habitats Regulations places Southern Water under a duty not to harm protected sites in the exercise of its statutory functions and the WRMP is itself subject to appropriate assessment under Regulation 63. Southern Water would be the competent authority for the WRMP 2024. It is the Appellant's case that this means that the supply of water identified to maintain projected supply must be from sources that can be excluded as having an adverse effect on protected sites.
- 7.21 In addition to being a regulator of the WRMP, the Environment Agency also grants abstraction licences under the Water Resources Act 1991. It may amend or revoke such licences under s.52 of that Act and such decisions are in themselves plans or projects and therefore subject to Reg 63 of the Habitats Regulations.
- 7.22 To summarise the position regarding the relevant 'competent authority' in different Regulation 63, Habitats Regulations situations. It is the Secretary of State in relation to the determination of this appeal, Southern Water for the consideration of the WRMP 2024, and the Environment Agency when deciding whether to grant, amend, or revoke the abstraction licence at Hardham.
- 7.23 Accordance with the development plan is an agreed matter in the SOCG [**ID11**] and the proposal benefits from the statutory presumption at S38(6) of the 1990 Act. Additionally, the proposal would promote water efficiency at 91 or 92 l/p/d. This could be secured by condition and accord with Policy 37 of the HDPF, which is 110 l/p/d. Emerging Local Plan policy does not attract material weight due to its early stage of preparation.

- 7.24 Subject to a favourable 'appropriate assessment', paragraph 188 of the Framework does not apply and the presumption in para. 11(c) would indicate that permission should be granted without delay.
- 7.25 Paragraph 20(b) of the Framework states that strategic policies should make sufficient provision for water supply. Paragraph 016 of the PPG¹⁴ states that planning for the necessary water supply would normally be addressed through the authorities' strategic policies, which can be reflected in water companies' WRMPs and that water supply is therefore unlikely to be a consideration for most planning applications. It goes on to say that exceptions to this include large developments not identified in plans that are likely to require a large amount of water. Kilnwood Vale has been identified in the development plan since 2009 and assumed in the WRMP 2019. So it would not be an exception and water supply should not be a general consideration in this appeal.
- 7.26 Para 194 of the Framework reflects a well established principle that decision makers are entitled to assume that other regulatory regimes are operated appropriately in accordance with the statutory duties. *R (An Taisce) [CD5 1.01]* is advanced as authority for this point. The observation at paragraph 91 of *Sizewell C [CD5 1.02]* is said to provide back up for the proposition that, without doing so, the planning system would be reduced to a state of sclerosis.
- 7.27 In the Appellant's view, it is material in this case that the Environment Agency are under an obligation to consider Amendment or revocation of abstraction licences under Regulation 63 of the Habitats Regulations. It is also material that Southern Water are under an obligation to produce a WRMP which 'must not constrain growth' and be from sources that must be able to be excluded from causing harm in order to favourably conclude an appropriate assessment under Regulation 63. At all times both the Environment Agency and Southern Water must exercise their powers in accordance with the general duty under Regulation 9 of the Habitats Regulations.
- 7.28 The Secretary of State, in conducting an appropriate assessment on this case, both can and should assume the separate regulatory regimes are operated in accordance with their statutory duties.
- 7.29 The Appellant also advances that the precautionary principle incorporates the principle of proportionality. The EU guidance on the application of the precautionary principle in decision-making is relevant here, stating that '*Proportionality means tailoring measures to the chosen level of protection. Risk can rarely be reduced to zero*'. Further, '*Measures based on the precautionary principle must not be disproportionate to the desired level of protection and must not aim at zero risk, something which rarely exists.*'¹⁵

¹⁴ PPG - Water supply, wastewater and water quality - Paragraph: 016 Reference ID: 34-016-20140306

¹⁵ see paragraphs 2.4.2-2.4.5 of [CD1 1.01]

The need for water neutrality

- 7.30 The Appellants position, which they say is agreed with the Council at the Inquiry and apparent from the correspondence with the Environment Agency and Southern Water, is that the pathway for potential harm to the Arun Valley site from a given development (alone or in combination) is an increase in groundwater abstraction at Hardham. Paragraph 11 of the Council's opening confirms this point [ID2] which says, '*Unless it can be demonstrated, with certainty, that occupations in 2025 (or at an earlier point in time) will not increase groundwater abstraction at Hardham, approval may not lawfully be granted.*'
- 7.31 Without this, there is no pathway and therefore no risk of development adding to the adverse impacts on the protected site. Natural England's insistence on demonstrating water neutrality (defined as no increase in water use) is a mischaracterisation of the issue. Instead, it should be sufficient to show that the development (alone and in combination) will not require an increase in groundwater abstraction from Hardham.
- 7.32 However, Natural England continue to base their position on an assumption that new development (this proposal included) with additional demand for potable water will lead to an increase in groundwater abstraction at Hardham. This assumption would only be correct if there were no alternative to serving new development other than from additional groundwater abstraction from Hardham. This is not the case in this appeal.
- 7.33 Consideration of the need for water neutrality can be divided into five sections.
- Whether demanding 'water neutrality' for all new development in the WSZ is a proportionate response to the risk identified to the qualifying interest.
 - Whether groundwater abstraction at Hardham has increased since September 2021 in response to additional development.
 - The extent of demand management savings programmed by Southern Water to reduce demand.
 - Whether supply sources in the WRMP 2024 include groundwater abstraction at Hardham, at levels that cannot be excluded from the potential of harm to the integrity of the protected site.
 - Whether there is evidence of adequate alternative sources which do not rely on increased groundwater abstraction at Hardham.

Whether demanding 'water neutrality' for all new development in the WSZ is a proportionate response to the risk identified to the qualifying interest.

- 7.34 The Appellant's answer to this is 'No'.
- 7.35 In support, they draw principally on evidence from their ecological expert, Mr Baxter. In the Appellant's view, the qualifying interest in the protected site is the Lesser Ramshorn Whirlpool Snail. This is a view that was not challenged by

anyone with any ecological expertise at the Inquiry.

- 7.36 The evidence supporting this is summarised from paragraph 3.2.5 in Mr Baxter's proof [**CD10 1.04b**], with a series of FAQs from Natural England from 2022 being a key document¹⁶. Specifically, the answer to question 4 "What evidence is there that wildlife in the Arun Valley is declining". The answer to this question in the FAQs is:

The SAC feature (Anisus vorticulus) has been reduced to a small population around a single ditch (in Oct 2021 survey) in Amberley Wild Brooks having been moderately widespread previously and has gone entirely from south of Pulborough Brooks where it was present, if uncommon, previously. This is a loss of up to three quarters of its former range within the SAC. This former range was a quarter of the species UK population. The SAC is therefore failing its conservation objectives for range and distribution and the species is at risk of going extinct on the site.

- 7.37 Mr Baxter's evidence sets out that the snail is dependent on ditches with good water quality and at Amberley Wild Brooks distribution of the snail is limited to one ditch on the eastern side of the site. Reporting work undertaken by Natural England from 2023¹⁷ indicates that there are a range of other factors that might affect the snail and its distribution.
- 7.38 The conclusion the Appellant draws from the reporting work is that the overwhelming issues are ones of site management, water level management and the maintenance of sluice features, and water quality, including salinity, disturbance, and combined sewer overflow. These issues are all within the control either the landowner (the RSPB) or the Environment Agency.
- 7.39 Considering the issues at hand and given the costs of requiring water neutrality through SNOWS, in the view of the Appellant, a range of more proportionate responses may have been open to Natural England.
- 7.40 Firstly, they could have pressed for or even assisted the landowner and the Environment Agency to improve site management for the snails at Amberley Wild Brooks. The costs to developers associated with SNOWS cannot be said to be a proportionate response to mending the sluices.
- 7.41 Secondly, as the outflow of the sewerage treatment works is an issue for water quality, they could have pressed the Environment Agency to resolve that issue through the means of the discharge licence.
- 7.42 Finally, Natural England could have pressed the Environment Agency to order the temporary cessation of groundwater abstraction until a query over transmissibility rates had been resolved (i.e. March 2025).

¹⁶ included at Appendix 9 of the Shadow HRA [CD1 1.01]

¹⁷ extracts included in Appendix 2 of [CD10 1.04c] and referred to in paragraph 69- 74 of Appellant's closing [ID10]

- 7.43 The action that Natural England has taken on any of these perceived proportionate responses is unclear. In the Appellant's view, what is clearly not a proportionate response is what Natural England have done. The direct effect of the NE Position Statement has been to halt the grant of planning permission for new development across the whole WSZ, affecting three local authority areas. The consequences been devastating for the delivery of housing in an area of growth.
- 7.44 The Council can now only demonstrate a 2.9 year housing land supply, based on figures in their latest Authority Monitoring Report [**CD4 1.04**]. Mr Smith for the Council gave evidence at the Inquiry that some 2,400 dwellings are currently held up by this issue in Horsham alone. Kilnwood Vale is expected to continue to make an important contribution to housing supply in Horsham between 2023 and 2028, equating to 396 dwellings or 15% of housing land supply.
- 7.45 Based on current best knowledge using the assumptions in the Part C Report, the estimated cost of SNOWS is likely to be in the region of £2000 per dwelling, as set out by Mr Kleiman for the Council at the Inquiry in cross examination. The Appellant says that is a cost to affected developers in Horsham equating to circa £17 million to 2030. This figure will grow if Southern Water's demand management measures are not as effective as anticipated, and a greater deficit needs to be made up through offsetting.
- 7.46 Natural England's assumption is that increased development will necessitate increased groundwater abstraction at Hardham and that, until the sustainability review concludes in 2025, adverse impacts of groundwater abstraction at Hardham cannot be excluded. The Environment Agency considers that a proportionate response is to minimise groundwater abstraction at Hardham. Natural England's action is not proportionate, given what the Environment Agency has done and the alternative sources of water supply available.

Whether groundwater abstraction at Hardham has increased since September 2021 in response to additional development.

- 7.47 The Appellant's answer to this is 'No'.
- 7.48 In response to the concerns raised by Natural England, the Environment Agency commissioned the Sustainability Review of the Hardham licence that will report in March 2025. It also secured a commitment from Southern Water to minimise abstraction under the existing licence. This voluntary reduction has resulted in abstraction at Hardham falling to 40% of its September 2021 levels (i.e. circa 5 ml/d compared with circa 12 ml/d).
- 7.49 Correspondence from both the Environment Agency and Southern Water indicates that both parties are alive to possibility of the Sustainability Review concluding that the groundwater abstraction for Hardham needs to be revoked. The evidence for this can be found in the Environment Agency's letter of 13 January 2023 in Appendix B of Mr Aitken's proof for the Appellant [**CD10 1.02a**].

- 7.50 So there is currently, and will be, no link between increased development demand and increased groundwater abstraction at Hardham. It has already been reduced voluntarily and, it will be reduced further if necessary (potentially to zero). This is the case regardless of demand from development.
- 7.51 As such, there is no causal relationship between increased development and increased groundwater abstraction at Hardham. There is, therefore, no need for water neutrality across the WSZ.
- 7.52 Natural England's response to the Appeal is to decline to recognise Southern Water's minimisation commitment as mitigation as it is voluntary and not, therefore, secured **[CD8 1.18]**. The Council have adopted the same argument.
- 7.53 The Appellant's argument is that, if the voluntary undertaking were to be breached, the Environment Agency can use powers under s52 of the Water Resources Act 1991 to vary the abstraction licence at Hardham. Southern Water's letter of 7 July 2023¹⁸ clearly recognising this by committing to minimise ground water abstraction at Hardham until at least the Sustainability Review of the licence.
- 7.54 As a result of the above, there is no need for water neutrality in addition.

The extent of demand management savings programmed by Southern Water to reduce demand

- 7.55 The Part C Report **[CD8 1.14c]** established water savings from demand management measures in the Southern Water WRMP 2019 (*referred to variably in the evidence as 'the Southern Water contribution'*). As a result, water demand of between around 6,000 and 8,000 dwellings could be offset by the measures to 2030. The basis for this calculation is summarised in the following paragraphs.
- 7.56 The Part C Report takes total projected growth across the WSZ to 2039¹⁹ and translates that into additional water demand based on either a 110 litres per person per day (l/p/d) or 85 l/p/d assumption on water efficiency. It then represents that, over time, as a trajectory of predicted demand arising from projected new growth. This is represented graphically by the green and dotted red lines in Figure 5.1 (page 27) of the Part C Report (reproduced below).

¹⁸ included at Appendix C of Mr Aiken's proof [CD10 1.02a]

¹⁹ table 3.1, Part C Report

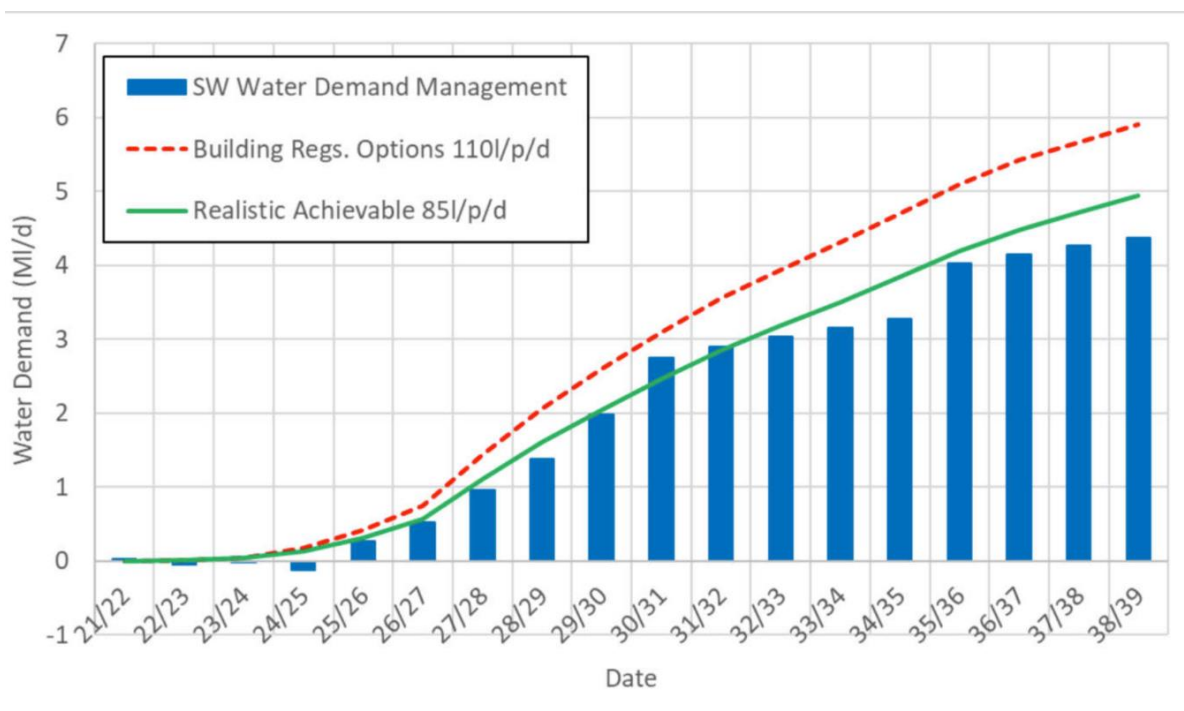


Figure 5.1 Balance of new demand vs SW's contribution from water demand management

- 7.57 The Part C Report then calculates savings in water demand that are derived from demand management measures set out in the WRMP 2019. This contribution is represented by the blue bars in Table 5.1. It produces an estimate that savings from demand management measures are equivalent to some 6,345-8,335 additional (i.e. not consented pre September 2021) dwellings capable of being delivered to 2030 before there is a need for off-setting²⁰.
- 7.58 Paragraph 180 of the Part C Report²¹ is said to identify a 0.25 ml/d deficit between the demand arising in 2021-2030 and the projected savings from Southern Water's demand management measures.
- 7.59 As the 6,000 to 8,000 dwellings were additional to those with full planning permission prior to September 2021, the Appellant says that balance of the savings from the Southern Water contribution could be directed to need arising from as yet unconsented development (i.e. without full planning permission) in current local plans. The appeal scheme is one such development. Growth in emerging local plans would be additional to the Southern Water contribution and a matter for those plans and the emerging WRMP 2024.
- 7.60 The points above led the Appellant to make what they call a conceptual division of development needs into three categories, namely, (1) dwellings consented prior to September 2021; (2) dwellings planned for in the adopted local plans but without consent, which are planned for in the WRMP 2019; (3) additional emerging local plan allocations, to be planned for in the WRMP

²⁰ page viii, Ibid

²¹ paragraph 180, Ibid

2024.

- 7.61 The Appellant's position is that the proposal firmly falls within the second category. As such, it can fairly utilise part of the 6,000-8,000 dwelling headroom identified in the Part C Report.
- 7.62 The Appellant notes that the Council sought to cast doubt in the Inquiry over the reliability of the predicted figures attributed to Southern Water's demand management measures in the Part C Report, and hence the 6,345-8,335 additional dwellings they would offset. They did so without bringing forward any alternative figures. Paying regard to the letter from the Environment Agency/Ofwat/Defra to Southern Water dated 20 October 2023²², the Appellant accepts that it is not unreasonable to reduce the amount of savings assumed from demand management measures, although by how much is evidentially unclear.
- 7.63 Even if the 0.25 ml/d shortfall in the Part C Report turns out to be unrealistic, the total demand from new development without any savings from Southern Water savings is 0.42 ml/d at 2025 and 2.59 ml/d at 2030. These are figures that can be accommodated through alternative available sources of water supply, without having to resort to offsetting through water neutrality.

Whether supply sources in the WRMP 2024 include groundwater abstraction at Hardham, at levels that cannot be excluded from the potential of harm to the integrity of the protected site.

- 7.64 The Appellant's answer to this question is 'No'.
- 7.65 Groundwater abstraction currently accounts for some 14%²³ of total water supply in the WSZ, of which groundwater abstraction at Hardham is only a part. So around 86% of supply comes from sources other than groundwater abstraction.
- 7.66 Additional demand can, therefore, be met by demand management measures (including improving leakage rates) and/or greater utilisation of other sources, rather than increasing groundwater abstraction from Hardham. New development does not increase groundwater abstraction at Hardham.
- 7.67 The supply of potable water is a statutory undertaking, conducted by Southern Water and regulated by the Environment Agency. Southern Water is under a duty to supply the development needs projected by the local authorities and show how it will do that through its WRMP. The WRMP process is repeated on a five-yearly basis, with annual review, and an expectation that it 'must not constrain growth'.

²² Appendix A of [CD10 1.02a]

- 7.68 Each WRMP must be accompanied by an HRA demonstrating that it would not harm protected sites. Only a favourable appropriate assessment establishing this would allow a WRMP to be published. So the forthcoming WRMP 2024 could not be published if it included supply from groundwater abstraction from Hardham that had not been subject to a favourable appropriate assessment.
- 7.69 The WRMP 2024, and accompanying HRA, is likely to be published ahead of the reporting of the Sustainability Review commissioned by the Environment Agency into the Hardham abstraction licence. The WRMP 2024 will need to account for a range of possibilities in relation Hardham. This includes how projected development needs can be accommodated if there is no groundwater abstraction from Hardham, as it the Sustainability Review has led to the abstraction licence being revoked.
- 7.70 The Appellant says that, as the outcome of the Sustainability Review will not be known until 2025, and adverse impacts cannot be excluded, the WRMP 2024 HRA would be unable to support a favourable outcome based on reliance on any groundwater abstraction from Hardham. Indeed, there is evidence within drafts of the WRMP 2024 confirming that alternative scenarios excluding Hardham abstraction are being looked at²⁴.
- 7.71 For these reasons, the presumed link between increased demand from development and increased groundwater abstraction at Hardham is a false one. Water neutrality is not required.

Whether there is evidence of adequate alternative sources which do not rely on increased groundwater abstraction at Hardham.

- 7.72 It is not necessary for the Appellants to provide evidence as to water supply sources which do not lead to risk to protected sites. The WRMP legislation is set up to prevent that and the Secretary of State is both entitled to assume that that statutory regime will operate appropriately.
- 7.73 Notwithstanding this, there are alternative sources available to Southern Water to meet all projected development needs without reliance on any demand management measures. This is the case even if groundwater abstraction at Hardham were to cease, which the Appellant accepts must be the working assumption until the Sustainability Review reports in 2025.
- 7.74 The Part C Report focuses on the period to 2030 as showing a potential deficit between projected demand and expected Southern Water savings, after which Southern Water's supply infrastructure is expected to be in place.
- 7.75 The Appellant's evidence to the Inquiry on alternative sources of supply that do not rely on Hardham focuses on three sources; 1. Weir Wood reservoir, 2. SES (Sutton and East Surrey) Water import, 3. Portsmouth Water import.

²⁴ see references at paragraph 114 of the Appellant's closing [ID10]

- 7.76 Weir Wood reservoir is required to be back in service by 31st March 2025 by statutory notice served on Southern Water by the Drinking Water Inspectorate under Reg 28(4) of the Water Supply Regulations 2016 [ID6]. Failure to comply with the notice engages enforcement action. So the Secretary of State can have comfort that Weir Wood will be operational by March 2025. The reservoir will have a peak deployable output of 13 ml/d.
- 7.77 The Appellant's assumptions are that projected development needs at 2025 are 0.42 ml/d, without any allowance for Southern Water demand management savings. If revocation of the Hardham licence is assumed, a further 5 ml/d would need to be found to make up for the loss in existing supply. This produces a worst case scenario deficit of 5.42 ml/d, rising to 7.59 ml/d at 2030.
- 7.78 In light of the above, Weir Wood alone obviates the need for any reliance by Southern Water on Hardham groundwater abstraction. This source will be available no later than 31 March 2025. The development will not be occupied until 2025. The Appellant is content for a condition to be imposed preventing occupations of the proposal until 31 March 2025, although they do not believe this to be necessary due principally to the low likelihood of drought occurring between January and March 2025 triggering a need for abstraction from Hardham.
- 7.79 The two other sources of alternative supply (SES and/or Portsmouth) import are available to Southern Water now. In the case of SES, 2.7 ml/d is available for bulk import. For Portsmouth Water a full usage of 15 ml/d is available, adding a resource of 9 ml/d on top of current usage. Taken together the two available bulk import sources make an additional 11.7 ml/d available to Southern Water. Adding in the 13 ml/d from Weir Wood, which gives a total available supply of 24.7 ml/d. This exceeds the Appellant's worst case scenario deficit of 5.42 ml/d.
- 7.80 These alternative sources show that there is more than ample supply that would be an alternative water supply to increasing, or relying on, groundwater abstraction at Hardham. The adequacy of alternative sources was tested during the 2022 drought where groundwater abstraction at Hardham was not increased. Since then, use of groundwater at Hardham has been taken out of drought orders. So future severe droughts will not lead to an increase in groundwater abstraction from Hardham.
- 7.81 Consequently, the Natural England position that increased development, unless water neutral, would increase groundwater abstraction at Hardham is false. Natural England have not considered these supply side factors at all and neither does the strategic approach in the Part C report, which is concerned with establishing levels of offsetting in order to achieve no increase in water use.

Cogent and compelling reasons not to follow Natural England's advice

- 7.82 The Appellant acknowledges that Natural England is the Government's statutory advisor on nature conservation matters and, ordinarily, a decision-maker will give substantial weight to its advice. However, a decision maker is not bound by that advice and the Courts have been careful to preserve the discretion of the decision maker. The standard of reasoning needed to depart from advice is discussed in two legal authorities, *Wyatt*²⁵ ('cogent reasons') and *Shadwell*²⁶ ('cogent and compelling reasons').
- 7.83 In addition to the five sections on the need for water neutrality set out above, the Appellant provides two further reasons that are also said to be cogent and compelling.
- 7.84 Firstly, that neither the Environment Agency, as the regulator for potable water, nor Southern Water, as the statutory undertaker with the duty to supply water to development without causing harm to protected sites, have objected to the application on the grounds that it is necessary to demonstrate water neutrality. If either body felt that, without water neutrality, potable water could not be supplied to the development (alone or in combination) without increasing groundwater abstraction at Hardham they would say so.
- 7.85 Secondly, that Natural England did not appear at the Inquiry to defend their position and be questioned on it. This, in the Appellant's view, left the Council seeking to defend a position on a topic that, on the evidence of their own witness, lies outside of their knowledge and expertise. In the Appellant's view, Natural England's position is based on a mischaracterisation of the issue and should be given limited weight.
- 7.86 In overall terms, it is submitted that Natural England has got the position on the need for water neutrality badly wrong. It is accepted that, pending the outcome of the Environment Agency's Sustainability Review, there is no known safe level of groundwater abstraction at Hardham. However, it is illogical to jump from that proposition to one that, for new development to be acceptable in Habitats Regulations terms, it must be able to demonstrate that it is water neutral in the sense of not increasing water usage. Natural England have therefore mischaracterised the issue and the weight of their advice is therefore reduced.
- 7.87 More widely, Natural England's position has been accepted uncritically by Local Planning Authorities. It has given rise to SNOWS, an offsetting scheme that is not necessary, and has had devastating effect on housing delivery in a time of a national and regional housing crisis.
- 7.88 There is no need for the proposal to demonstrate water neutrality and consent should be granted in accordance with Paragraph 11 (c) of the Framework.

²⁵ para. 9(4) of [CD5 1.05]

²⁶ mentioned at para 2.3.1 of [CD1 1.02]

8. The case for the Council

- 8.1 The case for the Council is set out in full in the evidence before the Inquiry²⁷. It is important that the evidence, together with the application and supplementary material, is considered in full to gain a proper understanding of the case. To assist, what follows is a summary based on the case presented in closing [ID9].

Introduction

- 8.2 The Council believes that the fundamental question for the Secretary of State is whether the use of water in the WSZ after the development is in place, will be the same or lower than before. An answer of anything less than certainty beyond reasonable scientific doubt that water use at the point of occupation will be the same or lower than before, leads to a conclusion that permission must be refused. To comply with Regulation 63(5) of the Habitats Regulations, the Secretary of State must be able to ascertain that the proposal will not add to the existing adverse effect identified in the NE Position Statement. Unless this test is met, approval cannot lawfully be granted.
- 8.3 No distinction can be made between groundwater abstraction at Hardham and water use in the WSZ as the two are inextricably combined. The Appellant's stance that the Position Statement and Part C Report are wrong because they fail to deal with the issue at hand - which is groundwater abstraction from Hardham, rather than water use in the supply zone - goes nowhere because groundwater from Hardham is included in the WSZ. The NE Position Statement confirms this, and is not disputed by the Appellant:
- The [WSZ] includes supplies from a groundwater abstraction which cannot, with certainty, conclude no adverse effect on the integrity of [the Arun Valley Sites]. [underlined is the Council's emphasis]*
- 8.4 So, if water use in the supply zone increases, so can ground water abstraction from Hardham.
- 8.5 What matters for the purposes of carrying out an appropriate assessment is the effect of the development on the protected sites, in reality. Unless and until the Environment Agency revokes Southern Water's Hardham abstraction licence, there is no way of telling if water used in the supply zone comes from Hardham (so contributing to the existing adverse effect) or some other source. There is, equally, no mechanism to ensure new development only takes water from non-groundwater sources. There is no separate tap labelled 'Hardham'.
- 8.6 The Part C Report is designed to resolve the existing significant adverse effects (the drying out of the Arun Valley sites) which may be caused by groundwater abstraction at Hardham. It provides the basis for a solution to that problem, by outlining a way development can avoid increasing water use in the WSZ.

²⁷ including [CD7 1.02a-i], [CD10 1.05a-e], [ID2], [ID9]

- 8.7 The only way of making sure water use in the WSZ isn't increased, is by not increasing use of water. This exactly as advised by Natural England, as the Part C Report aims to facilitate, and as SNOWS will operate to achieve.
- 8.8 If the Appellant is right on either of the two following points, a positive appropriate assessment can be concluded:
- a) it is certain that the Environment Agency will have revoked the Hardham groundwater abstraction licence (or amended the license to an agreed sustainable level of abstraction) by the time the development occupies, or
 - b) it is certain that the development will not increase water use in the WSZ when it occupies (on its own or in combination with other developments).
- 8.9 If the Appellant is wrong a condition must be imposed which prevents additional water use in the WSZ until mitigation is in place. In this case, the only certain mitigation is via payment into SNOWS because the Appellant has not sought to mitigate via a bespoke solution.

Legal principles

- 8.10 The legal principles governing the appropriate assessment process are well known and summarised at Paragraph 9 of *Wyatt [2023]* [**CD5 1.05**].
- 8.11 The Appellant's argument that the Secretary of State can conclude a positive appropriate assessment because they are entitled to assume that other regulatory regimes will work, is wrong in law for three reasons.
- 8.12 Firstly, Paragraph 194 of the Framework does not apply as the proposal does not concern ground conditions or pollution. Even if it did apply, it would not displace the legal requirement to carry out an appropriate assessment under the Habitats Regulations or in any way alter the relevant legal tests.
- 8.13 Secondly, Paragraph 20(b) of the Framework and Paragraph 016 of the PPG²⁸ cannot be relied upon as water supply is not a "general consideration" in this appeal. The appeal is not about whether Southern Water can supply sufficient water to the development, the question is whether the development will increase the use of water in the WSZ and thereby add to an existing adverse effect at the Arun Valley sites.
- 8.14 Finally, the Environment Agency and Southern Water's non-objection to the proposal cannot be relied upon. The nature conservation impacts of the proposal are outside of their remit. If there were a problem with the supply of water to the development, then no doubt they would object.
- 8.15 The Appellant contends that the Environment Agency, by allowing Southern Water to continue abstracting ground water from Hardham at a minimised rate pending the outcome of the Sustainability Review, is fulfilling its duties under the Habitats Regulations. In the Council's view, this fails to grapple with the

²⁸ PPG - Water supply, wastewater and water quality - Paragraph: 016 Reference ID: 34-016-20140306

point that those bodies (*Southern Water and Environment Agency*) have two different duties under the Habitats Regulations of reliance to this appeal, depending on which function they are carrying out.

- 8.16 There is the general duty under Regulation 9(3) to have regard to the Habitats Directives. This is discussed at Paragraph 85-87 of *Harris [2023] [ID7]* and applies to the exercise of all their functions. Then there is the duty under Regulation 63(5), which applies only when they are acting as the competent authority deciding whether or not to grant consent for a plan or project. The duties are not interchangeable.
- 8.17 By allowing Southern Water to continue groundwater abstraction at a minimised rate pending the Sustainability Review, the Environment Agency is fulfilling its general duty under Regulation 9(3). This is not the same as discharging its duties to secure protection of the sites.
- 8.18 The Environment Agency's letter to the Appellant²⁹ makes this clear when it says:
- 'As we stated in our letter dated 6 June 2022 and confirmed in our letter dated 13 January 2023, Southern Water's voluntary reduction in abstraction does not discharge the Environment Agency's duties under the Habitats Regulations...' We would discharge our duties securing the protection of the SAC by making any necessary changes to the abstraction licence. This would be done following the outcome of the investigation'. (Underlined is the Council's emphasis).*
- 8.19 So the Environment Agency's compliance with its duty under Regulation 9(3) of the Habitats Regulations does not provide the requisite certainty for the Secretary of State's appropriate assessment under Regulation 63(5).
- 8.20 Southern Water has a statutory responsibility to supply water, but it is not an absolute duty. Section 54 Water Industry Act 1991 allows consumers to claim compensation if the supply fails. But, under Section 54(2) *"it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach"*.
- 8.21 More importantly, the Water Industry Act 1991 does not oblige the undertaker to provide sustainable water. That is achieved at water resource planning level by a Habitats Regulations Assessment/appropriate assessment of the WRMP, with project level assessments where required.
- 8.22 It does not follow that a positive appropriate assessment at the WRMP level means that it can simply be assumed none of the projects under that plan will result in a significant adverse effect. The Council's draws attention of Paragraph 008 of the PPG on the relationship between strategic level appropriate assessments and projects³⁰.

²⁹ dated 11 July 2023 - Appendix B [CD10 1.02]

³⁰ PPG – Appropriate assessment - 008 Reference ID: 65-008-20190722

- 8.23 It is also relevant that the competent authority (which for the WRMP will be Southern Water) may nevertheless approve a plan which fails the appropriate assessment. The process allows for exceptions, if three legal tests are met that are abbreviated to IROPI³¹. That is another reason why the legal basis of the Appellant's contention that WRMP 2024 must necessarily be 'zero Hardham' is wrong.
- 8.24 The Appellant's evidence that the NE Position Statement and the consequent moratorium on new development is a massively disproportionate response is said by the Council to be wrong in law. The Council refers to Paragraph 2.2.7 of Mr Baxter's proof for the Appellant [**CD10 1.04b**] which says '*In the absence of reasonable certainty, the assessment should proceed in line with the precautionary principle. In this regard guidance advises that "measures based on the precautionary principle must not be disproportionate to the desired level of protection and must not aim at zero risk, something which rarely exists."*
- 8.25 The guidance supporting this statement³² is a general communication from the European Commission on the precautionary principle covering every area in which it might apply. It does not concern appropriate assessment.
- 8.26 It is the Council's case that the correct approach to proportionality is set out in the judgment of the Court of Appeal at Paragraph 9(7) of *Wyatt [2023]* [**CD5 1.05**]. This makes clear that, in the appropriate assessment context, proportionality applies to the test of certainty in the appropriate assessment, rather than to the measures taken. The measure in this case is the requirement that new development in the WSZ be water neutral. If an appropriate assessment cannot conclude beyond reasonable scientific and practical doubt (short of absolute certainty) that the development will not increase water use in the WSZ, then the competent authority's view on the proportionality or otherwise of the measure is legally irrelevant.

Essential matters in dispute

- 8.27 The Council sets out five matters that, in their view, are the essential ones in dispute:
- Current use of Hardham ground water extraction
 - Drought and the draft WRMP 2024
 - What the draft WRMP 2024 fully accommodates
 - Other sources of supply (extra water)
 - Revocation of the Hardham licence

³¹ (1)There are no feasible alternative solutions that would be less damaging or avoid damage to the site, (2)The proposal needs to be carried out for imperative reasons of overriding public interest, and (3)The necessary compensatory measures can be secured. (See guidance on derogations at <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>)

³² Commission of the European Communities (2.2.200) 'Communication from the Commission on the precautionary principle' (Document not before the Inquiry).

Current use of Hardham ground water extraction

- 8.28 Ground water abstraction at Hardham continues, albeit at a voluntarily minimised abstraction rate of 5 ml/d, which operates as a rolling average rather than a cap. Southern Water have explicitly stated that they are unable to commit either to the cessation or minimisation of Hardham ground water use. The reasons for this relate to drought conditions, as explained in Southern Water's letter to the Appellant³³:

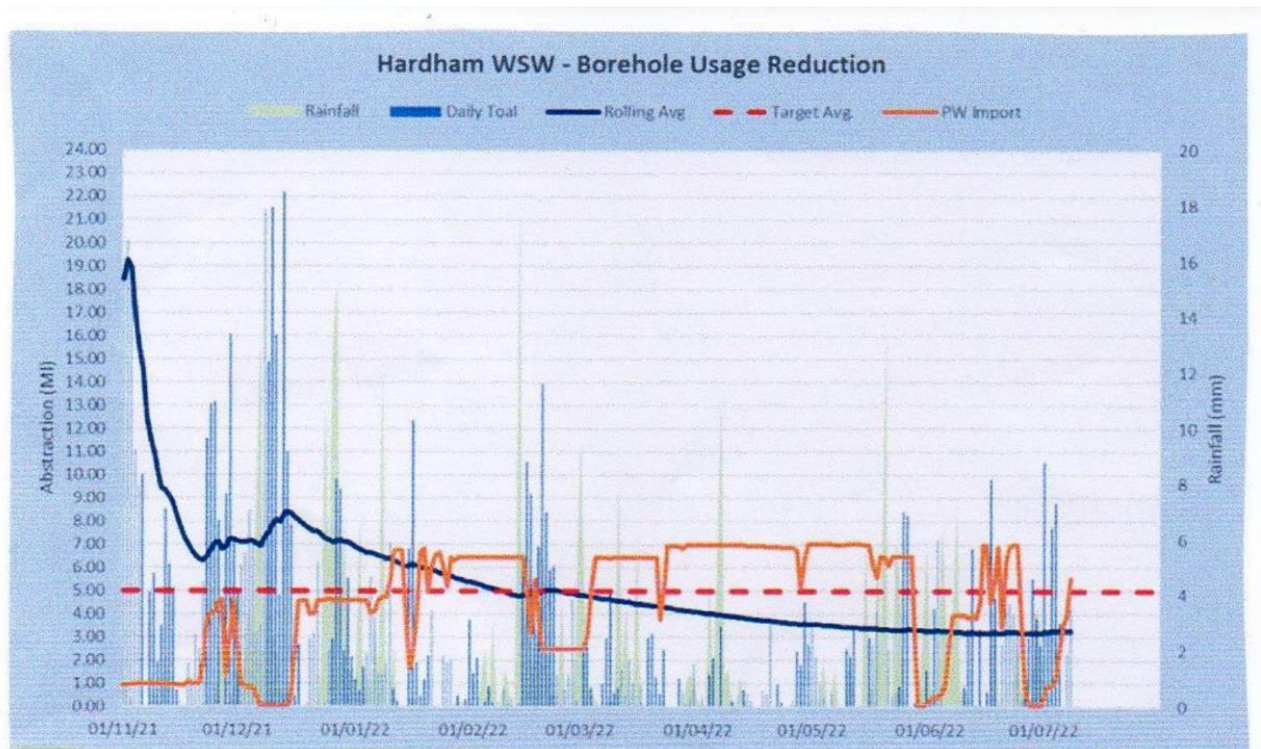
"Our position is that in most water resource conditions Southern Water has a sufficient supply available to meet demand in the Sussex North WSZ and that we have some flexibility in where water is sourced from, thereby enabling the commitment to reduced abstraction from the Hardham groundwater source while the sustainability study is ongoing.

However, when dry periods are experienced and these become more severe, the output of several other sources in Sussex North WSZ become constrained by water availability, placing more reliance on the Hardham groundwater source. In the scenario of a severe drought or major operational supply outage we would potentially need to increase our groundwater abstraction to a higher rolling average, including potentially up to the full licensed abstraction limit for short periods, to ensure the expected supply to our existing customers in the Sussex North WSZ. For this reason, we would not be in a position to commit to a cessation of abstraction from Hardham or to a fixed limit of 5 ml/d [..]as quoted in your letter of June 5."

- 8.29 The Council point to figures from the summer 2022 Hardham groundwater abstraction volumes³⁴ as showing why Southern Water cannot make this commitment. They are on page 172 of the Appellant's Shadow HRA Addendum [CD1 1.02] and show that, in July and August 2022, abstraction at Hardham reached volumes in excess of the voluntary 5 ml/d. The Appellant's argument that Southern Water's voluntary minimisation was stress tested during the 2022 drought is proved wrong by this data and Southern Water's letter to the Appellant quoted above.
- 8.30 It may be that over the whole period from 6 June 2022 to 31 August 2022 the daily average abstraction rate was 5.45 ml/d, but this average is meaningless. The data shows that over the peak drought period (the four weeks from 14 July to 14 August) abstraction increased above the minimised rate, nearly every day, and often by significant volumes to more than double the 5 ml/d minimised rate. During oral evidence at the Inquiry, Mr Aitken for the Appellant said that the spikes in abstraction at Hardham shown in the data could be signal tests. The Council describes this as pure supposition.

³³ letter dated 7 July 2023, at Appendix C of [CD10 1.02a]

- 8.31 Figure 5.1 at page 19 of Appellant's Shadow HRA Addendum is reproduced below. It shows the 5 ml/d voluntary minimised rate (red dotted line), daily totals at Hardham (blue bar), the rolling average (black line), and the level of Portsmouth Water import drawn upon (orange line). It is the Council's case that this chart precedes the peak drought period by stopping at 1 July 2022. So there is no data about the availability of import from Portsmouth Water during the 2022 drought period to substantiate the Appellant's claim that plenty of alternative supply is available, even in drought conditions.



Drought and the draft WRMP 2024

- 8.32 The Council accepts that the evidence demonstrates that, under normal conditions, Southern Water can commit to reduced groundwater abstraction from Hardham while the Sustainability Review is ongoing. However, in periods of drought, it cannot. Drought is important because it exacerbates the drying out of the protected sites. The evidence for this point can be found in the Amberley Wild Brooks SSSI adaptation report at Appendix AB2 of Mr Baxter's proof for the Appellant [**CD10 1.04c**³⁵].
- 8.33 This undermines the Appellant's assertion that the WRMP 2024 must assume a 'zero Hardham' baseline to comply with the Habitats Regulations, and so the Secretary of State can rely on the eventual appropriate assessment for the WRMP 2024. The Statement of Responses for the draft WRMP 2024³⁶ also does not evidence that the Environment Agency, Natural England or OfWat are

³⁵ page 14

³⁶ [CD8 1.04]

asking for the WRMP 2024 to be zero Hardham from day 1 to conclude a positive HRA. The Appellant's have not pointed to any other evidence on this matter.

- 8.34 Further, the Appellant's points on this are wrong when the Water Resources Planning Guidance [**CD8 1.08**] is considered. Section 5 of the guidance says that, in developing their supply forecasts, companies in England must ensure their baseline supplies are available in a 0.2% annual chance of failure caused by drought (described as a '1 in 500 year' drought). Section 9.5.1 of the guidance entitled 'lessons from 2022 drought' also states:

'Your plan should clearly include an appendix to demonstrate how experiences from 2022 have been considered. You should set out any lessons you have identified through the 2022 prolonged dry weather and drought event and actions you are taking. This should include changes you have made to your plan as a result and further work you are planning to undertake.'

- 8.35 The summer of 2022 Hardham abstraction data³⁷ shows that one of the lessons of that summer, which Southern Water will have to account for in WRMP 2024, is that ground water abstraction from Hardham was needed to maintain supply.
- 8.36 If Southern Water's demand reduction measures are not taken into account in estimating the volume of water required by new development WSZ (shown by removing the blue columns from the graph at paragraph 7.55 of this report), the required volume ranges from around 0.25 ml/d in 2025 and 2.0 to 2.75 ml/d in 2029-2030. To show that the WRMP 2024 will be zero Hardham, the Appellant needs to show that additional alternative available supply of between 17.58 ml/d and 20.28 ml/d will certainly be available³⁸. For the reasons set out in response to the 'other sources of supply' argument (below), the Council says that the Appellant cannot.
- 8.37 The Council accepts that, if Southern Water's demand reduction measures are accounted for, the required volume of water to supply new development reduces. However, given Southern Water's poor leakage reduction record so far, as evidenced by the letter to them from the Environment Agency/OfWat/Defra of 20 October 2023 [**CD10 1.02**³⁹], there is no certainty that the required volume would be reduced, and if so by how much.
- 8.38 The Council asserts that the question for the Secretary of State is when will the WRMP 2024 be 'zero Hardham'. This cannot be answered with any confidence, let alone certainty.

³⁷ page 172 of [CD1 1.02]

³⁸ the Council calculates these figures by taking the maximum abstraction from Hardham figure of 17.53 ml/d from the 2022 drought data³⁸ and adding in the 0.25 and 2.75 ml/d respectively.

³⁹ Appendix C

What the draft WRMP 2024 fully accommodates

- 8.39 It is the Council's case that the Appellant is wrong to say that the draft WRMP 2024 has 'identified the planned sustainability reductions and included measures to fully accommodate these whilst still meeting its duty to supply consumers'⁴⁰. It has not. It has simply considered a range of potential futures, and:

*'[looked at] a potential scenario where Pulborough groundwater source is no longer available, in order to assess alternative options that could be used to maintain the supply-demand balance. It is possible the water neutrality strategy will be required throughout the time frame covered by affected Local Plans, up to 2037.....We are planning to address the supply-demand balance in SNZ as quickly as possible. Our WRMP 2019 included the Littlehampton water recycling scheme to provide benefit from 2027- 28. This **could create sufficient supply demand headroom to stop any reliance on the Pulborough groundwater source.**' (Underline is the Council's emphasis)⁴¹.*

- 8.40 'Could create' is not the same as 'will create', let alone 'has already created' to satisfy the appropriate assessment for this proposal now.

- 8.41 It is clear from the draft HRA for the draft WRMP 2024 [**CD8 1.21⁴²**] that the only required licence amendments are:

'factored in to the supply-deficit calculations [...] and the EA will have confirmed that these are valid for the planning period when the WRMP modelling is undertaken. The existing consents regime (taking into account any required sustainability reductions) is therefore the baseline and, by extension, the HRA of the WRMP necessarily focuses on the additional effects introduced by the WRMP options and does not (and cannot) reassess or reconfirm the existing consents regime'.

- 8.42 This is crucial as there is presently no required licence amendment at Hardham. There is a voluntary minimisation, but the Environment Agency does not enforce it and there is no legal mechanism for them to do so. If a licence amendment is required this will only be known after the sustainability review concludes, which is expected sometime in 2025. Only after that, and only if the Environment Agency amends the licence, will a zero or reduced Hardham scenario become part of the draft WRMP 2024 baseline.

⁴⁰ paragraph 6.11 of CD10 1.02a,

⁴¹ paragraph 6.13, Ibid

⁴² page 38 of Annex 20

- 8.43 So, required reductions to zero are not allowed for within draft WRMP 2024. Reductions, and the means to achieve them, are under consideration but they are not part of the draft WRMP 2024 baseline. There is significant uncertainty about both the date and the achievability of a zero Hardham scenario, as reflected in the Environment Agency's comment on 'Pulborough Groundwater licence reductions' dated August 2023⁴³:

'In Southern Water's dWRMP24, the company has included a 'worst case' scenario where they consider the groundwater licence may be lost beyond 2040. However it has not clearly shown that it has considered the range of possible outcomes that could result from the sustainability investigation, when these might happen, or what actions would need to be taken to enable these to be implemented.' (Underline is the Council's emphasis).

- 8.44 The Environment Agency's position following this comment is there is a 'lack of appropriate options to manage potential outcomes of the licence review'. There has been no update on the Environment Agency's position since.

- 8.45 Southern Water's response from the same document, which again is the latest position, is that they:

'will consider additional environmental destination sensitivity scenarios to explore the potential risk of earlier licence changes [i.e. prior to 2040] and are "testing different potential outcomes from the Pulborough licence sustainability investigation through some additional sensitivity testing [...] which would include the risk of earlier reductions or revocation of the Pulborough groundwater abstraction licence'.

- 8.46 The Council's position on this is that it cannot rationally be concluded that Southern Water is doing anything more than considering and investigating solutions to the potential future impact of a zero or reduced Hardham ground water scenario. Nor is there any evidence to support the Appellant's position that Southern Water consider there is 'plenty of water in the system' already, so a zero or reduced Hardham scenario can easily be accommodated.

Other sources of supply (extra water)

- 8.47 The 'extra water' the Appellant relies on is principally bulk supply import from Portsmouth Water and SES Water, and Weir Wood Reservoir coming back in to service.

- 8.48 The draft WRMP 2024 technical report [**CD8 1.02**] evidences the uncertainty around when these supply sources will be available. Table 7.3⁴⁴ (Supply side options – Central Area) shows the "earliest utilisation" of Portsmouth Water import at 15 ml/d to be 2026, and import from SES (volume unspecified) to be 2031.

⁴³ page 15, question response R2.1 [CD8 1.04]

⁴⁴ pages 152-153

8.49 In the Council's view, the Appellant did not address this evidence during the Inquiry. In re-examination, the Council say that Mr Aitken for the Appellant asserted that SW are 'already using' these supplies. Even if that is the case, the technical report addresses the supply assumptions which feed into the draft WRMP 2024 baseline. For the Appellant to argue successfully that the bulk supplies will offset the additional water from its development (in combination with other developments) once the WRMP 2024 is finalised, they must deal with the point that the technical report shows they won't be utilised until after the Appellant wants to occupy.

8.50 There is also uncertainty about what volume of water will be available via bulk supply. Portsmouth Water is under a contract with Southern Water to supply a minimum 'sweetening flow'⁴⁵ of 1 ml/d. If Southern Water wants more than that it has to ask for it in line with a commercial contract with Portsmouth Water that is not in the public domain. The Statement of Responses to the draft WRMP 2024 [**CD8 1.04**⁴⁶] says:

'We have discussed this with Portsmouth Water and agreed that the bulk supply to Pulborough will remain at 15 ml/d for WRMP24 and have agreed with Portsmouth Water that we should both assume a volume of 15 ml/d. Whilst there are risks that the water may not be fully available in extreme droughts, it is the intention of the bulk supply agreement to provide this volume in droughts up to 1-in-200 year drought severity.'

8.51 There is uncertainty in the position and, in the absence of the contract, the Secretary of State cannot be certain that Portsmouth Water will transfer 15 ml/d to Southern Water, or when. Further uncertainty arises from the fact that neither the Council, nor Natural England, nor the Environment Agency, can enforce its terms. Contracts can be cancelled – the Council asserts that the bulk supply contract from Hampshire Water was cancelled.

8.52 As to bulk supply from SES water, Southern Water say in the Statement of Responses⁴⁷ that:

'We have agreed in principle with SES Water to extend the current arrangement we have with them in Sussex North WSZ to 2031 and increase DO benefit from the current 1.3 ml/d to 4 ml/d. This has now been incorporated in our revised dWRMP24.'

8.53 According to the Council, there is no indication that the SES bulk supply 'cancels out' the potential reduction or loss of the Hardham abstraction licence, and there is uncertainty about the start date. If it did, there would be no need for Southern Water to 'test different potential outcomes' to resolve the problem.

⁴⁵ clarified in the Inquiry as an amount of water passed through pipes at low volume to keep them in good working order when not in full use.

⁴⁶ page 9

⁴⁷ page 8

- 8.54 The Council does not agree that Weir Wood will necessarily supply 13 ml/d in 2025. The predicted supply volumes in the Statement of Responses⁴⁸ are as follows:

'[Weir Wood] is scheduled to provide the following PDO benefit over the next five years:

*2023-24: 0 ml/d
2024-25: TBC
2025-26: 13 ml/d
2026-27: 13 ml/d
2027-28: 13 ml/d'*

- 8.55 If the development occupies in March 2025, there is no way of telling whether the volume is TBC, or 13 ml/d, or somewhere in between.

- 8.56 It also appears that not all of Weir Wood's water will remain available in the WSZ. Table 4.1 of the draft WRMP Technical report [**CD 8 1.02**⁴⁹] shows that Southern Water are contracted to supply South East Water with 5.4 ml/d of potable water from Weir Wood until 2031.

- 8.57 The delay in delivering the Littlehampton Water Treatment Works recycling scheme adds further uncertainty. In the Statement of Responses⁵⁰, Southern Water say:

'We will need to further consider the potential timing of any licence reductions arising from the Pulborough sustainability study as it is likely that, owing to the delay in delivery of Littlehampton WTW recycling option, we will not be able to accommodate loss of groundwater licence without incurring a supply-demand deficit. We will discuss this further with the EA in the development of our Environmental Ambition for our revised dWRMP24'

and

'We will consider additional environmental destination sensitivity scenarios to explore the potential risk of earlier licence changes. However, the delay to our Littlehampton WTW recycling scheme is likely to impact the extent to which we can accommodate earlier licence reductions (before 2030) in Sussex North WSZ'.

- 8.58 This indicates that, at August 2023, the Littlehampton delay problem had not been resolved and there is no evidence that it has been resolved since. Further information will not be available until the revised draft WRMP 2024, which is not yet published.

⁴⁸ page 7

⁴⁹ pdf page 497 (Document page 35)

⁵⁰ pdf pages 14 and 15 [CD8 1.04]

- 8.59 Contrary to the Appellant's case, the draft WRMP 2024 has not accounted for a 'zero Hardham' scenario. If that were true, then Southern Water would not identify the delay of Littlehampton Water Treatment Works as impacting on the extent to which it can accommodate licence reductions before 2030.⁵¹
- 8.60 The WRMP 2024 has not accounted for anything as the plan does not exist yet. Even on the most optimistic forecasts from Southern Water it will not do so until May 2025. At this stage, options are being considered and Southern Water will have to make decisions prior to finalising the WRMP 2024.
- 8.61 At the last drought event in 2022, groundwater abstraction from Hardham increased so that Southern Water could supply customers. As this proposal is being determined now, based on the available information, no decision maker could be confident that water would not be drawn from Hardham ground water for new development.
- 8.62 In summary, none of the appellant's evidence answers with confidence, let alone certainty, the essential question of when a zero Hardham scenario will exist. The only way of ensuring that the proposal will not increase the use of water within the supply zone is via SNOWS, or a bespoke water neutrality scheme.

Revocation of Hardham licence

- 8.63 The Environment Agency's Sustainability Review into the Hardham licence is scheduled to conclude in 2025. If the outcome is that that ground water abstraction at Hardham must cease, there is no certainty as to when the licence will be revoked. It will not necessarily be immediate.
- 8.64 The Council notes that the Appellant has agreed to a Grampian condition preventing occupation until March 2025. The licence may or may not be revoked by that date, it is impossible to be certain. In the draft WRMP 2024, Southern Water do not commit to a date earlier than 2030, with a worst case identified by the Environment Agency being 2040.
- 8.65 The Environment Agency's letter of 11 July 2023 [**CD8 1.19**⁵²] says that a licence revocation need not be immediate '*so long as we are addressing the issues of effects on the SAC and have a plan to act once the extent of the effects is known*'.

The Council's case

- 8.66 The Council's case can be summarised in six points.
- 8.67 First, there are no cogent reasons justifying a departure from the advice in the NE Position Statement that this development must demonstrate, with certainty, that it will not add to the existing adverse impact of groundwater abstraction from Hardham. The statement is aimed at the correct problem

⁵¹ pdf pages 14 and 15 [CD8 1.04]

⁵² page 3

(significant adverse effects associated with Hardham ground water abstraction), as is the Part C Report and SNOWS. The Appellant's opinion that the ecological interests these measures protect are not worthy of protection, or perhaps not this much protection, is irrelevant.

- 8.68 Second, the statutory duties of Southern Water and the Environment Agency do not obviate the requirement for an appropriate assessment of this proposal. Nor do they determine the outcome of that assessment. The Appellant's 'parallel regimes' argument is misconceived as (1) The Environment Agency's compliance with its Regulation 9(3) duty is not secured mitigation of this proposal, (2) Southern Water's voluntary minimisation is not enforceable, and therefore also not secured mitigation, and (3) the WRMP 2024 does not exist yet, there is no completed HRA for that plan and a plan level HRA/AA is not the same as a project level appropriate assessment. The Appellant's case that a HRA of the draft WRMP 2024 is 'zero Hardham' from day 1 is wrong.
- 8.69 Third, the development is not already water neutral by virtue of being 'accounted for' within Southern Water's WRMP 2019. The fact that the development was included in the housing trajectory which formed the basis of WRMP 2019 is irrelevant. The Position Statement and the Part C Report are concerned with new development, whenever it was permitted. The exception to this is development with full permission prior to the NE Position Statement (September 2021). In any event, the estimates in the Part C Report for how much water will be required by planned new development are out of date.
- 8.70 Fourth, the appellant is unable to demonstrate, with certainty, when the future actions by the Environment Agency and Southern Water which aim to resolve the issues in the Arun Valley will be delivered to ensure this development, and all other similarly qualifying development, avoids adverse effects. The Appellant's evidence does not engage with this issue and reliance on other bodies complying with their statutory duties does not provide the answer. There is a difference between the general duty under Regulation 9(3) of the Habitats Regulations and the appropriate assessment requirement under Regulation 63(5) which is relevant here.
- 8.71 Fifth, the Part C Report is not appropriate for use as a development management tool. The figures in it represent a snapshot in time and are already out of date. There is no certain 'headroom' as contended by the Appellant.
- 8.72 Sixth, absent an offsite water neutrality scheme (which the Appellant is not offering) the only way in which the development can demonstrate certainty of mitigation is via the Council's proposed condition which prevents development commencing until water neutrality mitigation has been secured via SNOWS.

9. Summary of written representations

- 9.1 The Environment Agency did not respond directly to the Council's consultation on the application or the appeal. Southern Water responded only in relation to wastewater. The Appellant wrote to both and received responses to questions that they put to them. The responses can be found at Appendix B (Environment Agency) and Appendix C (Southern Water) of Mr Aitkin's proof of evidence [**CD10 1.02a**]. Both parties rely on the responses as part of their cases and I address them as necessary in this report.
- 9.2 Only Natural England responded to the appeal notification on time. As such, unless otherwise stated, what follows is a summary of the issues raised by parties external to the Council at the application stage.

Natural England

- 9.3 Natural England formally commented on the proposal three times:
- 12 September 2023 [**CD6 1.01**]. Responding to the planning application.
 - 11 January 2024 [**CD8 1.18**]. In response to the appeal, ahead of the Inquiry
 - 19 April 2024 [**ID13**]. Following the close of the Inquiry.

Letter of 12 September 2023 [**CD6 1.01**]

- 9.4 Natural England believe the proposal could have potentially significant effects on the Arun Valley sites, as per the NE Position Statement. They ask for further information, namely reconsideration of water neutrality with appropriate mitigation and relevant water budget calculations.
- 9.5 They note the Appellant's Shadow HRA and Addendum [**CD1 1.01, 1.02**] concludes that it can be ascertained that the proposal will not result in adverse effects on the integrity of the sites. Having considered the measures set out in the HRA to mitigate adverse effects, Natural England disagree. They advise that further consideration of mitigation is needed to ensure the proposal can demonstrate water neutrality.
- 9.6 They do not agree that impacts can be ruled out on the basis that its water demand is already accounted for in the pre-September 2021 existing/baseline water demand, against which water neutrality for all development thereafter is calculated. This is because the lawful water demand of the proposed dwellings did not exist prior to September 2021 and the proposal did not have full planning permission.
- 9.7 In response to Southern Water's 5 ml/d voluntary minimisation of groundwater abstraction at Hardham, they note there is no known acceptable level of groundwater abstraction which would be able to rule out having an adverse effect on the Arun Valley sites. In any event, the minimisation is unsecured and voluntary and not, therefore, appropriate mitigation. For these reasons, it is not appropriate to rely on Southern Water's abstraction minimisation as a mitigation measure to offset the increased water demand from the proposal.

- 9.8 In Natural England's view, water savings from Southern Water's planned demand reduction measures are to be utilised in the developing SNOWS to support the delivery of water neutral local plans across the WSZ. As such, relying on these measures to offset the proposal, without contributing to the strategy, would be double counting. They add that, while an appropriate contribution to such a strategy may be sufficient to rule out this proposal's impacts, no strategy has yet been agreed or implemented. As such, it is not appropriate to rely on the strategy at the time of their letter.
- 9.9 Natural England advise that any offsetting measures required to achieve water neutrality will need to have their maintenance and management appropriately secured with the competent authority, in perpetuity.

Letter of 11 January 2024 [CD8 1.18]

- 9.10 Natural England notes the appellants arguments as to why the proposal does not need to demonstrate water neutrality to rule out the adverse effects on the Arun Valley sites. They consider the arguments most relevant to Natural England's remit to be:
- That the proposal's water demand is already accounted for, and
 - That Southern Water's voluntary abstraction minimisation or demand reduction measures can be relied upon as offsetting mitigation measures.
- 9.11 They draw attention to the NE Position Statement and NE Advice Note. They say that achieving water neutrality can be defined as, 'ensuring that for every new development, total water use in the region after the development is equal to or less than the total water-use in the region before the new development' (*underline is their emphasis*). Natural England's view is that water use before the new development should be calculated in line with actual lawful existing water usage.
- 9.12 In their view, an appropriate assessment should not take into account mitigation measures which are uncertain at the time of the assessment. This includes voluntary measures not secured by an appropriate legislative or regulatory framework. A competent authority's decisions regarding the certainty of any given measure should consider both scientific certainty and practical certainty. Whereas scientific certainty is concerned with how likely a measure is to be effective, practical certainty is concerned with how likely a measure is to be delivered and secured in the long term.
- 9.13 They acknowledge that it is for the competent authority to satisfy itself on the certainty of any given measure. However, their view is that voluntarily adopted measures are not secured by an appropriate legislative or regulatory framework at the time of the permission. As such Southern Water's abstraction minimisation is not likely to have sufficient practical certainty to be relied upon as mitigation. Similarly, measures which have not been agreed or implemented are also unlikely to have sufficient practical certainty.

- 9.14 Natural England note the outcome of the Sustainability Review into groundwater abstraction at Hardham is due to report in March 2025. The findings of that investigation will determine what level of abstraction at Hardham can continue, while ensuring adverse effects on the Arun Valley sites are ruled out. As such, it is not appropriate to rule out adverse effects on the basis that ground water abstraction has been voluntarily reduced to 5 ml/day.

Letter of 19 April 2024 [ID13]

- 9.15 This letter was received following close of the Inquiry. It responds to specific questions that I put to Natural England aimed at informing an appropriate assessment. My letter also shared new documents that had been put before the Inquiry, as agreed with the parties.

Do you agree with the conclusion in the Shadow Habitats Regulations Assessment [CD1.1 01] in relation to Stage 1: Screening that only the Arun Valley Sites should be taken forward for appropriate assessment? If not, why? Which other sites should be taken forward and what are the reasons?

- 9.16 Natural England is satisfied that only the Arun Valley sites should be taken forward for appropriate assessment.

Do you agree with the proposition that the key concern in this case can be narrowed to the designated interest feature, namely the Lesser Whirlpool Ramshorn Snail? (See reference at paragraph 3.2.5 of Mr Baxter's Proof [CD10.1 04b] and paragraph 9 of the Appellant's closing [ID10]. If not, why?

- 9.17 They do not agree. As outlined in the NE Advice Note, the ongoing abstraction is having a detrimental impact on a number of sites, including the Arun Valley SAC, SPA and Ramsar site. A number of designated features associated with the SPA and Ramsar site (as well as their supporting habitats) are water dependent and are therefore potentially impacted as a result of the ongoing abstraction as well.

Do you agree that the evidence provided enables it to be ascertained that the proposal would not adversely affect the integrity of the Arun Valley Sites without the need for the development to demonstrate water neutrality?

- 9.18 They do not believe that the evidence provided by the Appellant is sufficient to conclude that the proposal would not adversely affect the integrity of the sites without the need to demonstrate water neutrality.

- 9.19 Natural England refer to the Sustainability Review reporting in March 2025. The findings of that investigation will determine what level of abstraction at Hardham can continue, while ensuring adverse effects on the sites can also be ruled out. Until the investigation has been completed, what is an acceptable level of groundwater abstraction is remains unknown.

- 9.20 Given the current uncertainty as to the potential impacts of additional abstraction, it is Natural England's advice that "for every new development, total water use in the Sussex North Water Supply Zone after the development must be equal to or less than the total water-use in the region before the new development" (as per the NE Advice Note) in order to ensure that future development does not contribute to increased levels of abstraction.
- 9.21 Minimisation of abstraction at Hardham does not consider, nor evidence, the fundamental question of how much water can be abstracted without having an adverse effect on the Arun Valley sites. Given the current situation, it is Natural England's advice that the current minimisation does not provide sufficient certainty.
- 9.22 In the absence of evidence to conclude how much water can be abstracted without having an adverse effect, it remains Natural England's opinion that future development should demonstrate how water neutrality will be achieved to ensure it does not result in additional abstraction beyond appropriate levels.

Do you agree that an alternative method that would protect the Arun Valley Sites has been put forward (paying regard to page 3 of the NE Advice Note)?

- 9.23 As outlined in the NE Advice Note, it is their view that the delivery of an alternative water supply may be required until the sites are restored to favourable conservation status.

Does the imposition of the condition at page 28 the SOCG [ID11] change your response to the previous two questions? Do you agree that the imposition of the two conditions set out on page 27 of the SOCG enable it to be ascertained that the proposal would not adversely affect the integrity of the Arun Valley sites? If not, please specify your reasons and provide details of any specific measures you consider are necessary.

- 9.24 They say that the wording and suitability of conditions is outside of their remit and expertise. However, any conditions that seek to ensure that there is not an adverse effect on the integrity on the sites should be suitably worded to ensure that adverse effects can be ruled out and be based upon robust evidence. Any mitigation that a condition seeks to secure should consider both scientific certainty and practical delivery.

Colgate Parish Council

- 9.25 No comments but notes that the Parish Council and residents are concerned there has been no application submitted for the community hall, shops and other infrastructure.

Comments from neighbours

- 9.26 One letter of objection was received, raising concern and objection to the proposal on the grounds that further housing being proposed prior to the neighbourhood centre being complete. This is alleged to be in breach of the Section 106 agreement for Kilnwood Vale. Resolving the issue of demonstrating water neutrality is also cited as a reason for delay. It is said

that the objector has been without any amenities for the entirety of the development's existence, and that the developer is actively avoiding building the essentials that were both promised and legally agreed. This is said to also put a strain on the amenities in surrounding areas which has resulted in oversubscription at doctors' surgeries, queues in local shops and lack of medicines at nearby pharmacies.

Southern Water

9.27 They note the development site is not located within Southern Water's statutory area for wastewater drainage services.

Thames Water

9.28 No objection on wastewater grounds subject to a condition aimed at ensuring confirmation of a suitable foul water connection for the development.

West Sussex County Council

Lead Local Flood Authority (LLFA)

9.29 The LLFA wrote to the Council on 18 October 2023 maintaining their initial objections to the proposal on the grounds that an acceptable drainage strategy hadn't been put forward. At the heart of their concerns were the Appellant's calculations relating to rainfall, the margin for flood risk, and the CV value used in the micro-drainage calculations.

Highways

9.30 They give advice relating to the potential adoptability of the proposal's roads, and make a number of comments relevant to that, noting that matters of adoption will be determined as part of any application for an agreement under Section 38 of the Highways Act 1980.

Fire and rescue

9.31 They are concerned that unavailability of additional water supply to fire hydrants in an emergency could increase the risk of being unable to control a fire. A condition is therefore thought to be necessary.

Essex County Council – place services team

Ecology

9.32 They have no ecological objections. Nevertheless, as the proposal does not demonstrate water neutrality, they issued a holding objection. This is subject to Natural England's formal comments on the conclusion of an appropriate assessment.

Archaeology

9.33 No historic environment objections.

London Gatwick

9.34 They have no objection, having examined the proposal from an aerodrome safeguarding perspective.

10. Inspector's conclusions

10.1 The numbers in superscript square brackets ^[xx] in this section are references to previous paragraphs in the report of relevance to the point under discussion. They are for cross referencing purposes only. My conclusions are based on consideration of all the evidence put before the Inquiry that is now also available to the Secretary of State.

10.2 Having regard to the matters on which the Secretary of State particularly wishes to be informed about ^[1.7], the matters in dispute between the parties, and the evidence to the Inquiry, the main considerations where my conclusions may assist are:

- Whether a Habitats Regulations compliant appropriate assessment can be concluded and, if so, on what basis.
- Whether the evidence otherwise indicates that the reserved matters should be approved.
- How the first two considerations relate to any planning balance necessary.

Appropriate assessment

10.3 The Applicant's shadow HRA [**CD1 1.01**] includes a summary of the main legislative principles, repeated at various points across the evidence by both parties. Beyond differing emphasis, the applicable law is not materially in dispute ^[7.16, 8.10]. The main principles are worth repeating for clarity and to set the context for the appropriate assessment.

10.4 By Regulation 63(1) of the Habitats Regulations a competent authority (which includes the Secretary of State exercising planning decision making powers) before deciding to give any consent, permission or other authorisation for a project which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) must make an appropriate assessment of the implications of the project for that site in view of that site's conservation objectives.

10.5 Under Regulation 63(2) an applicant (the Appellant in this case) must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required. Regulation 63(3) says that the competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies. The appropriate nature conservation body is Natural England.

- 10.6 Regulation 63(5) specifies that, in the light of the conclusions of the appropriate assessment, a competent authority may agree to the project only after having ascertained that it will not adversely affect the integrity of the European site.
- 10.7 In considering whether a project will adversely affect the integrity of the site, under Regulation 63(6), the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that it should be given subject to.
- 10.8 Beyond Regulation 63, Regulation 9 of the Habitats Regulations includes general duties on bodies relating to European sites and exercising functions so as to secure compliance with the requirements of the Habitats Directives (Regulation 9(1)). In exercising any of its functions, bodies must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions (Regulation 9(3)).
- 10.9 Two overarching legal points of relevance to the Secretary State's decision making relate to imperative reasons of overriding public interest (IROPI) and the precautionary principle and the question of proportionality. As both are questions of law, my view is based on the submissions made by the parties.
- 10.10 The duty under Regulation 63(5) of the Habitats Regulations is subject to Regulation 64, which makes provision for a project to be agreed notwithstanding a negative assessment of the implications for the European Site if the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest. The legal tests relating to this is referred to as 'IROPI' and are as follows:
- There are no feasible alternative solutions that would be less damaging or avoid damage to the site,
 - The proposal needs to be carried out for imperative reasons of overriding public interest, and
 - The necessary compensatory measures can be secured.⁵³
- 10.11 The Appellant's position on IROPI is that it is not applicable as it only applies in the absence of alternatives ^[7.16]. Paying regard to the reasons given by the Secretary of State for calling in the appeal^[1.7] it is relevant that IROPI offers a route within the Habitats Regulations to balance a negative assessment of effects on the Arun Valley Sites against other factors, which may in principle include housing demand and supply. However, as the substantive evidence does not make the case and there appears to be feasible alternative solutions if conditions are used as suggested below, I would not recommend that the Secretary of State reaches a decision on the basis that IROPI applies.

⁵³ see guidance on derogations at <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

- 10.12 Turning to proportionality, to accord with Regulation 63(5) of the Habitats Regulations, a decision maker may only grant approval having ascertained that there is no reasonable scientific doubt as to the absence of adverse effects on the integrity of the protected sites (the test of certainty). Wyatt⁵⁴, at paragraph 9, summarises some of the relevant points that emerge from applicable domestic and European caselaw. This includes that the duty under Regulation 63(5) embodies the precautionary principle, requiring a high standard of investigation.
- 10.13 In relation to proportionality in applying the precautionary principle, *Waddenzee*⁵⁵ assists in confirming that 'no reasonable scientific doubt' is not a requirement for absolute certainty as no such thing exists and that would be disproportionate. Nevertheless, the bar is a high one. This is reflected in *Sweetman*⁵⁶ in the context of compliance with the Habitats Directives, a compliant appropriate assessment '*cannot have lacunae and must contain complete, precise and definitive findings and conclusions*'.
- 10.14 The Council makes a fair distinction between (1) proportionality in complying with the test of certainty and (2) proportionality of any avoidance or mitigation measures necessary to conclude favourably on whether adverse effects on the Arun Valley sites are likely [8.26]. The former is uncontested between the parties, the test of certainty is not one requiring absolute certainty.
- 10.15 For the second proposition, the Appellant primarily relies on European Commission guidance [7.28]. This document was not put before the Inquiry in full and is instead quoted within the Shadow HRA [**CD1 1.02**⁵⁷]. The guidance appears to relate to general application of the precautionary principle across a range of functions, rather than being specific to the duties under Regulation 63 of the Habitats Regulations or anything comparable. As such, although it would be wrong to dismiss the guidance out of hand, it is safer to base findings mainly on an examination of the legislation itself.
- 10.16 Regulation 63(5) is clear that the Secretary of State can grant approval in this case only after having ascertained that it will not adversely affect the integrity of the Arun Valley sites, considering the conclusions of an appropriate assessment. The scope of the consideration is limited to effects on integrity. Beyond IROPI, there is no mechanism for balancing the Regulation 63(5) duty, and any necessary avoidance or mitigation measures, against impacts that are unrelated to effects on integrity.
- 10.17 The Appellant's case includes the encouragement of such a balance, by narrowing down on the Lesser Ramshorn Whirlpool Snail (which isn't legitimate anyway, for the reasons set out below), commenting on the limits of its distribution and other things they think could have been done to address the issue, and the impact of what they see as a requirement for water neutrality and the NE Position Statement more broadly has on the delivery of

⁵⁴ [CD5 1.05]

⁵⁵ referred to at para 9(7) of Wyatt [CD5 1.05]

⁵⁶ referred to at para 9(10) of Wyatt

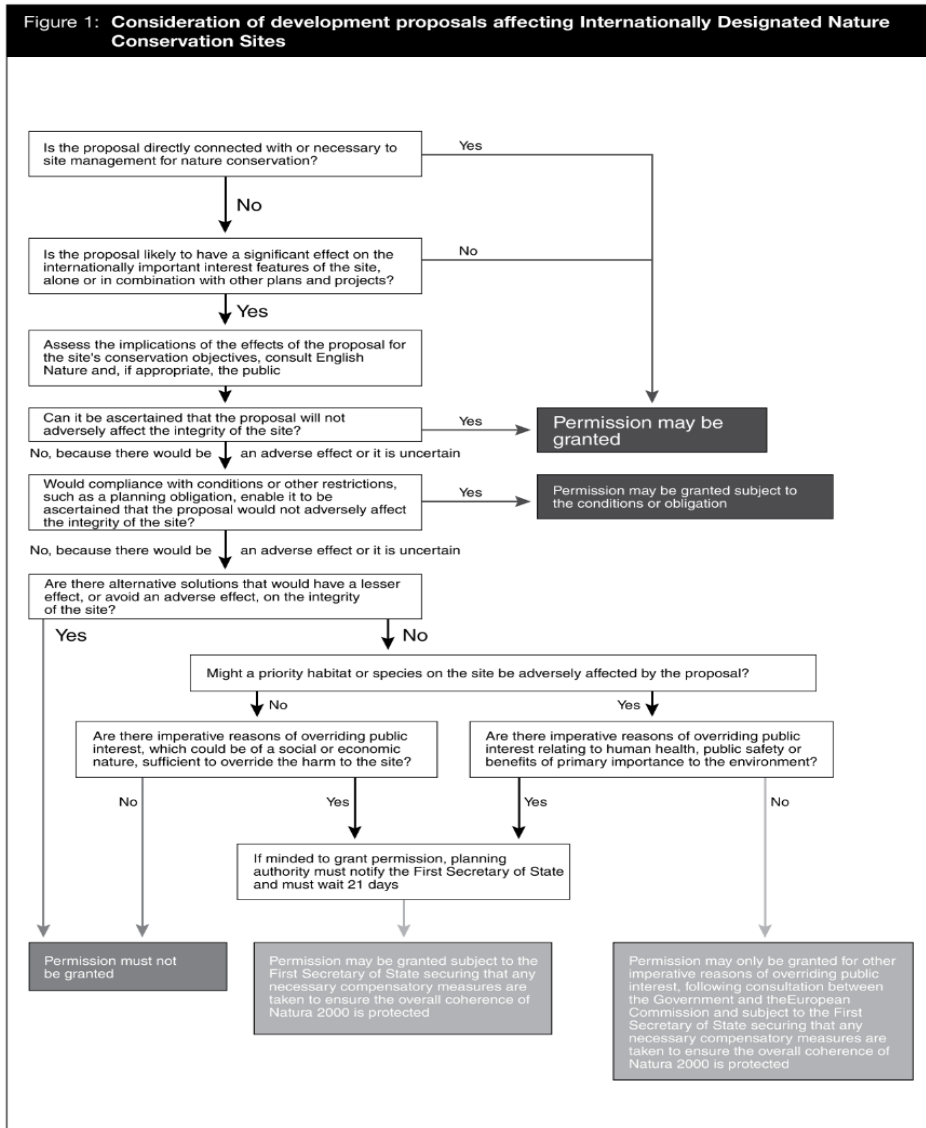
⁵⁷ paragraphs 2.4.2-2.4.5

development and cost [7.33-7.45]. This internal balance is outside the scope of the Regulation 63(5) duty and, therefore, taking account of the impact on delivery of development and costs would be to take account of legally irrelevant factors.

10.18 For similar reasons, taking account of the Appellant’s view on more proportionate things that they think other bodies could have done as an alternative to issuing the NE Position Statement would be to introduce legally irrelevant considerations that, in any event, are highly speculative [7.38-7.42].

10.19 For these reasons, I recommend that the Secretary of State does not agree with the Appellant’s arguments relating to ‘whether demanding water neutrality for all new development in the WSZ is a proportionate response to the risk identified to the qualifying interest’ [7.33-7.45].

10.20 What follows is an assessment of the main further points raised by the Appellant. This is to assist the Secretary of State with seeing the conclusions relevant to deciding an appropriate assessment, I have structured addressing them to generally align with the flow chart of the HRA process at Appendix 5 of the Appellant’s shadow HRA [6.1]. It is reproduced below:



10.21 Looking the first step on the flowchart, there is no suggestion that the proposal is directly connected with or necessary to site management for nature conservation. The next relevant steps providing a pathway through the flowchart are considered below in detail are as follows:

- Is the proposal likely to have significant effects (either alone or in combination)?
- What are the implications of the effects for the site's nature conservation objectives?
- Can it be ascertained (with reasonable certainty) that the proposal will not adversely affect the integrity of the site?
- Would compliance with conditions or other restrictions enable it to be ascertained that it the proposal would not adversely affect the integrity of the site?

10.22 There is some overlap between the Appellant's arguments and where they may, arguably, fit within the structure.

10.23 In addition to addressing the key arguments in the appeal, what follows is also intended to give the Secretary of State the necessary information to conclude and adopt this part of the report, with the references to evidence within it, as appropriate assessment of the proposal.

Is the proposal likely to have significant effects (either alone or in combination)?

10.24 Section 3 of the Shadow HRA goes through the process of screening for likely significant effects⁵⁸, concluding that effects are unlikely in relation to the Ashdown Forest SAC, Lewes Downs SAC, and Pevensy Levels SAC. This is based on the assessment in the HRA produced to support the Outline Permission as circumstances are said to be unchanged.

10.25 In relation to the Arun Valley Sites, the NE Position Statement is an obvious change in circumstances. The Shadow HRA concludes that, as likely significant effects on the sites are possible, it is necessary to take the Arun Valley Sites forward for appropriate assessment.

10.26 Natural England agree with the approach taken to screening in the HRA ^[9.16] and I have no reason to recommend a different conclusion. As such, the scope of the appropriate assessment is limited to effects on the Arun Valley Sites.

10.27 The basic tenet of the NE Position Statement is not seriously contested by any party. As the WSZ includes supplies from ground water abstraction (Hardham) it cannot, with certainty, be concluded that there will be no adverse effects on the integrity of the Arun Valley Sites. Fundamentally, as this is 'the problem' and there is no evidential basis to say otherwise, this should be adopted as a starting point.

⁵⁸ section 3

- 10.28 This being the case, projects such as the proposal⁵⁹ need to show with reasonable certainty that they will not add to the impact. One way to achieve that, according to the NE Position Statement, is to demonstrate water neutrality using the definition which relates to water use in the WSZ [7.6].
- 10.29 The statement specifically relates to planning and is aimed at 'all applications which fall within the supply zone'. It being focused on what action can be taken within the system to conclude favourably under the Habitats Regulations is therefore unsurprising. Water neutrality being specifically identified as 'one way' of showing that development will not add to the impact is an action within the control of Local Planning Authorities and developers is also understandable. This doesn't hint at a lack of understanding on Natural England's part of the role of other actors in what is a complex and multifaceted problem.
- 10.30 Water neutrality is a demand side intervention and is therefore concerned with water use. Development obviously has the potential to put pressure on water use. There is no requirement for new development, including this proposal, to facilitate a reduction in groundwater abstraction from Hardham. However, it must not increase its use, either alone or in combination, and make the problem worse. Authorising projects that contribute to the problem in these circumstances, without suitable avoidance/mitigation, would not accord with Regulation 63.
- 10.31 It is not the purpose of this appeal to examine the rationality of the NE Position Statement or the wider policy response to the problem. I do not accept the Appellant's arguments that the NE Position Statement and the related documents mischaracterise the issues, in so far as they relate to this appeal. Although water neutrality is clearly a focus of both the Council and Natural England, as demonstrated by the Part C Report and SNOWS, there is nothing to seriously suggest that the intention is to do anything other than bring forward a planning related solution to an uncontested problem in the Arun Valley Sites.
- 10.32 For these reasons, I recommend that the Secretary of State finds the Appellant's arguments criticising the NE Position Statement and the concept of water neutrality to be not of central relevance to question of whether a favourable appropriate assessment can be concluded [7.6-7.11].

What are the implications of the effects for the site's nature conservation objectives?

- 10.33 The designation information relating to the Arun Valley Sites, including conservation objectives and qualifying features, is summarised at paragraph 3.8 of the Shadow HRA. In relation to the SAC and the SPA the conservation objectives include ensuring the integrity of the sites is maintained or restored and contributing towards the achievement of a favourable conservation status of its qualifying interest features.

⁵⁹ without full planning permission prior to September 2021 when the NE Position Statement was published.

- 10.34 The qualifying interest features are identified as the Lesser Ramshorn Whirlpool Snail (for the SAC) and the Bewick Swan (for the SPA). For the Ramsar, the site is designated for its international importance under Criterion 1⁶⁰ for its representative, rare or unique wetland types. Specifically showing a greater range of habitats than any other chalk river in Britain, including fen, mire, lowland wet grassland and small areas of woodland. It is also designated under Criterion 2 for supporting a diverse range of wetland flora and fauna, including several nationally rare species. Under Criterion 6 the site is designated for regularly supporting a sizable population of species of waterbird.
- 10.35 Natural England do not agree with the Appellant seeking to narrow the relevant qualifying interest feature to the Lesser Ramshorn Whirlpool Snail [7.35-7.36, 9.17]. The Council did not contest this point significantly during the Inquiry. However, by their own admission, they had limited supporting ecological expertise to do so.
- 10.36 The Appellant's response to Natural England's letter after close of the Inquiry [ID14] describes the snail as a 'key receptor' indeed 'arguably the most sensitive receptor and the focus of much of the discussion'. It also correctly says that the Appellant's Shadow HRA acknowledges the relevance of overlapping designations of the SPA (for birds) and Ramsar (for aquatic flora and invertebrates).
- 10.37 Even accepting that the snail is a key focus, based on the evidence presented, it cannot be said with reasonable certainty to be the only qualifying feature affected in the Arun Valley Sites. Adopting a precautionary approach, I would not recommend accepting the Appellant's evidence that the qualifying interest affected by the issue in the NE Position Statement can be narrowed to the Lesser Ramshorn Whirlpool Snail.
- 10.38 Regardless, narrowing the focus loses much of its utility if the Secretary of State agrees that the Appellant's arguments relating to 'whether demanding water neutrality for all new development in the WSZ is a proportionate response to the risk identified to the qualifying interest' should be rejected [7.33-7.45], which I recommend [10.20].
- 10.39 If the Secretary of State does not reject that argument, I would recommend that any question of proportionality is considered based on there being the potential for effects on all qualifying interests in the Arun Valley Sites, rather than narrowing the issue to the snail.

⁶⁰ Although not before the inquiry, to assist with understanding, general information about the Ramsar Criterion can be found at - https://www.ramsar.org/sites/default/files/documents/library/ramsarsites_criteria_eng.pdf

Can it be ascertained (with reasonable certainty) that the proposal will not adversely affect the integrity of the site?

10.40 The adoption of water neutrality is described in the NE Advice Note as a tool to help ensure compliance with the Habitats Regulations. It does not preclude the consideration of alternative methods to protect the sites and enable development, provided the requirements of the Habitats Regulations are met and is not intended to pre-judge the outcome of individual applications⁶¹. It is for the Appellant to bring forward any alternative methods in the form of avoidance/mitigation measures that meet the test of certainty. What follows is an assessment of the main elements of the Appellant's case that, taken together, are said to allow a favourable appropriate assessment to be concluded without the need for water neutrality.

Reliance of other regulatory regimes [7.12-7.13, 7.17-7.21]

10.41 The Appellant's case relies at least partially on performance of action by the Environment Agency, Southern Water, and others under regulatory regimes and functions beyond planning. This raises a question about the degree to which such regimes/functions can be relied upon as mitigation/avoidance measures to conclude that the proposal will not adversely affect the integrity of the Arun Valley Sites. The main regimes/functions in this case can be summarised as –

- Powers of the Environment Agency to grant, revoke, and amend water abstraction licences under the Water Resources Act 1991.
- Duties on Southern Water to supply potable water and prepare and maintain a WRMP under the Water Industries Act 1991.

10.42 In line with the well-established principle in planning decision making, the Secretary of State can assume that other regulatory regimes will operate effectively and, therefore, it is not necessary to duplicate them. The subject matter of Paragraph 194 of the Framework (ground conditions and pollution) is not relevant to this case. However, the policy principle aligns with long understood general practice across the planning system. The caselaw referred to by the Appellant supports this approach⁶² [7.25, 8.11].

10.43 Planning Practice Guidance⁶³ says that planning for the necessary water supply would normally be addressed through strategic policies. Water supply resulting from planned growth can then be reflected in the WRMPs produced by water companies. This points towards a co-dependence between the town and water planning regimes, with local plans identifying planned growth and water companies planning for supply based on it. It also reflects the principle that water supply should not normally be a general consideration in development management decision making.

⁶¹ See page 3 of [CD8 1.16]

⁶² R(An Taisce) [CD 1.01] and Sizewell C [CD5 1.02]

⁶³ Paragraph: 016 Reference ID: 34-016-20140306

- 10.44 In Horsham there is no dispute that Kilnwood Vale is 'planned growth' and that the WRMP 2019 was published in full knowledge of it ^[7.18], albeit ahead of the NE Position Statement. In this case, water supply is being considered only in the very specific legislative context of the Habitats Regulations. It cannot, therefore, fairly be described as a general consideration that may conflict with the principles set out in Planning Practice Guidance ^[7.24, 8.13]. In any event, the guidance does not overrule the legislative requirement.
- 10.45 In my view, in assessing the appropriateness of mitigation/avoidance measures, the Secretary of State is entitled to assume that other regulatory regimes will operate effectively. This does not, however, disapply the need to satisfy the test of certainty to accord with the duty under Regulation 63(5) of the Habitats Regulations. It is not sufficient to simply assume that the problem will be dealt with by others without a proper examination of practical and scientific certainty, including adopting the precautionary approach where necessary. Doing otherwise risks delegating responsibility to others and leaving gaps in coverage of protection for the Arun Valley Sites, contrary to the wider purpose of the Regulations (and, by extension, the Habitats Directives).

Southern Water voluntary minimisation and Environment Agency action following the Sustainability Review ^[7.46-7.53, 8.28-8.31]

- 10.46 Until the Sustainability Review concludes in 2025, and subsequently reports on its findings, there is no known 'safe' level of groundwater abstraction from Hardham that can be excluded from having a significant effect on the Arun Valley Sites. The review will inform the Environment Agency's decision making about whether to take action to impose changes on the existing Hardham licence using powers in S.52 of the Water Resources Act 1990⁶⁴.
- 10.47 Southern Water's voluntary minimisation of a target rolling average of 5 ml/d is a temporary measure they have committed to keeping in place at least until the Sustainability Review concludes⁶⁵. Minimisation in this context means Southern Water using their best endeavours to keep abstraction as low as possible whilst also meeting customer demand⁶⁶. It is taken as a rolling average and has been exceeded, notably in the 2022 drought ^[8.30].
- 10.48 Voluntary minimisation was agreed between the Environment Agency and Southern Water in the short term as appropriate action for keeping ground water abstraction at Hardham from increasing appreciably above September 2021 levels. This timing is significant as it relates to the point at which the NE Position Statement was issued. It allows parties to say, at least until the Sustainability Review reports, that the likely adverse effects on the Arun Valley Sites are unlikely to worsen. It does not, as made clear by their letter of 11 July 2023⁶⁷, discharge the Environment Agency's duties under the Habitats Regulations. That would, instead, follow by making any necessary changes to the abstraction licence.

⁶⁴ the existing licence is a Licence of Right granted in 1966 and is, therefore, not time limited. (see Environment Agency letter 28 April 2022 in Appendix B of CD10 1.02a)

⁶⁵ see page 2 of Southern Water letter dated 7 July 2023 at Appendix 2 of [CD1 1.02a]

⁶⁶ see Environment Agency letter dated 6 June 2022 at Appendix 2 of [CD1 1.02a]

⁶⁷ Appendix 2 of [CD1 1.02a]

- 10.49 It logically follows that reasonable certainty of the appropriateness of the existing level of voluntary minimisation only exists until the Sustainability Review concludes. The purpose of the review is to collect hydrological and ecological data to support future decision making. As the Environment Agency puts it in their letter of 13 January 2023;
- 'The protection of the [Arun Valley Site] will be secured by making any necessary changes to the abstraction licence. A voluntary commitment to reduce abstraction does not secure the necessary protection, although it is a welcome step to reducing the risk of deterioration of, and risk of adverse effects to, the site whilst detailed investigations are being carried out in relation to the abstraction'.*
- 10.50 The current temporary minimisation measures, that were only ever intended to be short term, cannot be relied upon as avoidance/mitigation that confirms reasonable certainty of no adverse effects on the Arun Valley Sites.
- 10.51 Natural England and the Council's concerns that voluntary minimisation is not secured is secondary to the fact that it is only a short-term measure. Whether a licence change at Hardham is necessary will only be known once the Sustainability Review concludes. At that time, the Environment Agency would have a range of options that includes amendment or revocation of the licence. As part of that decision making, they are under a duty under Regulation 9(3) of the Habitats Regulations to secure compliance with the Habitats Directives, and therefore to consider the effects on the Arun Valley Sites.
- 10.52 I agree with the Council that the Regulation 9(3) duty is more general than the Regulation 63(5) obligation to only authorise a project having ascertained that no likely adverse effects on integrity will result. The Environment Agency's response to the Appellant of 26 April 2022 at Appendix 2 of [**CD10 1.02a**] gives a sense of how they see their obligations *'in exercising our powers, we have to take account of our legal obligations when undertaking this action – these include our duties and obligations to protect the environment as well as any legal duties regarding the impact of our action on the licence holder and any duties they may have to provide public water supply'.*
- 10.53 The response indicates a perceived greater freedom on the Environment Agency's part to balance a wider range of factors and still accord with their obligations under the Habitats Regulations. Notwithstanding this and the more general nature of the duty under Regulation 9(3) of the Habitats Regulations, it would be wrong to discount evidence of the Environment Agency's role out of hand.
- 10.54 The Secretary of State can have confidence that the Environment Agency will appropriately monitor and review a voluntary minimisation agreement with a water company and consider taking formal action if breach of it leads them to think that is necessary. Their letter of 6 June 2022⁶⁸ provides evidence of the monitoring process they have in place, as well as confirming that they do not formally enforce voluntary action. So, while voluntary minimisation is not legally secured, discounting it purely on this basis fails to pay regard to the Environment Agency's powers and obligations, which the Secretary of State

⁶⁸ Appendix 2 of [CD1 1.02a]

can assume will be operated judiciously.

- 10.55 Looking forward, beyond the Sustainability Review, there are a range of unknown actions that the Environment Agency could take in relation to the ground water abstraction licence at Hardham in the exercise of their powers under S52 of the Water Resources Act 1991. There are also things that Southern Water may volunteer to do or, indeed, they may formally apply to change in the licence under S51 of the 1991 Act.
- 10.56 The unspecified future action of these parties does not provide the necessary reasonable certainty to conclude that no adverse effects on the integrity of the Arun Valley Sites will result from the proposal. While they can be expected fulfil their legal obligations under the Habitats Regulations, the question of 'how' and 'when' lacks reasonable certainty.
- 10.57 In summary, I recommend that the Secretary of State does not discount voluntary minimisation out of hand on the basis that it is not secured. However, it is only a short-term measure and reasonable certainty of its appropriateness cannot be judged until the Sustainability Review reports. Further, while they can be expected to comply with their legal obligations, the unspecified future action by the Environment Agency and/or Southern Water in response to the Sustainability Review does not provide evidence of reasonable certainty that the Secretary of State can rely upon to confirm that no adverse effects on the integrity of the Arun Valley Sites will result from the proposal.

The WRMP 2024 [7.63-7.70, 8.32-8.46]

- 10.58 For information, an uncontested description of the preparation and function of WRMPs is described in the proof of evidence of the Appellant's water supply witness⁶⁹. The overarching objective of the WRMP is to look ahead over 25 years and describe how the water company aims to secure a sustainable supply/demand balance. The Government's Water Resources Planning Guideline [**CD8 1.08**] assists companies with preparing WRMPs and, at paragraph 6.3, says that water demand growth projections should be based on those in local plans and the resulting supply must not constrain planned growth [7.17,7.18].
- 10.59 When the final version is published, the WRMP 2024 would be a statutory plan⁷⁰ and must, therefore, be accompanied by its own HRA. As things presently stand the WRMP 2024 and its HRA are in draft form. The Statement of Responses [**CD8 1.04**] indicates a range of relevant information and new material that would need to be considered ahead of finalising either document. The likelihood of changes being made brings into question the validity of the draft WRMP 2024 and its HRA as a basis for present decision making. The specific details of the documents themselves do not, therefore, provide a credible basis on which to reach a conclusion about reasonable certainty.

⁶⁹ paragraphs 4.19- 4.41 of [CD10 1.02a]

- 10.60 A reasonable planning system parallel to this situation would an HRA prepared for a Local Plan being used to support a development management decision. Paragraph 008 of the PPG provides some relevant advice ^[8.22] including reminding decision makers that the HRA would still need to contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt on the impact of the project. This is a high standard to meet and will need to be assessed on a case by case basis.
- 10.61 Although not a direct comparison, the guidance helps to support a view that measures in a WRMP are capable in principle of being avoidance/mitigation measures that confirm an absence of likely adverse effects on a European Site. However, the draft stage at which the WRMP 2024 has reached in this case leads me to conclude there is an absence of reasonable certainty. In this respect, I agree with the Council's view that a positive appropriate assessment at the WRMP level does not mean that projects under that plan can be assumed to have no significant adverse effects.
- 10.62 In a more general sense, the Secretary of State can expect that the relevant bodies will comply with their duties under the Habitats Regulations when the WRMP 2024 is finally published. This includes carrying out any appropriate assessment of likely adverse effects on the Arun Valley Sites necessary to meet the Regulation 63(5) duty.
- 10.63 The Appellant's working assumption that the WRMP 2024 is likely to be published ahead of the Sustainability Review reporting is a fair one, in the absence of evidence to the contrary ^[7.68]. The Council questions the degree to which the draft WRMP 2024 plans for a 'zero Hardham' baseline ^[8.39-8.46]. While the evidence doesn't support a firm view that the current draft of the WRMP 2024 does, there is reasonable evidence that water supply scenarios informing the WRMP will need to contemplate excluding ground water extraction from Hardham ^[7.69]. However, concluding on the specifics would be speculation. Possible reasons for the WRMP 2024 needing to adopt zero Hardham include (1) that the Environment Agency revokes the abstraction licence in response to the Sustainability Review or (2) a favourable appropriate assessment of the WRMP 2024 cannot otherwise be concluded and an IROPI argument is not, or cannot, be made.
- 10.64 The Appellant is incorrect to say that the WRMP 2024 could not be published if it included an unfavourable appropriate assessment ^[7.67, 7.69]. Regulation 64 of the Habitats Regulations and the associated IROPI tests provide a legislative route to do just that and whether any such decision would be made in response to evidence that, is at present, is unknown ^[8.23].
- 10.65 The Council's questioning of whether the WRMP 2024 could, in practice, adopt a zero Hardham baseline based primarily on Southern Water's available water supply in times of drought does not particularly assist ^[8.32-8.36]. It comes largely from a disagreement between the parties around how ably water supply coped in response to the 2022 drought ^[7.79, 8.32-8.36]. For reasons that include the lack of certainty about demand management measures and the availability of alternative sources (discussed below) there isn't the evidence to conclude on this point one way or another.

- 10.66 Overall, there is not the certainty in the draft WRMP 2024 or its accompanying HRA to conclude that any of the specific measures within it provide reasonable certainty of no adverse effects on the integrity of the Arun Valley Sites will result from the proposal. Other bodies can be expected fulfil their legal obligations under the Habitats Regulations. This includes Southern Water concluding any necessary favourable appropriate assessment, unless IRPOI applies. However, as the question of 'how' and 'when' lacks reasonable certainty.
- 10.67 The Appellant answers a firm 'no' to their own question of '*whether supply sources in the WRMP 2024 include groundwater abstraction at Hardham, at levels that cannot be excluded from the potential of harm to the integrity of the protected site*' [7.63]. For the reasons set out above a response of 'we don't know' is a more accurate answer. I recommend that the Secretary of State takes the same view based on the available evidence.
- 10.68 In these circumstances the Secretary of State is being asked to do little more than rely on the unspecified future action of parties fulfilling responsibilities under the Habitats Regulations under other regulatory regimes, including the assumption that any necessary favourable HRA must come forward. The Secretary of State is entitled to assume that other regimes will operative effectively. However, without more detail of what will happen and when, in this case it does not provide evidence of reasonable certainty that can be relied upon to confirm that no adverse effects on the integrity of the Arun Valley Sites will result from the proposal.
- 10.69 It is the Appellant's case that addition water demand (including from the proposal) can be met by a combination of greater utilisation of other sources of supply and/or demand management measures [7.65]. Neither of these are secured mitigation measures for the proposal. Instead, they support the Appellant's case that the Secretary of State can rely on other regulatory regimes to avoid/mitigate the likely adverse effects on the Arun Valley Sites and have confidence that supply side options for doing so can be utilised without the need for water neutrality. The merits of both are discussed below.

Alternative sources of supply [7.71-7.80, 8.47-8.62]

- 10.70 Evidence on alternative sources of supply supports the Appellant's argument that a resulting loss of supply from groundwater extraction Hadham ceasing to 2030⁷¹ can be made up elsewhere [7.64]. As there is no detailed evidence before the Inquiry to contradict the Appellant's worst case scenario deficit assumptions, and they otherwise appear fair, is it reasonable to adopt them as a starting point [7.76].
- 10.71 In relation to Weir Wood, the statutory notice under regulation 28(4) of the Water Supply (Water Quality) Regulations 2016 was available to the Inquiry [ID6]. There is no detailed evidence about progress towards completing the measures in the statutory notice and the likelihood of it becoming operational by 31 March 2025. On the other hand, there is no evidence to suggest the statutory notice will not be complied with. The Secretary of State is also entitled to assume that the regime under the Water Supply Regulations will

⁷¹ see para 7.73 of this report on the relevance of 2030

operate effectively ^[7.75]. The Council's information from the Statement of Responses does not cast serious doubt over the timings, as they are driven by the statutory notice ^[8.54-8.55]. Unlike the Environment Agency's consideration of the Hardham licence, which is dependent on the Sustainability Review reporting, there is reasonable certainty of outcome on the timing of Weir Wood becoming operational.

- 10.72 How the additional supply from Weir Wood would be used is a different matter. The Statement of Responses⁷² references Southern Water's 'current pressures from the treatment works outage at Weir Wood', which is also acknowledged by the Appellant's witness on Water Supply⁷³. There is also evidence of ongoing issues with the Littlehampton Water Treatment Works ^[8.56-8.58]. As such, the degree to which additional supply from Weir Wood is needed to address existing pressures, rather than serve new growth, is unclear. As is the nature of any contractual agreement with other water companies to export water elsewhere ^[8.56]. For these reasons, although on the face of it Weir Wood is capable of making up for a loss of supply resulting from cessation of groundwater extraction at Hardham, there is not reasonable certainty in the evidence provided that would be the outcome.
- 10.73 In these circumstances, a condition preventing occupation of the development until at least 31 March 2025 would serve no planning purpose and would not, therefore, pass the test of necessity in the Framework ^[7.77].
- 10.74 The bulk supply agreements between Southern Water and Portsmouth Water and SES Water respectively are subject to commercial contracts that are not before the Inquiry or otherwise in the public domain. The Council takes issue with the availability of the supplies ^[8.48-8.53]. In my view the lack of reasonable certainty comes more fundamentally from the absence of transparency around the terms of the contracts. As such, while they may in theory provide supply capable of making up for a cessation of groundwater extraction at Hardham, reasonable certainty of supply in practice cannot be concluded upon.
- 10.75 In summary, there are alternatives to serving new development other than from additional groundwater abstraction at Hardham. The Secretary of State should give some weight to the options as potentially available alternatives if a decision is taken in the future to cease groundwater abstraction at Hardham. However, the need for them being theoretical and questionable evidence that their availability is secured, places limits on the weight that can be attached.

Demand management savings ^[7.54-7.62, 8.69, 8.71]

- 10.76 The Appellant's arguments on demand management savings are enabled principally by their consideration of the measures in the WRMP 2019 and how they are treated in the Part C Report to generate what is referred to as the Southern Water contribution ^[7.54-7.57]. It is by utilising the contribution that the Appellant claims that the proposal is already water neutral as it is 'accounted for' in Southern Water's WRM2019. More generally, demand management savings provide further evidence that addition water demand for development

⁷² page 7 [CD8 1.04]

⁷³ paragraph 6.27 [CD10 1.02a]

can be met from other sources without the need for water neutrality [7.58-7.59]⁷⁴.

- 10.77 Taking a step back, the purpose of the Part C Report is to set out a strategy for achieving water neutrality in the WSZ and provide part of the evidence base to support the adoption of Local Plans in Horsham and the other affected Local Planning Authorities. The strategy has three components, (1) reducing water demand through new build efficiency targets modelled on 110 or 85 l/p/d⁷⁵, (2) offsetting through the Southern Water contribution, and (3) offsetting the remaining demand by other means using the planning system (through the strategic approach that has become SNOWS or a bespoke solution)⁷⁶. The three components are intended to work together to provide the coverage necessary to say that water neutrality in the WSZ is achieved, delivering reasonable scientific and practical certainty of no likely adverse effects on the Arun Valley Sites. The success or failure of one component has an impact on the other two.
- 10.78 The Southern Water contribution is drawn from the WRMP 2019 and the demand management measures within it aimed at reducing household water consumption and leakage. The Part C Report makes an allowance to account for these measures to determine an assumed Southern Water contribution. It is therefore an estimate intended to inform the strategy in the Part C Report based on the evidence available on that time.
- 10.79 The Environment Agency/Ofwat/Defra letter to Southern Water of 20 October 2023 refers to concerns that the company has reported a supply-demand balance significantly below what is forecast in the WRMP 2019, driven in large part by leakage⁷⁷. No updates to the Part C Report have been made since its publication assessing the continuing appropriateness of the assumed Southern Water contribution. The evidence available to the Inquiry suggests that, as the underlying figures are open to question, it cannot be relied upon to create the 6345 to 8335 dwelling headroom claimed by the Appellant.
- 10.80 The Appellant appears to accept that the figures may lack realism and the Council is under no specific duty to bring forward alternative figures in circumstances where the October 2023 letter to Southern Water is enough to cast serious doubt. As such, the extent of assumed reductions from demand management measures is evidentially unclear and the lack of clarity does not support the Appellant's case that the proposal is 'accounted for' in the WRMP 2019. The question of whether water supply from alternative sources can be assumed, even in the absence of savings from demand management measures, is addressed elsewhere in this report [7.61-7.62].

⁷⁴ the Appellant's detailed reasoning explaining how the proposal is accounted for in the WRMP 2019 can be found in paragraphs 8.15-8.45 of their Statement of Case [CD7 1.01]

⁷⁵ for information, it is the difference between these two modelled scenarios that creates the 6345–8335 dwelling margin, depending on whether a 100 or 85 l/p/d efficiency target is utilised/achieved.

⁷⁶ a summary can be found in the Executive Summary to the Part C Report on page iv + [CD8. 1.14c]

⁷⁷ pages 1 and 2 and accompanying table heading 'leakage', Appendix 1 of [CD10 1.02a]

- 10.81 The 'conceptual division' of development needs is a tool of the Appellant's invention ^[7.59]. It appears to come from discussion around the remaining demand to be offset explained in section 5.2.4 of the Part C Report. However, categorisation of development 'needs' was never the purpose of the Part C Report, nor was it intended to be used directly to support development management decisions or in the manner utilised by the Appellant.
- 10.82 As a strategic development allocated in the HDLP, Kilnwood Vale quite clearly formed part of the baseline informing the WRMP 2019. In this respect, the proposal is 'planned for'. However, this is irrelevant when viewed in the context of the NE Position Statement that distinguishes development in only two ways (1) development with full planning permission prior to September 2021 that is exempt from the statement as it cannot act retrospectively, and (2) other development. The Appellant's claim that there is another category in the middle that the proposal falls into is fictitious and, in any event, is based on figures that (for reasons explained above) are open to question. In this respect, there is no evidentially clear 'headroom' to utilise. Even if there were, there is no evidence on how such headroom would be apportioned to support the insistence that this proposal must be entitled to use it.
- 10.83 It does not appear to be in dispute that the proposal can achieve water efficiency that would meet the target of 110 l/p/d. Indeed, the open market dwellings are calculated as 91.40 l/p/d. Achievement of this could be secured by conditions. However, for the reasons above, that does not assist with confirming that the proposal would fall within any perceived headroom alluded to in the Part C Report.
- 10.84 In summary, I recommend that the Secretary of State does not agree that the extent of demand management savings programmed by Southern Water provides reasonably certain further evidence that additional water demand for development can be met from other sources without the need for water neutrality. Further, I recommend the Appellant's arguments that the proposal can fairly utilise 'headroom' they believe the Part C Report confirms as available are rejected. Neither of these provide evidence of reasonable certainty that the Secretary of State can rely upon to confirm that no adverse effects on the integrity of the Arun Valley Sites will result from the proposal.

Conclusions

- 10.85 To summarise, in my view the Secretary of State is entitled to assume that other regulatory regimes will operate effectively. In principle, this can provide reasonable certainty of mitigation/avoidance of likely significant effects on a European site and a positive appropriate assessment to be concluded to discharge of the duty under Regulation 63(5) of the Habitats Regulations.
- 10.86 However, the evidence in this case does not allow such a conclusion to be reached. Existing voluntary minimisation of groundwater extraction at Hardham by Southern Water is only designed to be a short term measure in advance of the Sustainability Review reporting. It is not of itself an appropriate mitigation measure for the proposal. While they be expected to fulfil their legal objections, the unspecified future action of the Environment Agency and/or Southern Water in response to the Sustainability Review does not provide reasonable certainty of no adverse effects on integrity due to the lack of detail about what action will be taken and when.

- 10.87 The draft WRMP 2024 and the accompanying HRA are subject to change and do not, of themselves provide reasonable certainty of avoidance/mitigation measures. This leaves the Secretary of State relying on the generality of the WRMP process itself and the fact that the WRMP 2024 would either need to conclude a favourable appropriate assessment or make an IROPI case. There is little certainty here, nor about whether the detail, coverage, and spatial scale of the WRMP 2024 could be used as an appropriate basis for decision making on the proposal.
- 10.88 The evidence does not, with reasonable certainty, support the Appellant's case that Southern Water's WRMP 2019 demand management savings provide reliable evidence that additional water demand arising from development can be appropriately met from this source and the claim that the Part C Report confirms the existence of headroom that the proposal can fairly utilise is without merit.
- 10.89 The question of availability of alternative sources of supply is a complex one, due primarily to fluid nature of contractual arrangements between water companies and the lack of public transparency on the terms of such arrangements. The evidence does not allow a specific source of alternative supply to be identified, nor is there a need for there to be one. However it does, in general, point towards some capacity in supply that the Secretary of State can take confidence in should groundwater abstraction at Hardham need to cease in the future.
- 10.90 In conclusion, based on the evidence provided, taken separately or as a whole the Appellant's evidence of avoidance/mitigation does not lead me conclude that it can be ascertained (with reasonable certainty) that the proposal will not adversely affect the integrity of the Arun Valley Sites.
- 10.91 If the Secretary of the State is of the view that the Appellant's evidence of avoidance/mitigation result in a favourable conclusion on adverse effects, they are entitled to conclude a positive appropriate assessment on this basis. There would be no need to go on to consider conditions or other restrictions in the section below.

Would compliance with conditions or other restrictions enable it to be ascertained that it the proposal would not adversely affect the integrity of the site?

- 10.92 In the absence of being able to otherwise ascertain that it the proposal would not adversely affect the integrity of the Arun Valley Sites, it falls to consider whether use the Council's suggested pre-commencement condition on page 27 of **[ID11]** requiring water neutrality mitigation to be secured via SNOWS would allow a favourable appropriate assessment to be concluded. The suggested condition is as follows:

No development shall commence until water neutrality mitigation has been secured via Horsham District Council's adopted Offsetting Scheme (in line with the recommendations of the Sussex North Water Neutrality Study: Part C – Mitigation Strategy, Final Report, December 2022) and this has been confirmed in writing by Horsham District Council.

- 10.93 Although Natural England have not commented on the wording or suitability of the condition, as they see that as being beyond their expertise, they advise that any such condition should lead to scientific and practical certainty of ensuring no adverse effects ^[9.24]. In my view, it is appropriate to clarify that the standard should be 'reasonable certainty' to be consistent with the caselaw principles discussed elsewhere in this report.
- 10.94 SNOWS is part of the strategic approach to achieving water naturalness that is designed to provide one way of addressing the issues raised by the NE Position Statement and it is endorsed by Natural England⁷⁸. The overall mitigation strategy in the Part C Report is only effective when all three of its elements⁷⁹ work together. SNOWS is designed to 'make up' for any deficit left over from the other 2 elements through Local Authority offsetting and, taking a step back to look at the Part C Report as a whole, is capable of responding with reasonable flexibility to adjust to the best available evidence at particular times.
- 10.95 In these circumstances, a negatively worded/Grampian condition requiring accordance with SNOWS, and therefore water neutrality, can in principle provide reasonable certainty of no adverse effects on the integrity of the Arun Valley Sites. This is subject to an accompanying condition relating to on-site water efficiency that would achieve levels within the targets contemplated by the Part C Report, and therefore be consistent with the wider mitigation strategy. Section 4 of the Appellant's Water Neutrality Statement provides evidence that this would be achievable [**CD10 1.03a**]⁸⁰. This condition is recommended in Annex 4 of this report at Condition 5.
- 10.96 Turning to national policy and guidance on the use of conditions. The points above lead me to conclude that a SNOWS condition would be necessary to secure accordance with the Habitats Regulations. As such, one of the Framework tests at paragraph 56 would be met. I would also not take issue that the condition would be relevant, enforceable, capable of precision.
- 10.97 The only remaining question on the paragraph 56 tests worthy of detailed examination is whether such a condition would be reasonable. As it specifically addresses the use of Grampian conditions, the following PPG principle should also be considered in more detail '*such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission*'⁸¹.
- 10.98 SNOWS is not currently operational which, according to the Council, will not happen until later in 2024. The Proof of Evidence from one of the Council's witnesses provides details of progress on SNOWS [**CD10 1.05d**]⁸². Its introduction is subject to matters that include agreement between the relevant Local Planning Authorities around prioritisation of access, the tariff that

⁷⁸ [CD8 1.22]

⁷⁹ (1) reducing water demand through defined water efficiency requirements for new development, (2) water company demand management delivery, and (3) SNOWS

⁸⁰ Appendix A

⁸¹ reference ID: 21a-009-20140306

⁸² paragraph 3.6- 3.15

developers looking to use SNOWS will be asked to pay, and (related to this) an update to capacity and costs calculations to reflect the latest figures on water demand forecasts and the WRMP 2024.

10.99 These matters are substantially outside the Council's control and have the potential to impact on the introduction date for SNOWS. They will also affect when a developer can be expected to have access to SNOWS post introduction and the tariff they would be asked to pay.

10.100 In these circumstances, notwithstanding the Appellant's willingness to accept the condition in the absence of anything else short of an unfavourable appropriate assessment, in my view the Council's suggested condition as drafted stretches the test of reasonableness. Nevertheless, there are two appeal⁸³ decisions before the Inquiry where residential development in Horsham was allowed and a similar condition was used.

10.101 Lower Broadbridge Farm was for development on unallocated land, with a Grampian condition and unilateral undertaking providing restrictions that would prevent implementation until either a water neutrality scheme had been approved and implemented or, alternatively, use of SNOWS when available. In this case, neither the mitigation land nor landowner for the water neutrality scheme were identified at the point the decision was made.

10.102 In the case of Storrington, the land was allocated in a neighbourhood plan with a Grampian condition restricting development until a site-specific water neutrality mitigation scheme had been agreed and implemented or, alternatively, use of SNOWS when available. In this case, more detail of the site-specific mitigation scheme and land were known at the decision date than was the case in Lower Broadbridge Farm.

10.103 Both decisions consider their respective conditions against the tests in the Framework and conclude that they were necessary to confirm no adverse effects on the integrity of the Arun Valley Sites⁸⁴. Both acknowledge the uncertainty related to SNOWS and prioritisation of access to it for their proposals but do not identify these issues as a barrier to linking conditions to it.

10.104 For this proposal, while the Council cast some doubt over prioritisation of access in oral evidence at the Inquiry, their acceptance that the proposal may well score highly in the prioritisation system when it is finalised in the Proof of Evidence from one their witnesses is a fair reflection of the position⁸⁵. This does not appear to be a materially different situation to the one presented to the Inspectors in the two appeal cases, where a favourable conclusion was reached. There is no evidence in this case leading me to recommend a contrary view. As such, I consider that there is some prospect that the proposal would be able to access the SNOWS scheme within the permission

⁸³ Lower Broadbridge Farm (APP/Z3825/W/23/3321658) [ID3] and Storrington (APP/Z3825/W/22/3308455 & APP/Y9507/W/22/3308461) [CD5 1.03]

⁸⁴ see analysis at paragraphs 13 to 56 and condition 12 (in the Lower Broadbridge Farm decision) and paragraphs 67 to 109 and condition 13 (in the Storrington decision)

⁸⁵ see paragraph 4.10 of [CD10 1.05d]

time limit and a condition securing this would accord with the principle in the PPG.

10.105 On the more general question of reasonableness, it is notable that in both the Lower Broadbridge Farm and Storrington cases accessing SNOWS is specified in the absence of a bespoke water neutrality solution being implemented. This is essentially using SNOWS as a fallback and differs from the present proposal where, as currently drafted, offsetting via SNOWS would be the only option available to the developer.

10.106 Considering the points above, to ensure a SNOWs condition for this proposal is reasonable, and therefore in full accordance with the paragraph 56 Framework tests, there needs to be an option within it for a bespoke specific water neutrality scheme to be brought forward. Otherwise, the developer would be tied to the use of SNOWS regardless of prioritisation or the tariff. Provided such a scheme were approved by the Local Planning Authority, adopting this approach would not introduce uncertainty into the process in a way that may offend the Habitats Regulations.

10.107 Accommodating the possibility of a bespoke specific water neutrality scheme within the condition for the proposal would not be dissimilar to the circumstances in Lower Broadbridge Farm, where neither the mitigation land nor landowner for the water neutrality scheme were identified at the point the decision was made. As such, this approach would be consistent with other appeal decisions.

10.108 The option of amending the Council's suggested condition in this way was discussed with the parties at the Inquiry, with the Appellant supporting the approach and the Council being prepared to accept it if necessary to resolve any concerns I might have around reasonableness. The Council's position is reflected in paragraph 81 of their Closing [ID9].

10.109 Turning to the trigger for the condition, the need for water neutrality arises because of the occupation of the dwellings. This is because it is the use of water by the end users that gives rise to likely adverse effects on the Arun Valley sites. As there is no evidence of risks from construction, the Council's suggested pre-commencement trigger arguably lacks clear justification as the condition could be linked to occupation and still fulfil its intended purpose. This brings into question whether it would accord with the final sentence of paragraph 56 of the Framework.

10.110 In oral evidence at the Inquiry, the Council argued that an occupation trigger would make administration and enforcement of the conditions difficult, as rectifying potential breaches becomes harder when people are living in the homes. This is an understandable but generic argument with no specific evidence before the Inquiry of risk. It does not amount to clear justification. As such, a prior to occupation trigger would be a more pragmatic approach in this case as it would give the developer an option to construct the dwellings ahead of SNOWS becoming operational if they wished to do so, whilst at the same time not authorising the action that gives rise to likely adverse effects until the condition is discharged. I recommend this approach.

10.111 Considering the above, Condition 6 of Annex 4 in this report recommends the adopting the Council's suggested SNOWs condition, subject to the following main amendments:

- Use of a prior to occupation trigger in preference to pre-commencement.
- The addition of an option to agree and subsequently implement a site-specific water neutrality scheme.

10.112 For these reasons, I recommend that compliance with conditions enables the Secretary of State to ascertain that the proposal would not adversely affect the integrity of the Arun Valley sites.

Conclusion of appropriate assessment

10.113 Considering the assessment and conclusions carried out above, and subject to compliance with conditions, the Secretary of State is able to ascertain with reasonable certainty that the proposal would not adversely affect the integrity of the Arun Valley Sites. The Secretary of State is therefore able to conclude a favourable appropriate assessment and discharge their duty under Regulation 63(5) of the Habitats Regulations. I recommend that the Secretary of State adopts this section of the report, and the references included, as their appropriate assessment of the proposal.

10.114 In fulfilling this duty, regard has been paid to representations for Natural England, as the appropriate nature conservation body for the purposes of Regulation 63(3) of the Habitats Regulations. Natural England not appearing at the Inquiry has not lessened the regard paid to their representations [7.84].

Approval of the reserved matters

10.115 Sections 4 and 5 of the Appellant's Statement of Case [**CD7 1.01**] presents their view on the detail of the reserved matters. The Council have provided their assessment in section 3 of their Statement of Case [**CD7 1.02a**]. Section 6 of the SOCG [**ID11**] agrees the matters as common ground. Together, they provide adequate reasoning for why the proposal accords with the parameter plans, the Section 106 under the Outline Permission, and accords with relevant policies in the current development plan, including the policies described in Section 5 of this report.

10.116 Prior to the Inquiry, there was an unresolved issue related to flood risk and drainage ^[9.29]. There was disagreement about the proposed sustainable drainage system, specifically the appropriate figure (CV value) that should be used within the surface water calculations. The issue drew a holding objection from the LLFA and motivated them to submit a proof of evidence to the inquiry [**CD10 1.06**].

- 10.117 Ultimately, following discussion between the parties ahead of the Inquiry, the LLFA withdrew their objection and didn't appear. Two updated drawings [**ID4** and **ID5**] arise from the discussions that took place and alter the surface water systems serving sub phase 3DEFG to increase pipe sizes and ensure there will be no increase in flood risk on or off the site.
- 10.118 Considering the technical nature of the updated drawings, no fairness or other issues resulted from allowing them to be added as inquiry documents. Subject to the updated drawings being specified in an approved details condition, I recommend agreeing that the proposal would be acceptable in flood risk and drainage terms.
- 10.119 Colgate Parish Council and a letter from a neighbour both question whether the wider development at Kilnwood Vale accords with the governing S106 agreement, particularly in terms of provision of community facilities. The Council has not raised any concerns in this regard and, while the S106 was not before the Inquiry, the Council's appraisal supports a view that sub phase 3DEFG accords with it. Any enforcement of the wider S106 provisions is beyond the remit of this appeal.
- 10.120 Beyond this, there is little I can add to the assessment of matters unrelated to habitats effects provided by the Council, supported by the SOCG, other than to say that I agree with it and recommend adopting the reasoning. For these reasons, the reserved matters can be approved subject to the conditions discussed below.

Planning balance

- 10.121 The planning balance presents three options for the Secretary of State. My recommendation is that the Option 1 is adopted. Although they are alternative courses of action, I do not recommend adopting either Option 2 or Option 3 for the reasons provided.

Option 1 (recommended)

- 10.122 Firstly, if it is agreed that Condition 6 at Annex 4 of this report requiring water neutrality is necessary and appropriate, for the reasons discussed above^[10.90-10.110], the proposal accords with the development plan for the area as a whole and therefore benefits from the statutory presumption in S38(6) of the 2004 Act. As appropriate mitigation measures would be provided by the condition securing water neutrality, which is the basis for concluding a favourable appropriate assessment^[10.111-10.112], there is no conflict with Policy 31(4) of the HDPF ^[5,6] and the development plan taken as whole. Paragraph 11(c) of the Framework indicates that the proposal should be approved without delay. As such, my recommendation is that the reserved matters should be approved.

Option 2

10.123 Secondly, if the Secretary of State thinks that the Appellant's evidence of avoidance/mitigation allows a favourable appropriate assessment to be concluded, the water neutrality condition is likely to become unnecessary and reserved matters can be approved using the same pathway explained in the paragraph above.

Option 3

10.124 As a final option, if the Secretary of State does not think that the Appellant's evidence of avoidance/mitigation allows a favourable appropriate assessment to be concluded and disagrees with the use of the water neutrality condition, the proposal would not, in my view, accord with Policy 31(4) of the HDPF due to an absence of appropriate mitigation and compensation measures. It would also conflict with the environmental objective in the Framework of protecting the natural environment ^[5.19]. Approval of the proposal in these circumstances would also be in breach of the Secretary of State's duty under Regulation 63(5) of the Habitats Regulations. This would be a very significant material consideration to be weighed against other considerations.

10.125 The Council's housing land supply position is uncontested and poor ^[7.43]. There is no dispute that Kilnwood Vale is an important contributor to delivery. It is a long-standing allocation that has been part of Council's spatial strategy for circa 15 years. It has outline planning permission and substantial parts that have been implemented through other phases.

10.126 The Appellant's frustration at the delay to Sub Phase 3DEFG is understandable, although there is no evidence that they seriously explored a site-specific solution that may have assisted with managing a delay. Regardless, implementation of Sub Phase 3DEFG accords with Framework on delivering a sufficient supply of homes and is a significant material consideration ^[5.18].

10.127 The statement of case of the Appellant's planning witness [**CD10 1.101a**]⁸⁶ sets out a full range of planning benefits associated with the proposal. I would not take issue with any of them. Collectively the benefits are significant material considerations.

10.128 It is also important to highlight that there are currently occupied homes at Kilnwood Vale with people living day to day with an incomplete development and an absence of local services that are related, directly or indirectly, to the delivery of Sub Phase 3DEFG. Delay in completion effects the establishment of the community and the lives of those currently living there. As an ongoing construction project, delay would likely get to a point where the continuing employment of site staff would be put at risk.

⁸⁶ Paragraphs 9.10-9.36

- 10.129 Neither of these points are substantially evidenced but are natural and immediate consequences that should not be lost sight of.
- 10.130 The balance of benefits is tempered by the fact that the length of actual delay in any of the scenarios considered in this report is not extensively evidenced. Nevertheless, the benefits are significant material considerations.
- 10.131 Weighing these matters up, notwithstanding the significance of the benefits, they do not outweigh the conflict with legal obligations in the Habitats Regulations that would, in the absence of a favourable appropriate assessment, put the Secretary of State in breach of the duty under Regulation 63(5). As such, my recommended decision under this third option would be a dismissal of the appeal.
- 10.132 For completeness, the presumption at Paragraph 11(d) of the Framework is not relevant in this scenario as the application of Framework policies that protect areas particular importance⁸⁷ provides a clear reason for refusing the proposal.

Conclusion on planning balance

- 10.133 To directly address the reason for recovery ^[1.7], for the reasons discussed above, Regulation 63 of the Habitats Regulations does not allow for a balancing of different planning objectives beyond affects on the integrity of the Arun Valley Sites ^[10.13-10.20]. While an ordinary consideration of the planning balance under S38(6) of the 2004 Act allows for a wider balance, breach of the legal obligations under the Habitats Regulations weighs overwhelmingly in the balance, even in the face of other very important policy objectives.
- 10.134 In opening, the Appellant said that the intention of the appeal is expressly to test the validity of the NE Position Statement and the Council's response to it [**ID1**]⁸⁸. With due respect, the wider public policy questions this encompasses includes elements that are outside the scope of the decision that is before the Secretary of State. At this project level the question is fundamentally about whether, on a proper application of the law as it stands, accordance with the Habitats Regulations can be secured to allow agreement of the reserved matters for Sub Phase 3DEFG.
- 10.135 When considered on this basis, I recommend that reserved matters should be approved in line with the first option discussed above^[10.120].

⁸⁷ Which, under footnote 7, includes Habitats sites and/or SSSIs

⁸⁸ paragraph 7

11. Conditions

- 11.1 Should the appeal be allowed, recommended conditions and the reasons for them, are attached at Annex 4. Unless otherwise stated they are as per the list at Appendix 2 of the SOCG [**ID11**], except for any minor drafting changes/amalgamation needed for clarity. The list was updated following the Inquiry and discussion about their accordance with Paragraph 56 of the Framework.
- 11.2 The water neutrality conditions are discussed in paragraphs 10.90 to 10.110 of this report.
- 11.3 Although suggested by the LLFA, I do not recommend a separate condition requiring accordance with drainage plans (see Condition 14, SOCG, Appendix 2). This would be unnecessary as it would replicate the plans condition at Condition 1, which contains the drainage plans.
- 11.4 Conditions 14 and 15 relating to foul water and fire and rescue were not discussed at the Inquiry and come at the suggestion of the relevant consultees. This appears simply to have been an oversight, as the Appellant will have had the opportunity to review the consultation responses. Examining the contents, I recommend including them for the reasons set out.

12. Inspector's recommendation

- 12.1 For the reasons set out above, I recommend that the application for reserved matters approval be granted subject to the conditions in Annex 4.

Annex 1: Appearances

FOR THE APPELLANT:

Counsel for the Appellant - Christopher Boyle KC (Landmark Chambers)

Witnesses:

Alistair Baxter CEcol CEnv MCIEEM (Aspect Ecology)
Alistair Aitken C Eng MICE MCIWEM C.WEM (Fortridge Consulting Limited)
Dan Smyth BSc, MSc, DIC (Savills)
Sarah Beuden BSc MSc MRTPI (Savills)

FOR THE LOCAL PLANNING AUTHORITY:

Counsel for the Local Planning Authority – Noemi Byrd (6 Pump Court)

Witnesses:

Tal Kleiman (Horsham District Council)
Adrian Smith (Horsham District Council)

Annex 2: Core Documents

Agreed between the parties as core documents ahead of the inquiry. Full documents can be accessed [here](#).

CD1: Planning Application Documents and Plans

Reference	Content
CD1 1.01	Shadow Habitats Regulations Assessment (October 2022)
CD1 1.02	Shadow Habitats Regulations Assessment Addendum (Drawing: August 2023, Ref N/A)
CD1 1.03	Water Neutrality Statement (Drawing: August 2023, Ref N/A)
CD1 1.04	Preliminary Surface and Foul Water Drainage Strategy (Sheet 1 of 2) (Drawing: 2107120-002, Ref D)
CD1 1.05	Preliminary Surface and Foul Water Drainage Strategy (Sheet 2 of 2) (Drawing: 2107120-003, Ref D)
CD1 1.06	Preliminary Surface and Foul Water Drainage Strategy (Sheet 1 of 2) (Drawing: 2107120-002, Ref E)
CD1 1.07	Preliminary Surface and Foul Water Drainage Strategy (Sheet 2 of 2) (Drawing: 2107120-003, Ref E)
CD1 1.08	PPS25 Flood Risk Assessment (Drawing: July 2010, Ref N/A)
CD1 1.09	Site Wide Drainage Strategy Report (Drawing: December 2016, Ref D5)
CD1 1.10	Applicant Response to LLFA Holding Objection (Drawing: 07.08.2023, Ref N/A)
CD1 1.11	Drainage Strategy Briefing Note (Drawing: 04.08.2023, Ref A)
CD1 1.12	Drainage Strategy Briefing Note (Drawing: 29.09.23, Ref B)
CD1 1.13	Phase 2 and 3 Remaining Infrastructure Drainage Report (Drawing: October 2023, Ref N/A)
CD1 1.14	Site Location Plan

CD2: Original Application Relevant Documents

Reference	Content
CD2 1.01	Kilnwood Vale Outline Consent Decision Notice (October 2011)
CD2 1.02	Kilnwood Vale Section 73 DC/15/2813 Decision Notice (April 2016)
CD2 1.03	DAS Addendum (December 2015)

CD2 1.04	Phasing Plan (Drawing: 321, Rev ADD02)
CD2 1.05	Building Heights Plan (Drawing: 361, Rev ADD03)
CD2 1.06	Density Plan (Drawing: 322, Rev ADD05)
CD2 1.07	Land Use Plan (Drawing: 321, Rev ADD04)
CD2 1.08	Movement Plan (Drawing: 351, Rev ADD03)
CD2 1.09	Open Space Plan (Drawing: 322, Rev ADD01)
CD2 1.10	Pedestrian and Cycle Plan (Drawing: 351, Rev ADD02)
CD2 1.11	Illustrative Masterplan Phasing Plan

CD3: Documents not part of original application

Reference	Content
CD3 1.01	Applicant's response to the Lead Local Flood Authority's Holding Objection (7 December 2023)
CD3 1.02	Drainage Strategy Briefing Note (Ref: 2107120-01C)

CD4: The Development Plan and Evidence Base

Reference	Content
CD4 1.01	Horsham District Planning Framework (November 2015)
CD4 1.02	Horsham District Local Plan 2023-2040 Regulation 19 (January 2024)
CD4 1.03	Horsham District Local Plan: Habitats Regulations Assessment (November 2023)
CD4 1.04	Annual Monitoring Report 2022/23 (18 January 2024)
CD4 1.05	<u>Local Plan Viability Study (Aspinal Verdi, November 2023)</u>
CD4 1.06	<u>Joint Topic Paper: Water Neutrality (HDC & others, May 2023)</u>
CD4 1.07	<u>Water Neutrality Statement of Common Ground (HDC & Others, July 2023)</u>

CD5: Relevant Planning Appeal Decisions and High Court Judgements

Reference	Content
CD5 1.01	Judgement: R (An Taisce) v SSECC - [2014] EWCA Civ 1111 1 August 2014
CD5 1.02	Judgement: R (Together Against Sizewell C) v SoS for Energy Security and Net Zero [2023] EWHC 1526 22 June 2023
CD5 1.03	Appeal A Ref: APP/Z3825/W/22/3308455 Land west of Ravenscroft, Storrington, West Sussex RH20 4HE Appeal B Ref: APP/Y9507/W/22/3308461 Land west of Ravenscroft, Storrington, West Sussex RH20 4EH
CD5 1.04	Appeal ref. APP/Z3825/W/22/3308627 Copsale Road Appeal on 3 rd October 2023
CD5 1.05	Wyatt v Fareham BC [2023] Env. L.R. 14
CD5 1.06	Appeal Ref : APP/Z3825/W/23/3324144 Land North of The Rise, Partridge Green – 8 February 2024
CD5 1.07	Appeal Ref: APP/Z3825/W/23/3321658 - Lower Broadbridge Farm
CD5 1.08	Judgement - Harris v Environment Agency [2022] EWHC 2263 (Admin)

CD6: Statutory Consultee Responses

Reference	Content
CD6 1.01	Natural England (12 September 2023)
CD6 1.02	Lead Local Flood Authority (22 May 2023)
CD6 1.03	Lead Local Flood Authority (18 October 2023)

CD7: Appeal Documents

Reference	Content
CD7 1.01	Appellant Full Statement of Case (January 2024)
CD7 1.02	HDC Statement of Case (January 2024)

CD8: Other

Reference	Content
CD8 1.01	Southern Water Water Resources Management Plan (December 2019)
CD8 1.02	Southern Water Draft Water Resources Management Plan (2024)
CD8 1.03	Southern Water: Draft Water Resources Management Plan 2024 Statement of Response August 2023
CD8 1.04	Southern Water : Water Resources Management Plan 2024 Statement of Response Annex 5.2: Responses to non questionnaire respondents by organisations August 2023 Version 1
CD8 1.05	Southern Water: Water Resources Management Plan 2019 Annex 10: Strategy for the Central area December 2019 Version 1
CD8 1.06	Southern Water: Draft Water Resources Management Plan 2024 Annex 17: Leakage Strategy October 2022 Version 1.0
CD8 1.08	Gov.Uk : Guidance Water resources planning guideline Updated 14 April 2023 https://www.gov.uk/government/publications/water-resources-planningguideline/water-resources-planning-guideline
CD8 1.09	Biodiversity and Geological Conservation: Circular 06/2005
CD8 1.10	National Planning Policy Framework
CD8 1.11	<u>National Planning Practice Guidance</u>
CD8 1.12	Water Neutrality and Planning Applications prepared by Horsham District Council (June 2023)
CD8 1.13	Water Neutrality and Planning Policy prepared by Horsham District Council (June 2023) https://www.horsham.gov.uk/planning/water-neutrality-in-horshamdistrict/water-neutrality-and-planning-policy
CD8 1.14a	JBA Consulting - Sussex North Water Neutrality Study: Parts A: Individual Local Authority Areas (July 2021)
CD8 1.14b	JBA Consulting - Sussex North Water Neutrality Study: Part B - In-combination (April 2022)
CD8 1.14c	JBA Consulting - Sussex North Water Neutrality Study: Part C - Mitigation Strategy (December 2022)
CD8 1.15	Natural England's Water Neutrality: Position Statement and Response (2021)
CD8 1.16	Natural England's Advice Note regarding Water Neutrality within the Sussex North Water Supply Zone prepared by Natural England (February 2022)
CD8 1.18	Natural England Correspondence (11 January 2024)
CD8 1.19	Correspondence from the Environment Agency (11 July 2023)
CD8 1.20	Correspondence from Southern Water (7 July 2023)

CD8 1.21	Southern Water Draft WRMP 2024 Annex 20 – Habitats Regulations Assessment
CD8 1.22	<u>Natural England endorsement of Part C Position Statement (November 2022)</u>
CD8 1.23	<u>SN Authorities Water Neutrality Statement of Common Ground (July 2023)</u>
CD8.1.2 4	Horsham Local Plan Water Technical Note (Aecom, March 2021)
CD8.1.2 5	HDC Rebuttal Land at Lower Broadbridge Farm. (Appeal ref. APP/Z3825/W/23/3321658)
CD8.1.2 6	The Wallingford Procedure, Volume 1 Principles, Methods and Practice 1981
CD8.1.2 7	The Wallingford Procedure, Volume 4 Modified Rational Method, 1981
CD8.1.2 8	CIRIA X108 - Drainage of Development Sites - A Guide
CD8.1.2 9	CIRIA C753 The SuDS Manual
CD8 1.30	Water-stressed areas - final classification 2021
CD8 1.31	Glossary Combined (4.3.2024)

CD9: Statements of Common Ground

Reference	Content
CD9 1.01	Main Statement of Common Ground (February 2024)

CD10: Proofs of Evidence

Reference	Content
CD10 1.01	Appellant Planning – Miss Sarah Beuden
CD10 1.02	Appellant Water Supply, Demand and Resources – Mr Alistair Aitken
CD10 1.03	Appellant Water Calculations – Mr Daniel Smyth
CD10 1.04	Appellant HRA – Mr Alistair Baxter
CD10 1.05a	HDC HRA/Planning/Water – Mr Adrian Smith - Main
CD10 1.05b	HDC HRA/Planning/Water – Mr Adrian Smith - Summary
CD10 1.05c	HDC HRA/Planning/Water – Mr Adrian Smith – Appendix 1
CD10 1.05d	HDC Water Supply – Mr Tal Kleiman

CD10 1.05e	HDC Water Supply - Summary – Mr Tal Kleiman
CD10 1.06	Lead Local Flood Authority – Katherine Waters
CD10 1.07	Appellant Flood Risk – Mr Brian Cafferkey

Annex 3: Inquiry documents

Documents submitted during or after the Inquiry

Accepted on the basis that I was satisfied the material was directly relevant to, and necessary for, my decision and that no prejudice arose from accepting them.

Documents can be accessed [here](#).

- ID.1 Mr Boyle's (Appellant) opening statement
- ID.2 Ms Byrd's (Council) opening statement
- ID.3 3321658 Land at Broadbridge Heath Appeal Decision, 7 March 2024
- ID.4 Preliminary Surface and Foul Water Drainage Strategy (Sheet 1 of 2) (Drawing: 2107120-002, Ref G)
- ID.5 Preliminary Surface and Foul Water Drainage Strategy (Sheet 2 of 2) (Drawing: 2107120-003, Ref G)
- ID.6 Southern Water Services Limited – Weir Wood New Build Notice under regulation 28(4) of the Water Supply (Water Quality) Regulations 2016
- ID.7 Judgment – Harris v Environment Agency [2022] EWHC 2263 (Admin)
- ID.8 Source of Shadow HRA, Figure 5.1. SW 11 July 2022
- ID.9 Ms Byrd's (Council) Closing statement
- ID.10 Mr Boyle's (Appellant) Closing statement
- ID11 Final statement of common ground
- ID12 Clarification note in respect of access
- ID13 Natural England letter dated 19 April 2024
- ID14 Appellant's response to Natural England letter dated 19 April 2024

Annex 4 :Recommended conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans listed in Appendix 1 of the Statement of Common Ground between Horsham District Council and Crest Nicholson Operations Limited dated 18 March 2024

Reason: In the interests of certainty.

Pre-Commencement (Slab Level)

- 2) No development above ground floor-slab level shall commence until a schedule of materials, finishes and colours to be utilised for the external walls, windows and roofs of the approved buildings, has been submitted to and approved by the Local Planning Authority in writing. All materials to be utilised in the construction of the approved buildings shall, thereafter, conform to those approved.

Reason: To ensure that the approved development is of a high quality of design and appearance and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 3) No development shall commence above ground floor-slab level, until full details of underground services, including locations, dimensions and depths of all service facilities and required ground excavations, have been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out as per the approved details and coordinated with the approved Residential Landscape Masterplan (ref: 30125-5 DR-5000 S4-P12), Softworks Proposals (3015-5-DR-5001-P9, 3015-5-DR-5002-P9, 3015-5-DR-5003-P6, 3015-5-DR-5004-P6, 3015-5-DR-5005-P6, 3015-5-DR-5006-P10, 3015-5-DR-5007-P10, 3015-5-DR-5007-P10 and 3015-5-DR-5008-P9) and Preliminary Surface and Foul Water Drainage Strategy (refs: 2107120-002 G and 2107120-003 G).

Reason: To ensure the successful delivery of necessary underground services without conflict with the approved landscaping and drainage strategy, in accordance with Policies 33 and 38 of the Horsham District Planning Framework (2015).

- 4) No development shall commence above ground floor-slab level, until full details of any street-furniture to be installed, which can include any lighting columns, public cycle stands and bollards have been submitted to and approved by the Local Planning Authority in writing. The development shall be implemented in accordance with the approved details.

Reason: To ensure that the approved development is of a high quality of design and appearance and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 5) No development above ground floor slab level shall commence until full details of the water efficiency measures required to achieve a maximum of 91.4 l/p/d have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include the specification of all fixtures and fittings to be included in all dwellings, and a completed Part G calculator confirming the targeted water consumption is achieved.
- i. No dwelling hereby permitted shall be occupied until the approved water efficiency measures to serve that dwelling have been installed and made available for use in accordance with approved details, with evidence of installation submitted to an approved in the writing by the Local Planning Authority.
 - ii. The installed water efficiency measures, or any subsequent replacement of measures over the lifetime of the development, shall achieve equivalent or higher standards of water efficiency to those approved unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure the development uses measures which promote the conservation of water in accordance with policies 35 and 37 of the Horsham District Planning Framework and to ensure the development is water neutral to avoid an adverse impact on the Arun Valley SAC, SPA and Ramsar sites.

Pre-Occupation

- 6) No dwelling hereby permitted shall be first occupied until written agreement from the Local Planning Authority has been provided that either:
- i. A water neutrality mitigation scheme has been secured via Horsham District Council's adopted Offsetting Scheme (in line with the recommendations of the Sussex North Water Neutrality Study: Part C – Mitigation Strategy, Final Report, December 2022). OR
 - ii. A site-specific water neutrality mitigation scheme has been (a) agreed in writing with the Local Planning Authority as being equivalent to Horsham District Council's adopted Offsetting Scheme AND (b) implemented in full.

Reason: To ensure the development is water neutral to avoid an adverse impact on the Arun Valley SAC, SPA and Ramsar sites in accordance with Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 185 and 186 of the National Planning Policy Framework (2023), and duties under the Conservation of Habitats and Species Regulations 2017 (as amended).

- 7) All approved soft/ hard landscaping and boundary treatments within the curtilage of an approved building shall be implemented prior to the first occupation of that dwelling, in accordance with the approved soft/hard landscaping drawings, unless alternative hard and soft landscaping details and/or boundary treatments are submitted to and been approved in writing by the Local Planning Authority prior to the commencement of development above ground-floor slab level.

Reason: To ensure that the approved development is of a high quality of design and appearance and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 8) All soft landscaping outside of the curtilage of an approved dwelling shall be carried out in the first planting and seeding season, following the first occupation of the relevant buildings or the completion of the development, whichever is the sooner. Any trees or plants detailed on the approved landscaping strategy which die, are removed, become seriously damaged or diseased, within a period of five years following the completion of the development shall be replaced with new planting of a similar size and species.

Reason: To ensure that the approved development is of a high quality of design and appearance and in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 9) Prior to the first occupation of any part of the development, a landscape management responsibilities plan (delineating areas of ownership and maintenance responsibility) for all communal landscape areas shall be submitted to and approved in writing by the Local Planning Authority. The landscape areas shall be managed and maintained in accordance with the approved details.

Reason: To ensure a satisfactory development and in the interests of visual amenity and nature conservation in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 10) No dwelling hereby permitted shall be occupied until secure covered cycle parking facilities to serve that dwelling have been constructed and made available for use in accordance with approved drawings. The cycle parking facilities shall thereafter be retained as such for their designated use.

Reason: To provide alternative travel options to the use of the car in accordance with Policy 40 of the Horsham District Planning Framework (2015).

- 11) No dwelling hereby permitted shall be occupied until the car parking spaces serving the respective dwellings have been constructed and made available for use in perpetuity. All unallocated (visitor) parking spaces shall be completed and made available for use prior to the completion of the development and shall, thereafter, remain available only for use as visitor parking.

Reason: To ensure future occupiers benefit from sufficient access to parking facilities and in accordance with Policy 41 of the Horsham District Planning Framework (2015).

- 12) No part of the development shall be occupied until details of the proposed solar PV apparatus, including locations and amounts, have been submitted to and approved in writing by the Local Planning Authority. The equipment shall, be installed prior to the first occupation of each respective dwelling in accordance with the approved details.

Reason: To provide certainty to the Local Planning Authority as to the extent of solar PV provision within the approved development, the extent of benefit to be derived in respect of the mitigation and minimisation of impacts of climate change and visual impacts of solar PV provision in accordance with the provisions of Policies 33, 35, 36 and 37 of the Horsham District Planning Framework (2015).

- 13) No dwelling shall be first occupied until secure covered provision for the storage of refuse and recycling has been made for that dwelling in accordance with the submitted plans. The refuse and facilities shall thereafter be retained for use at all times.

Reason: To ensure that future occupiers benefit from sufficient facilities for the storage of refuse/ recycling bins and in the interests of visual amenity in accordance with Policies 32 and 33 of the Horsham District Planning Framework (2015).

- 14) No dwelling shall be first occupied until confirmation has been provided to the Local Planning Authority that either:- 1. All foul water network upgrades required to accommodate the additional flows from the development have been completed; or- 2. A development and infrastructure phasing plan has been agreed with the Local Authority in consultation with Thames Water to allow development to be occupied. Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.

Reason: To ensure that any necessary improvements to the foul water network are made ahead of occupation.

- 15) No dwelling shall be first occupied until details showing the location of fire hydrants and method of installation and maintenance in perpetuity have been submitted to and approved in writing by the Local Planning Authority, in consultation with West Sussex County Council's Fire and Rescue Service. The development shall be carried out in accordance with the approved details and retained as such, unless a variation is agreed with the Local Planning Authority.

Reason: In the interests of emergency planning and in accordance with policy CP13 of the Horsham District Local Development Framework; Core Strategy and DC40 of the Horsham District Local Development Framework: General Development Control Policies (2007) and policy CP3 of the Horsham District Local Development Framework Core Strategy (2007), HDPF Policies 33 and 39.

Regulatory and monitoring

- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking, amending and/or re-enacting that Order), no roof extensions falling within Class B, Part 1, Schedule 2 of the Order shall be erected, constructed and/or installed to any dwelling hereby approved without express planning permission from the Local Planning Authority first being obtained.

Reason: To ensure that the Local Planning Authority can fully consider whether prospective roof extensions adequately preserve the visual amenity of the area and privacy and living conditions of nearby occupiers in accordance with Policy 33 of the Horsham District Planning Framework (2015).

- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking, amending and/or re-enacting that Order), all garages hereby permitted shall be used only as private domestic garages for the parking of vehicles incidental to the use of the properties as dwellings and for no other purpose.

Reason: To ensure adequate off-street provision of parking in the interests of amenity and highway safety, and in accordance with Policies 40 and 41 of the Horsham District Planning Framework.



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, King's Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Appendix 2

Report to Crawley Borough Council

**by Glen Rollings BA (Hons) MAUD MRTPI and
David Spencer BA (Hons) DipTP MRTPI**

Inspectors appointed by the Secretary of State

Date: 6 September 2024

Planning and Compulsory Purchase Act 2004 (as amended)

Section 20

Report on the Examination of the Crawley Borough Local Plan 2024-2040

The Plan was submitted for examination on 31 July 2023

The examination hearings were held between 21-23 November 2023 and 9-16
January 2024

File Ref: PINS/Q3820/429/9

Contents

Abbreviations used in this report	3
Non-Technical Summary	4
Introduction	5
Context of the Plan.....	6
Public Sector Equality Duty	7
Assessment of Duty to Co-operate.....	7
Assessment of Other Aspects of Legal Compliance	12
Assessment of Soundness.....	16
Issue 1 – Spatial Strategy and Safeguarding for Gatwick	16
Issue 2 – Housing Need	28
Issue 3 – Supporting Economic Growth and Gatwick Green.....	31
Issue 4 – Gatwick Airport	47
Issue 5 – Meeting Housing Needs	52
Issue 6 – Town Centre	60
Issue 7 – Housing Land Supply.....	611
Issue 8 – Character, Design and Heritage	644
Issue 9 – Environment and Green Infrastructure.....	666
Issue 10 – Transport and Infrastructure	69
Issue 11 - Monitoring and Review	74
Overall Conclusion and Recommendation	755
Schedule of Main Modifications.....	Appendix

Abbreviations used in this report

DCO	Development Consent Order
DPA	Dwellings per annum
DtC	Duty to Cooperate
EGA	Economic Growth Assessment
ELAA	Employment Land Availability Assessment
FEMA	Functional Economic Market Area
HWNL	High Weald National Landscape ¹
GAL	Gatwick Airport Limited
GAMP	Gatwick Airport Master Plan
GTAA	Gypsy & Traveller Accommodation Assessment
IDS	Infrastructure Delivery Schedule
IP	Infrastructure Plan
LDS	Local Development Scheme
LEP	Local Enterprise Partnership
LPAB	Local Plan Airport Boundary
LPCVA	Local Plan & CIL Viability Assessment
MM	Main Modification
MPPA	Million Passengers Per Annum
MSA	Market Signals Assessment
MSCPs	Multi-Storey Car Parks
NPPF	National Planning Policy Framework
NRP	Northern Runway Project
OEMP	Operational Efficiency Master Plan
PD	Permitted Development
PPG	Planning Practice Guidance
PPTS	Planning Policy for Traveller Sites
NWS	Northern West Sussex ²
NWSEGA	Northern West Sussex Economic Growth Assessment
NWSHMA	Northern West Sussex Housing Market Assessment
RBBC	Reigate & Banstead Borough Council
SA	Sustainability Appraisal
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SHLAA	Strategic Housing Land Availability Assessment
SNWRZ	Sussex North Water Resource Zone
SPA	Special Protection Area
SPD	Supplementary Planning Document
SoCG	Statement of Common Ground
WSCC	West Sussex County Council

¹ On 22 November 2023 Areas of Outstanding Natural Beauty (AONBs) were re-termed "National Landscapes".

² We use this term as an umbrella for the authority areas of Crawley, Horsham and Mid Sussex

Non-Technical Summary

This report concludes that the Crawley Borough Local Plan 2024-2040 provides an appropriate basis for the planning of the Borough, provided that a number of main modifications (MMs) are made to it. Crawley Borough Council has specifically requested that we recommend any MMs necessary to enable the Plan to be adopted.

Following the hearings, the Council prepared schedules of the proposed modifications and, where necessary, carried out sustainability appraisal and habitats regulations assessment of them. The MMs were subject to public consultation over a six-week period. In some cases, we have amended their detailed wording and/or added consequential modifications where necessary. We have recommended their inclusion in the Plan after considering the sustainability appraisal and habitats regulations assessment and all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Clarification of the plan period (in effect extending it by one year) with associated amendments to the housing and employment land requirements and a revised stepped housing trajectory;
- Various amendments to the policy for the Gatwick Green strategic employment site to more positively provide for employment needs over the plan period and to ensure a comprehensive and coordinated development that complements any planned expansion at the adjacent Gatwick Airport;
- Clarifications on the type and scale of development to be supported within the area safeguarded for Gatwick Airport;
- Various amendments to improve the clarity and justification of planning obligations sought in relation to affordable housing and employment skills; and
- A number of other modifications to ensure that the plan is positively prepared, justified, effective and consistent with national policy.

Introduction

1. This report contains our assessment of the Crawley Borough Local Plan in terms of Section 20(5) of the Planning and Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is compliant with the legal requirements and whether it is sound. The National Planning Policy Framework 2021³ (paragraph 35) (NPPF) makes it clear that in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The Crawley Borough Local Plan 2024-2040, submitted in July 2023 is the basis for our examination. It is the same document as was published for further consultation in May 2023 following previous consultations under Regulation 19 in January 2020 and January 2021.

Main Modifications

3. In accordance with section 20(7C) of the 2004 Act the Council requested that we should recommend any main modifications (MMs) necessary to rectify matters that make the Plan unsound and thus incapable of being adopted. Our report explains why the recommended MMs are necessary. The MMs are referenced in bold in the report in the form **MM1**, **MM2** etc, and are set out in full in the Appendix.
4. Following the examination hearings, the Council prepared a schedule of proposed MMs and, where necessary, carried out sustainability appraisal and habitats regulations assessment of them. The MM schedule was subject to consultation for six weeks. We have taken account of the consultation responses in coming to our conclusions in this report. We have made some amendments to the detailed wording of the main modifications and added consequential modifications where these are necessary for consistency or clarity. None of the amendments significantly alters the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal/habitats regulations assessment that has been undertaken. Where necessary we have highlighted these amendments in the report.

³ An updated version of the NPPF was published on 19 December 2023. Paragraph 230 of the 2023 NPPF is clear that plans submitted prior to 19 March 2024, should be examined against the 2021 NPPF, which was extant at the time of plan submission.

Policies Map

5. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, the submission policies map comprises the set of plans identified as the Crawley Local Plan Map as set out in document CBLP/M/01.
6. The policies map is not defined in statute as a development plan document and so we do not have the power to recommend main modifications to it. However, there are some instances where the geographic illustration of policies on the submission policies map is not justified and changes to the policies map are needed to ensure that the relevant policies are effective.
7. These further changes to the policies map were published for consultation alongside the MMs [Crawley Local Plan Map Modifications Consultation Version – February 2024 – document MC/CBLP/M/01]
8. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes proposed in the Crawley Local Plan Map [CBLP/M/01] and Crawley Local Plan Map Modifications Consultation Version – February 2024 published alongside the MMs.

Context of the Plan

9. The Crawley Borough Local Plan 2024-2040 would supersede the Crawley Local Plan 2015 in full. The submitted plan is an amalgam of new policies and those updated, where necessary, from the 2015 Local Plan. The Plan set out strategic policies for the Borough for the next 15 years, including a positive framework to support and deliver a revitalised town centre.
10. The Plan area is geographically small comprising the main built-up area of Crawley, Gatwick Airport and remaining open land between the town and the Airport. Crawley was designated a new town in 1947 and expanded on planned residential neighbourhoods each with their own facilities. The principal employment estate is at Manor Royal, which is a major employment hub of sub-regional significance. Ongoing development at Forge Wood represents a major new community for housing within the Borough during the Plan period. Elsewhere housing development at the edge of Crawley is occurring within either Horsham or Mid Sussex Districts, reflecting that land supply within the administrative boundary of the Borough is highly constrained.

11. Gatwick Airport exerts a strong influence over the Borough both as a major employer (directly and indirectly) and in terms of transport networks including bus services, rail and the M23. Land to south of the existing airport has been safeguarded for approximately the last twenty years to enable the option of a second wide-spaced runway at Gatwick Airport, if required.
12. To the south of the Borough is the High Weald National Landscape (HWNL). This verdant setting is complemented by extensive green infrastructure throughout the town. Large parts of the Borough are within the Sussex North Water Resource Zone (SNWRZ) where it is necessary to achieve water neutrality to avoid an adverse effect on qualifying features of the protected habitats of the Arun Valley Special Protection Area (SPA), Arun Valley Special Area of Conservation (SAC) and Arun Valley Ramsar⁴ sites.

Public Sector Equality Duty

13. We have had due regard to the aims expressed in S149(1) of the Equality Act 2010. This has included our consideration of several matters during the examination including the accommodation needs for gypsies and travellers, older persons accommodation, accessible and adaptable housing and access to community facilities. The Sustainability Appraisal (SA) of the Plan has iteratively considered the potential effects of the Plan on those with protected characteristics, such that the three aims expressed at S149 of the Equality Act have been appropriately taken into account in plan-making.

Assessment of Duty to Co-operate

14. Section 20(5)(c) of the 2004 Act requires that we consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.
15. Crawley is geographically a small borough. Nearly all of the undeveloped land immediately to the north of the town has been safeguarded as part of the development plan since 2007 so as not to preclude the possibility of a second wide-spaced runway at Gatwick Airport. The previous 2015 Local Plan resulted in significant unmet housing and employment needs due to this constrained land availability. These were largely accommodated by neighbouring authorities as part of their subsequent plan-making⁵.
16. The submitted Plan seeks to accommodate the proposed full employment land requirement over the Plan period. It is evident, including through statements of common ground (SoCG), that Crawley has engaged with neighbouring

⁴ Ramsar Convention on Wetlands of International Importance (UNESCO) 1971

⁵ Horsham, Mid Sussex and Reigate & Banstead

authorities on employment land matters, and this extended to various jointly prepared evidence base documents⁶.

17. We are mindful that the Plan's employment land requirement is predicated to an appreciable degree on the reduced housing requirement. Accordingly, the SoCG with Horsham recognises that any strategic growth adjacent to Crawley in its Plan may not necessarily meet Crawley's unmet housing needs and therefore it would be anticipated that some employment needs arising from an urban extension may need to be met in Crawley (as the adjacent and dominant employment centre). Any remaining employment need arising from the development may be accommodated in the urban extension itself, or if necessary, accommodated elsewhere within neighbouring districts. This points to an element of unmet employment land needs should development West of Crawley be identified and allocated (in an adopted Plan) on the basis of meeting some of the Borough's unmet housing needs.
18. In light of the above, through the Duty to Cooperate (DtC) process, Northern West Sussex (NWS) authorities have signalled that they will ensure a sufficient supply and choice in employment floorspace through respective plan-making⁷. There is agreement that the latest Economic Growth Assessment work is appropriate for the wider NWS area, including the identification of at least 26.2ha of employment land for Crawley. There is also agreement within NWS on Crawley's approach to release a new strategic employment site. We deal with the soundness of this site later in this report but note here that at 44ha the proposed Gatwick Green site in this Plan could provide some headroom to accommodate needs arising from any urban extensions adjacent to Crawley that had capacity to meet some of the Borough's unmet housing needs. This would be addition to any potential capacity in Horsham District that may further assist any wider unmet employment land needs⁸.
19. Because Crawley was seeking to meet its (labour demand) employment land needs in full, we do not consider it was necessary that the DtC process explored the consequences of not releasing a strategic employment site. This is not what Crawley were planning for. The outcomes of the DtC process demonstrate cross-boundary support from adjoining authorities (and others) for Crawley's proposed approach to releasing a new strategic employment site at Gatwick Green as part of the submitted Plan.
20. Under the standard method for calculating local housing need, the annual figure for the Borough has increased to 755 dwellings per annum (dpa), compared to the previous objectively assessed need of 675dpa. It was clear from an early stage of plan-making that Crawley would be unable to accommodate all its

⁶ Northern West Sussex Economic Growth Assessment

⁷ Paragraph 13 of Northern West Sussex SoCG July 2023 [Document SOCG/01]

⁸ Horsham District Council Regulation 19 Representations 20 June 2023 page 2

housing need. This raises two strategic planning matters for the DtC. The first is the effort and extent of engagement from Crawley in securing an effective outcome, in terms of gaining potential commitments from others to assist in meeting the significant unmet housing need. The second, which is allied to this, is securing effective outcomes in terms of any wider planned housing growth adjacent to Crawley's administrative boundaries.

21. In respect of unmet housing needs, the scale of the issue is significant, with the submitted Plan seeking to accommodate less than half of the identified housing need. The issue was clearly identified by the Council, significantly in advance of Plan submission, through various forums, including regular meetings of the Northern West Sussex Housing Market Area (NWSHMA) authorities. In addition to regular dialogue, the Council issued formal requests to NWSHMA authorities, and beyond, seeking assistance in meeting the unmet housing needs in January 2020 and April 2023. The focus for accommodating the unmet housing need is inevitably on the NWSHMA authorities given the need to secure sustainable patterns of development.
22. Significant weight has been placed on the fact that during the last round of plan-making, Crawley's unmet housing needs were largely accommodated within the NWSHMA. Based on the evidence in both the SoCGs and representations from Horsham and Mid Sussex that cannot be assumed to occur again for this Plan. Neither authority have committed during the preparation of Crawley's Plan to accommodate any of the unmet housing need. Both Horsham and Mid Sussex are advancing reviews of their local plans. This is taking place in the context of an approximate 25% uplift in housing need, such that the cumulative need figure across the NWSHMA has increased from 2,201dpa under the existing adopted local plans to a figure of 2,756dpa based on the standard method outputs at the time of this examination. Whilst it will be for each authority to ultimately determine precisely how much housing development it can sustainably accommodate within the suitable land available, the cautiousness of NWSHMA authorities to assist addressing the unmet housing need does not represent a failure against the DtC on Crawley's part.
23. The NWSHMA SoCG, to which West Sussex County Council (WSCC) is also a signatory, is significant on this matter of unmet need. This clearly establishes an agreed hierarchical approach that should capacity arise then unmet needs within the Housing Market Area (HMA) would take priority over any other anticipated requests to accommodate unmet need. We are satisfied that at the time of the preparation of Crawley's Local Plan this is as far as the authorities can practicably go in establishing a strategy in respect of Crawley's unmet housing needs. This reflects the combination of significantly increased housing need and further environmental constraints, including water neutrality.

24. In respect of a greater effort in engaging beyond the NWSHMA, the formal requests, particularly in April 2023, have gone well beyond the immediate HMA authorities. There is no doubt that Crawley have cast a wide net and the various SoCGs with authorities in both Sussex and Surrey demonstrate the reasonable endeavours Crawley has undertaken to explore whether its unmet needs could be met elsewhere. Given the various constraints, including, Metropolitan Green Belt to the north in Surrey, Ashdown Forest SAC and SPA to the east, the HWNL and South Downs National Park to the south, it is perhaps unsurprising that Crawley's request for assistance from further afield has not elicited a positive response as part of the DtC.
25. Wider growth around Crawley has been considered as part of the regular engagement between the Borough and its neighbouring planning authorities. Options which would be, in spatial terms, strategic urban extensions to Crawley, have been consulted on as part of current plan preparation in both Horsham and Mid Sussex⁹. In the scenario that such development was to be allocated we are satisfied that neighbouring authorities are aware of Crawley's requirements, not least an acute affordable housing need and a secondary education capacity issue. Evidence, including the Joint Area Action Plan for West of Bewbush, the Planning Performance Agreement for West of Ifield and planning obligation negotiations in Mid Sussex, provides confidence that there would be effective, on-going joint working were major growth allocated adjacent to Crawley. We are also satisfied that the submitted Plan before us would not inhibit or preclude sustainable development adjacent to Crawley. This includes the positively prepared policy for an area of search for the Crawley Western Multi-Modal Link. This infrastructure is not technically required for the Plan's growth but would support strategic growth in Horsham District.
26. Whilst none of the prescribed bodies have asserted that Crawley has not met the DtC, there is a general concern regarding potential impacts arising from a lack of coordinated planning for growth around Crawley. Whilst the Gatwick Diamond Local Strategic Statement and West Sussex and Greater Brighton Local Strategic Statement provide a degree of strategic framework for plan preparation these are high-level, non-statutory documents. There is a cogent argument, in our view, that growth in and around Crawley would benefit from genuine strategic planning that could suitably consider growth options and infrastructure at an appropriate level and on a consistent evidence base.
27. Whilst jointly produced local plans can include strategic policies¹⁰, there is no obligation to prepare such plans. The Local Development Scheme (LDS) identifies the potential of a Joint Plan¹¹, but plan-making within the NWSHMA has been staggered such that there is no obvious point at which plan review for

⁹ West of Ifield in Horsham District and Crabbet Park in Mid Sussex District

¹⁰ NPPF paragraph 17 a)

¹¹ Local Development Scheme January 2023 [CB/LDS/01] paragraphs 2.8-2.13

the respective authorities could reasonably coalesce around a timely joint strategic plan. In preparing individual Local Plans across NWS, it is better, in our view, that Crawley's Plan is examined and adopted ahead of Horsham and Mid Sussex in terms of providing certainty around the scale of unmet needs and any infrastructure requirements.

28. The LDS confirms that "joint working is a known priority". This has occurred on strategic cross boundary matters and is evidenced in the SoCGs with Horsham and Mid Sussex in accordance with the requirements set out in the PPG¹². Through the various forums and groupings, including with WSCC, it is evident that effective consideration has been given to cross-boundary infrastructure implications¹³. For example, transport modelling for the submitted Plan, includes sensitivity testing, including allowances for West of Ifield (3,000 homes), were that option to come forward. Water Cycle Study work has also been undertaken on a wider 'Gatwick sub-region' basis including Mid Sussex, Horsham and Reigate & Banstead.
29. Importantly, water neutrality within the catchment of the Arun Valley has emerged as a significant strategic matter during the preparation of the Plan. We are satisfied, as demonstrated through the related SoCG, that the affected planning authorities, including Crawley, have engaged with Natural England, the Environment Agency and water utility companies to establish an effective policy approach to enable plans and projects to secure a positive appropriate assessment outcome under the Habitats Regulations. The collective approach to policy formulation¹⁴ and consistency across the catchment and the cooperative approach to shared resources and solutions to enable development to come forward across the catchment demonstrates that the DtC on this matter has been met.
30. In conclusion, the plan preparation process for Crawley has generated a very significant unmet housing need. At the time of Plan submission there was no clear mechanism or agreement as to how the unmet need could be accommodated. We are satisfied that Crawley has made appropriate efforts to engage with others on the issue. It is evident, however, in an area where housing need figures are significantly increasing and the capacity to accommodate growth is subject to various policy and environmental considerations that a resolution to meeting Crawley's unmet needs was not going to be straightforward. The NWSHMA SoCG provides a constructive approach but ultimately the DtC does not extend as far as a duty to agree that some or all of Crawley's unmet housing need must be accommodated.

¹² PPG paragraphs 61-010-20190315 – 61-015-20190315

¹³ SoCG/01 – Northern West Sussex (July 2023), Sections 4 & 5

¹⁴ Including the Water Neutrality Study Part B In Combination Assessment 2022 [ES/SDC/06]

31. Overall, we are satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the DtC has therefore been met.

Assessment of Other Aspects of Legal Compliance

Sustainability Appraisal and Strategic Environmental Assessment

32. The Council carried out a sustainability appraisal (SA) of the Plan, prepared a report of the findings of the appraisal, and published the report along with the plan and other submission documents under regulation 19. The appraisal was updated to assess the MMs. The submitted SA report is comprehensive and addresses the requirements of Strategic Environmental Assessment (SEA).
33. As required, the SA report must identify, describe and evaluate the likely significant effects that would arise from implementing the Plan, including “reasonable alternatives”, taking into account the objectives and geographical scope of the plan¹⁵. In terms of SA there will always be disagreements because the assessment process relies on judgments, which are inherently subjective. On the whole, we find the Council’s judgements that have informed what are preferred options taken forward into the Plan and the explanation for discounting alternatives to be logical and clearly set out.
34. One of the principal reasons for discounting what may have otherwise been reasonable options for sustainable development is the conflict with the objective to safeguard land for Gatwick Airport. This is particularly the case in respect of options for employment land. The Council has made its assessment of those areas it considers critical for airport expansion and those that are non-essential (in accordance with NPPF paragraph 106c) in terms of land that should continue to be safeguarded.
35. Nonetheless, there is a methodological concern regarding how the SA has considered alternative options for employment land. The SA of discounted employment sites is comprehensive and has considered various potential sites collectively and on an individual basis. Whilst there may be disagreements on how sites have been assessed against the individual SA objectives, we find the Council’s judgements in their assessment of sites to be reasonable. It is not explicit in the SA whether “rejected employment sites” are treated as reasonable alternatives to the proposed strategic Gatwick Green site but they are all presented in the same Appendix of the SA (Appendix H pages 396-441). Clearly, some of the sites are capable of being alternatives to Gatwick Green (in

¹⁵ Environmental Assessment of Plans and Programmes Regulations 2004, Regulation 12(2).

terms of strategic size) and so it is reasonable to consider that they were assessed as alternative strategic site options.

36. The SA report explains why these sites have been discounted, including being in conflict with the continued, precautionary need to safeguard land for Gatwick. There is a suggestion that SA should have been 'policy blind' on all site options within the 2015 Local Plan safeguarded land but this would have been an ineffective exercise given the evidence on the location of a second wide spaced runway and the policy approach to retain safeguarding. In our view SA has appropriately sieved the options and discounted alternatives at the appropriate stage having regard to the baseline evidence for the SA, including the 2013 Aviation Policy Framework, the draft 2018 ANPS and the 2019 Airport Master Plan.
37. Gatwick Airport is clearly a significant and special consideration for land use planning in the Borough. This includes issues such as hotel and visitor accommodation and airport related parking. We address the soundness of the policies later in this report, noting that they are a continuation of 2015 Local Plan policies which were found sound in the context of the NPPF. In respect of the SA process, this has looked at reasonable options for both policy areas¹⁶, including a 'do nothing' option. The SA process cogently explains why locally specific policies, that reflect the need for a specific sustainable pattern of development including Gatwick Airport, would form part of an appropriate strategy for Crawley.
38. Overall, we find no shortcomings in the SA of Policies EC7 and GAT3, including how the possible effects of the policy options have been assessed and the overall reasoning for selecting the preferred policy approach. SA is necessarily a high-level exercise, such that the options appraised should encompass identifiably separate policy approaches or objectives, rather than go into permutations that are not sufficiently distinctive. This matter was examined in the High Court¹⁷ for the 2015 Local Plan in respect of Policy GAT3, such that the Council's approach in SA for this Plan remains reasonable in testing the two separate high-level policy options for airport related parking.

Habitats Regulations

39. The Crawley Local Plan Habitats Regulations Report (January 2023) sets out that a full appraisal has been undertaken where it has been identified that the Plan, alone and/or in combination with other plans and projects, is likely to have a negative impact on the qualifying features of Habitats sites which requires mitigation. The principal issues are firstly in relation to hydrological impacts

¹⁶ Policy EC7 at pages 241-243 and Policy GAT3 at pages 252-254 of KD/SA/01

¹⁷ Holiday Extras Ltd v. Crawley Borough Council [2016] EWHC 3247 (Admin)

(water quantity and quality), particularly for the Arun Valley SPA, SAC and Ramsar sites. The second issue is air quality in terms of the impact of atmospheric nitrogen deposition and acidification, including at the Ashdown Forest SAC and SPA.

40. The policy areas that have been screened in for appropriate assessment relate to employment development, town centre redevelopment and housing, together with the proposed policy approach on water neutrality. In respect of water, the first matter is water quality in the wider Thames River basin catchment to the north of the Borough including the River Mole. Generally, improvements to Wastewater Treatment Works are predicted to provide capacity to accommodate planned development without deterioration in receiving watercourses below the current Water Framework Directive classification, as evidenced in the Water Cycle Study¹⁸.
41. In relation to water neutrality, it is evident without mitigation that levels of abstraction within the Sussex North Water Resource Zone serving the Arun Valley catchment needed to supply growth in the Local Plan would have an adverse impact on the integrity of the Arun Valley SAC, SPA and Ramsar sites and The Mens SAC site. The proposed approach is to secure stringent water efficiency measures (85 litres per person per day in housing and 3 credits within the water consumption category of BREEAM¹⁹ standard for non-domestic buildings) and through appropriate off-setting to achieve water neutrality. This is set out in submitted Policy SDC4. Tangible progress is being made on implementing a local authority-led water off-setting scheme²⁰. The HRA Report concludes that with this mitigation in place there would be no adverse impact in terms of water quantity impacts.
42. With regards to in-combination effects with other Plans and projects, the specific Water Neutrality SoCG demonstrates the significant co-operation and consistent approach being pursued by the relevant local planning authorities, together with WSCC, the Environment Agency and water utility providers. Natural England endorse the approach being taken and the conclusions of the HRA report. Overall, we find the mitigation in Policy SDC4 would be effective and so share the HRA report conclusions of ultimately no adverse impact on site integrity.
43. In relation to air quality, the Plan contains a number of policies aimed at maximising sustainable travel. These would be implemented in tandem with Crawley's Transport Strategy (which seeks to promote walking, cycling, public transport and electric car clubs) and the Local Cycling and Walking Infrastructure Plan. The HRA sets out in detail the outputs from air quality

¹⁸ Gatwick Sub-Region Water Cycle Study 2020 and Crawley Addendum 2021 [ES/SDC/08&09]

¹⁹ BREEAM – Building Research Establishment Environmental Assessment Method

²⁰ Progress Note July 2023 [DS/TP/00a] (with details of the Sussex North Offsetting Water Scheme (SNOWS)).

modelling for Ashdown Forest and Mole Gap to Reigate Escarpment and demonstrates in relation to baseline data, future trends and impact of Local Plan policy that there would be no adverse impact on site integrity.

Strategic Priorities and Climate Change

44. The Development Plan, taken as a whole, includes policies to address the strategic priorities for the development and use of land in the local planning authority's area. This includes submitted Policies SD1 and SD2. The first sets out Crawley's strategic objectives for development and how that would contribute to sustainable development in the Borough. The second singles out enabling healthy lifestyles and wellbeing as a particular strategic priority for the Borough, including a requirement for health impact assessments for major developments. Given the baseline evidence for the Borough²¹ on aging population, childhood obesity and various other health inequalities we consider the approach in Policy SD2 to be soundly based, consistent with NPPF paragraphs 92 and 93. Elsewhere the Plan contains identified strategic policies which correlate to the strategic objectives in Policy SD1 and to the evidence that has informed the SA objectives for Crawley. The submitted Plan would also provide spatial alignment in contributing towards delivery of the Council's Corporate Plan Priorities 2023-27 [PS/DS/CBCCP/01].
45. The Development Plan, taken as a whole, includes policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change. This includes policies on sustainable design and construction addressing such matters as energy consumption, connectivity to district energy networks, tackling water stress and achieving water neutrality (Policies SDC1-4). There are also policies to prioritise modal shift through design (Policy CL3) and transport planning (Policy ST1), enhance green infrastructure and biodiversity and to ensure development is protected from, and does not exacerbate, flood risk²².

Other Matters of Legal Compliance

46. The Plan has been prepared in accordance with the Council's Local Development Scheme (LDS).

²¹ Including the West Sussex Joint Health and Wellbeing Strategy 2019-2024 & Sussex Health & care: Improving Lives Together – Our Ambition for a healthier future in Sussex (2022) [PS/DS/NHS/01]

²² The plan is informed by Strategic Flood Risk Assessment including the latest climate change allowances (2023) [PS/ES/EP/17].

47. Consultation on the Plan and the MMs was carried out in compliance with the Council's Statement of Community Involvement.
48. The Plan complies with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations.

Assessment of Soundness

Main Issues

49. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings, we have identified 11 main issues upon which the soundness of this plan depends. This report deals with these main issues. It does not respond to every point or issue raised by representors. Nor does it refer to every policy, policy criterion or allocation in the Plan.

Issue 1 – Is the Plan's Spatial Strategy and approach to Safeguarding for Gatwick Airport based on robust evidence and is it justified, effective and consistent with national planning policy?

Spatial Strategy

50. In large part, due to the size and nature of the Borough, there are few genuine spatial options for accommodating the full development needs over the plan period. SA has assessed three high-level scenarios to inform an appropriate strategy. In terms of accommodating development needs further afield, the DtC process has identified at a strategic level that this is not presently feasible. Even if it were, we have strong reservations about a strategy that would involve the dispersal of a proportion of Crawley's growth well beyond the NWSHMA, including to locations where connectivity to Crawley and Gatwick Airport for work would be weak and largely reliant on the private car. Accordingly, plan preparation was justified in not seeking a wider dispersal of growth far beyond the Borough boundaries.
51. It therefore follows that a key spatial strategy matter is the extent to which development needs could be accommodated within the Borough. This would be intertwined with any approach to safeguarding for Gatwick Airport.
52. The submitted plan seeks to accommodate employment land requirements within the Borough, having determined the extent of land critical for safeguarding. We set out separately below under Issue 3, concluding at paragraph 127 that the minimum employment land requirement in the Plan is soundly based. At a strategic level having sought to accommodate the

employment land requirement, the spatial choices for doing so are limited. At a high level, there is insufficient capacity through remaining land parcels and any redevelopment opportunities on existing employment land, including Manor Royal, to accommodate the full employment land requirement. Some consolidation and reconfiguration on existing employment estates, through town centre redevelopment and at the Horley Business Park site, adjacent in Reigate and Banstead (RBBC), would meet some of the needs but there would remain a significant residual requirement for new land. This would be particularly the case for warehousing and logistics sectors, including those seeking large footplates. We are satisfied that the evidence in the Employment Land Availability Assessment (ELAA) and the SA demonstrates that plan-making has considered reasonable spatial options within the Borough for providing employment land.

53. Whilst extending Manor Royal would represent a logical choice for a sustainable pattern of employment development, this location has been discounted due to the continued safeguarding for Gatwick Airport. By reference to the Airport's 2019 Master Plan, the area of land between Manor Royal and the existing airport is clearly critical for physically implementing a second wide spaced runway, including necessary peripheral infrastructure, land for a safety buffer and essential realigned highways and watercourses.
54. The Plan's spatial strategy proposes to release land for employment at Gatwick Green in the north east of the Borough. The location is reasonably related to Manor Royal and to Gatwick Airport. The quantum of land proposed for allocation is sufficient to establish a new strategic employment site. It would complement rather than compete with Manor Royal or other strategic employment areas in the wider Functional Economic Market Area (FEMA). The Gatwick Green location requires land that has been previously safeguarded for Gatwick Airport and we address the soundness of this below. Nonetheless, in considering an appropriate spatial strategy for employment needs we are satisfied that the Plan has assessed reasonable spatial options.
55. In terms of the potential to accommodate housing within the Borough we are satisfied that the only reasonable spatial option is to optimise delivery within the existing built-up area of Crawley and to build out the remaining greenfield allocations from the 2015 Local Plan (Forge Wood). When taking into account the combination of safeguarding for the airport, acceptable living conditions due to noise and the need to safeguard environmental assets, there are effectively no reasonable options for further peripheral greenfield housing in this Plan. The SA has dealt with this appropriately.
56. Regarding development potential in Crawley, the Plan is evidenced by a comprehensive assessment of available sites in the Strategic Housing Land Availability Assessment (SHLAA). This includes potential sources of supply within the town centre, including various high-profile opportunity sites that are

positively identified as part of the coordinated revitalisation of the town centre as a central neighbourhood. It also includes sites that justify the town centre being appropriately considered as part of a longer-term broad location for further housing. Additionally, the Plan takes a positively prepared, character-led approach to suitably optimising windfall capacity within the town as evidenced in the Crawley Compact Residential Development Study 2023 [WC/CLD/01], and suite of Housing Typology Policies under the umbrella of submitted Policy H3. This includes estate regeneration, infill opportunities, town centre regeneration and upward extensions. There is no persuasive evidence that obvious sites or opportunities within the town for housing have been omitted.

57. It is asserted, that additional capacity could be derived from a more positive approach to estate regeneration and town centre redevelopment. On the former, there are no funded plans for comprehensive estate regeneration, which would be challenging to implement given the varying degrees of right to buy and the planned character of these areas. Recognisable sites or deliverable redevelopment opportunities within the neighbourhoods are positively factored into the Plan. Whilst there may be a perception of overt capacity within the town centre, a number of high-profile sites are already identified and accounted for. The Plan is predicated on an ambitious but realistic strategy to create a larger residential community within the town centre, as evidenced by various recently implemented redevelopment schemes. An alternative spatial strategy that sought to significantly optimise town centre capacity in addition to that already identified in the Plan would not be justified and without consideration of important factors such as heritage (listed buildings and conservation areas) and the need to retain and provide other land uses in the town centre. Overall, we are satisfied that there is no reasonable or deliverable alternative spatial strategy that could deliver significantly more development within the existing built-up area of the Borough than assumed in the Plan.
58. At a strategic level, we consider it is justified that the Plan is predicated on a strategy of optimising development in Crawley and then seeking to see development needs accommodated as close to Crawley as possible. We accept, as part of the latter, the Council would be reliant on neighbouring planning authorities. This, however, is not unreasonable given previous plan-making and the indications that both Horsham and Mid Sussex are contemplating strategic urban extensions to Crawley as part of their current plan-making²³. Accordingly, we consider the Plan is justified in setting out the position of Crawley Borough Council, as a local planning authority, with regards to development 'At Crawley'. Prudently, the Council recognises that it cannot set policy in its Plan to materially affect what would be a decision for another local planning authority. However, given any strategic growth on the edge of Crawley would give rise to impacts on Crawley it is justified that the submitted Plan sets

²³ As articulated by both Horsham and Mid Sussex at the duty to cooperate and spatial strategy hearing sessions and subsequently confirmed in their Regulation 19 Plans.

out content on “Urban Extensions at Crawley” including Crawley-centric considerations.

59. These considerations are set out at paragraph 12.23 of the submitted Plan. As submitted the Plan articulates what would be required for Crawley to support adjacent growth proposals, that is not the same as setting policy requirements. Nonetheless, they comprise reasonable expectations for sustainable development given the immediate impact of wider growth ‘At Crawley’, particularly on matters such as character and infrastructure, would be keenly experienced by communities in Crawley. On this issue, we find the Plan’s approach to likely peripheral growth in neighbouring authorities to be sound.

Safeguarding for Gatwick Airport

Existing Airport and Northern Runway Project (NRP)

60. The number of flights and passenger numbers at Gatwick Airport is not restricted by any extant planning permission. Nonetheless, the Airport has entered into a Section 106 (S106) agreement in terms of commitments to environmental and other matters. The latest S106 was updated and signed in May 2022 with the Council and WSCC. As such the airport can continue to maximise the existing single runway airport to increase passenger numbers, principally through operational changes and the scope of permitted development (PD) rights. Accordingly, Policy GAT1 would provide a justified and effective mechanism to enable the Council to carefully assess proposals when consulted on as part of PD process and for those proposals that would require planning permission.
61. The Examination for the proposed Development Consent Order (DCO) for the NRP was completed in August 2024, with the outcome awaited in 2025. Justifiably, the Local Plan does not assume an expanded airport on the basis of a non-concluded DCO process. Nonetheless, Policy GAT1 judiciously recognises the potential of the NRP. Additionally, transport modelling work has prudently incorporated sensitivity testing for the NRP alongside the growth in the Plan. We consider plan preparation and content has appropriately considered the DCO proposal insofar as it reasonably can. If the DCO process is consented in whatever form, that may trigger a need to consider reviewing the Plan policies for Gatwick. Critically, it would not affect the overall spatial strategy in this Plan including any area required for safeguarding or otherwise. The evidence to this examination is that NRP would be operational by 2029 at the earliest, ratcheting up to its full potential by 2047.

Context and Principle of Safeguarding at Gatwick

62. The National Aviation Framework 2013 states at paragraph 5.9 the following. “Land outside existing airports that may be required for airport development in the future needs to be protected against incompatible development until the

Government has established any relevant policies and proposals in response to the findings of the Airports Commission, which is due to report in Summer 2015.” The Airports Commission reported in July 2015, concluding that an additional runway at Heathrow presented the strongest option to meet the need for additional airport capacity in the South East.

63. The ‘Airports National Policy Statement (ANPS): new runway capacity and infrastructure at airports in the South East of England’ was finalised in 2018. This confirmed a need to increase capacity in the South East by constructing one runway, with Heathrow identified as the government’s preferred scheme. As resolved at the Supreme Court in 2020, the decision to support a third runway at Heathrow remains lawful and the ANPS remains valid.
64. Parallel to this, the government produced in 2018, the document ‘Beyond the horizon: The future of UK aviation: Making best use of existing runways’. This identified that recent aviation forecasts were exceeding the growth taken into account by the Airports Commission work. A draft aviation strategy was published at the end of 2018 “Aviation 2050: the Future of UK Aviation.” This draft document stated that forecast aviation demand to 2030 could be best met through expansion at Heathrow and by other airports making best use of their existing runways subject to environmental issues being addressed. In addressing long term need (the case for further runways beyond 2030) the document states that the Government proposes to ask the National Infrastructure Commission to include airport capacity in future national infrastructure assessments. The draft Strategy confirmed that it was prudent to continue with a safeguarding policy to maintain a supply of land for future national requirements and to ensure that inappropriate developments do not hinder sustainable aviation growth.
65. In May 2022 the Government published ‘Flightpath to the future’, to enable consideration of wider changes to aviation as a result of Covid-19 and Brexit. It supports airport growth where justified and clarifies that the ANPS and “Beyond the Horizon” provide the most up to date policy on planning for airport development.
66. The Gatwick Airport Master Plan (GAMP) was published in July 2019. It presents various scenarios for growth including optimising capacity on the existing single runway, bringing into operational use the existing standby runway and continuing to safeguard land for a second wide spaced runway to the south of the airport. The second scenario is currently progressing as the NRP through the DCO process. If successful the DCO would enable capacity of the airport to increase to over 75 million passengers per annum (mppa) by 2038, stepping up to around 80 mppa by 2047.
67. Land was first safeguarded for Gatwick in the 2007 Core Strategy following the 2003 Aviation White Paper. As such there is an understandable frustration that significant parts of the Borough’s potential land supply have long been held in

abeyance. Whilst the GAMP states that Gatwick is no longer actively pursuing plans for an additional southern runway it nonetheless confirms that there remains a possibility that the airport may wish to implement one in the future. The GAMP does not rule out the possibility. Accordingly, it seeks a continuation of land being safeguarded in accordance with a boundary identified at Plan 21 in the document.

68. Whilst there have been more recent policy documents and statements on aviation, the audit trail stretches back to the 2013 National Aviation Framework as the key source requiring safeguarding for future runways as well as and the 2018 draft aviation strategy. The National Infrastructure Commission has not yet included airport capacity due to the current uncertainty around the future demand for air travel and the approach to expanding runway capacity in the South East. Overall, there is appreciable uncertainty in national policy regarding the requirement for safeguarding. In this context we consider the Plan has taken a suitably precautionary approach in retaining the vast majority of safeguarded land whilst seeking to allocate land to address the Borough's economic needs.
69. We deal with Plan Review under Matter 11 of this Report but emphasise here that any changes to national aviation policy affecting the Plan's approach to Gatwick would likely trigger a plan review. At this time, it is appropriate that the authority gets a new Local Plan in place in terms of the positive policy framework for the town centre, water neutrality and employment provision and to provide some certainty for other authorities within the NWSHMA. There is no persuasive reason to delay plan adoption in Crawley for further deliberations on where or how future aviation policy may evolve.
70. The rationale for continuing to safeguard is that the draft national Aviation Strategy (Aviation 2050) still supports the principle of safeguarding land for airports, when looking at the longer-term picture. As such removing safeguarding of land likely to be critical to delivering a second wide spaced runway in this Plan could constrain longer term national policy decisions on aviation requirements. NPPF paragraph 106c on protecting sites is phrased as "could be" critical where there is robust evidence.
71. What comprises robust evidence is a matter of judgment and the combination of current national aviation policy, and the GAMP, would meet the threshold in our assessment. We are, however, of a firm view, that perpetuating this circa 20-year situation is not without harm given the scarcity of developable land in the Borough, the pressing need for development and the wider objective to foster sustainable patterns of development in both the FEMA and NWSHMA. If there is no firm movement, in respect of updated government policy on longer term aviation needs, to indicate additional wide-spaced runway capacity is required in the South-East, then the Plan review should, in our view, revisit this matter.
72. Whilst the principle of safeguarding for airport expansion is a national policy for aviation, whether land is safeguarded for a specific airport and the subsequent

delineation of any safeguarded area is squarely an issue for local level plan-making in accordance with NPPF paragraph 106(c). Whilst the Aviation Policy Framework (2013) requires airports to provide Master Plans (and supports the identification and protection of land that should be safeguarded) there is nothing before us in terms of national aviation policy that says land at Gatwick Airport must be safeguarded and that this must be in rigorous accordance with the Airport's latest masterplan. Given the criticality of Gatwick in the Borough, to the sub-regional economy, and to the transport infrastructure of the country, the GAMP is among the chief evidence documents that should inform plan preparation. That does not mean the Council is required to slavishly reflect the Masterplan in the Local Plan, including the ultimate action of safeguarding land. Indeed, on the evidence before us, safeguarding for airports is not commonplace, although we recognise that some Local Plans have positively reflected airport masterplans within their policy framework²⁴.

73. Land has been safeguarded at Gatwick for the past circa 20 years. With no positive indication at a national level that a second wide-spaced runway at Gatwick will be greenlighted it is entirely understandable that the Council has sought to carefully consider as part of this Plan whether reaffirming the significant extent of land previously safeguarded in the 2015 Plan would remain justified in accordance with NPPF paragraph 106c. In terms of the parameters for determining the extent of safeguarded land we find that such land should be focussed to those areas that are critical and demonstrated to be such by an airport master plan. As such we do not consider that safeguarding should include land that is not essential to the implementation of future expansion.
74. Moreover, the Council has a duty in the wider public interest to balance the objectives for the Airport against the over-arching obligation of the Plan to contribute to the achievement of sustainable development. This means promoting a sustainable pattern of development that should aim to meet, as a minimum, the assessed needs for housing and other uses. On the other hand, regard must also be given to the fact that the area of largely undeveloped land to the south of the current airport is the only practicable option for a second wide spaced runway, if required.
75. Safeguarding the full extent of land identified in the GAMP would mean that minimum housing and employment needs could not be met within the Borough. This would be significant because as the preceding DtC section in this report illustrates, accommodating displaced housing and employment needs from Crawley would not be straightforward. We accept that not safeguarding land for the airport does not necessarily mean that housing needs could be met in full

²⁴ As set out in GALs response to the proposed main modifications.

because of existing environmental conditions (aircraft noise) on land proximate to the existing airport. The same would not apply for employment.

76. Therefore, we are concerned that not meeting employment needs within the Borough would be especially negative on two dimensions. Firstly, in terms of maintaining a strong and competitive economy in the Borough, consistent with the evidence that Crawley is the major employment centre within the FEMA. Secondly, the potential to generate commuting patterns at odds with otherwise reducing the need to travel. Dispersing economic development away from the Borough is something which would only be sound when shown to be demonstrably necessary. It is therefore entirely justified as part of plan-making that the Council reconsidered whether safeguarding land for a second wide-spaced runway and the various associated land uses remained a sound approach based on the available evidence.
77. As part of the plan preparation process, the Council promoted the concept of a North Crawley Area Action Plan to look at the justification for safeguarding at Gatwick and the scope to accommodate strategic employment development. The Council has considered the alternative option of a more flexible approach through an area action plan mechanism as part of the SA (including in relation to employment land provision). The SA sets out cogent reasoning as to why the option has not been taken forward as part of an appropriate strategy for this Plan. As set out elsewhere, if circumstances change on the need to safeguard land that would be a matter for a plan review.

The extent of safeguarded land

78. In determining the extent of safeguarded land in the Plan, the GAMP is an important consideration. Much will hinge on the basis, age and quality of the evidence informing the masterplan. Guidance at Annex B of the 2013 Aviation Policy Framework says that airport masterplans are to “be given due consideration in local planning processes” (paragraph 4.11). Accordingly, the GAMP is not binding on the extent of safeguarded land.
79. The fundamental and clear test for plan-makers is at NPPF paragraph 106c and it requires consideration of whether there is robust evidence to identify and protect sites that would be critical in developing infrastructure to widen transport choice and realise opportunities for large scale development. Rather than simply rolling forward safeguarding because it was considered appropriate in 2007 and subsequently in 2015, we consider the test is now heightened in respect of Gatwick for those areas of land where it is questionable as to whether the intended land use in the latest master plan would be “critical” to the development. Consequently, and given the circumstances described above (in terms of the pressures on land resources and the need to secure sustainable development more widely), it was entirely appropriate that the Council scrutinised the latest 2019 airport master plan and the evidence behind it.

80. Clearly land required for the second-wide spaced runway, aircraft manoeuvre and passenger facilities, safety buffers and essential highway and watercourse diversions, would be critical, and so warrants being protected. The area proposed for safeguarding in the Plan would protect those areas identified in Plan 20 of the GAMP covering these critical elements. The main issue is the extent to which land needs to be safeguarded to the east of the existing airport as shown in the GAMP. This area is shown for long stay surface car parking.
81. We are cognisant of the Airport's recent and significant measures to promote modal shift (for example the multi £million upgrade of Gatwick train station) and for this to continue during the plan period through the iterative Airport Surface Access Strategy and S106 processes. Nonetheless, we agree with the Airport that, notwithstanding good progress on modal shift, car borne passenger numbers are likely to remain significant and should be catered for. As such additional car parking will be critical to an expanded airport.
82. It is confirmed that the GAMP draws on evidence for car parking provision from 2014 to the Airports Commission. This includes at Appendix A5 an Operational Efficiency Master Plan (OEMP). The OEMP shows at Figure 4.6.6.1 the proposed Gatwick Green site within long stay surface parking (labelled No.6 in the legend). Section 3.7 of this document summarises what is described "Eastern area developments". This is the area to the east of the railway line. It states the area "has been designated to accommodate a consolidated surface car parking zone which feeds all terminal buildings as well as providing a safeguard for commercial developments should these be required."
83. We have strong reservations about the continuing validity of this evidence, which appears to be, until this examination, the kernel of the robust evidence relied upon by the Airport for potentially safeguarding approximately 138ha of land to the east of the airport for car parking (including in the 2021 Arup update note). Table 3.7.1 of the OEMP identifies a requirement for some 95,750 parking spaces to support the expanded airport operating at 95mppa. There is relatively little detail before us to explain how these figures were arrived at in terms of either demand or design solutions. Given this lack of evidence, the increasing use of alternative modes of surface access and the emerging alternatives to traditional surface car parking, it is questionable whether all of the land east of the airport would be critical to the delivery of an additional wide-spaced southern runway. As such the Council was justified in scrutinising the robustness of the GAMP evidence as required by NPPF paragraph 106c.
84. Moreover, GAL in response to the York Aviation Paper (during the examination) have updated their assessment of parking to support the implementation of the GAMP which results in a parking demand of 76,315 spaces of which 68,015 would be long stay or staff spaces. It is not our role to determine precisely what amount of car parking would be needed to support a second wide spaced runway (due to reach the 95mppa within 20-25 years from opening) but the

examination hearings reasonably coalesced around a figure of circa 68,000-70,000 spaces.

85. Whilst GAL maintain that they still require the full 138ha to be safeguarded to deliver this quantum of parking, there is not the robust evidence to support this. Taking a figure of 69,000 parking spaces, at an average surface car parking space density of 20sqm (including circulation space), would equate precisely to 138ha. However, the trend for airport parking, at Gatwick and elsewhere, has been to advance more efficient ways of parking such as blocked parking, automated (robotic) parking models, decking and multi-storey car park (MSCP) provision. This trend for efficient parking is likely to continue and intensify during the plan period as technology advances. The full use of the 138ha for car parking, including potentially elements of surface parking, would not be an efficient use of land in a highly constrained Borough.
86. Whilst we understand GAL wishes to offer consumer choice for those desiring larger surface parking spaces, we are nonetheless satisfied that various options exist to secure more efficient parking including MSCPs, decked provision and block parking including robotic or mechanical solutions. There is very little to indicate that the cost of such options would not be viable. Recent growth in car parking demand at Gatwick has been consistently met on-airport though a mixture of decking and multi-storey parking solutions onsite. This indicates such forms of parking provision are likely to be viable. Whilst the NRP DCO is not yet determined, it nonetheless shows that more efficient parking could be secured at Gatwick (parking spaces per million passengers) compared to the 2014 work. Indeed, block parking at Gatwick (45%) is already in excess of that forecast around the time of the 2014 work (33%).
87. Of the 138ha of land shown in the GAMP to the east of the airport, 94ha would be safeguarded in the Plan once 44ha is removed for the Gatwick Green allocation. There is very little to demonstrate that this 94ha, or even a reduced area of 81ha²⁵, could not accommodate the long-term car parking needs associated with an airport operating at c.95mppa. To some extent the onus is on the airport to provide to the Council (and to us as examiners) the robust evidence that these residual areas could not provide critical amounts of car parking and so demonstrate that the full 138ha should be protected. That has not happened and instead we have largely been presented with assertions on consumer choice and the practicalities and impacts of decked and MSCP provision in this part of the Borough.
88. There are MSCPs at Gatwick relatively close to the existing runway. Subject to location there is no compelling evidence that additional MSCP provision would not be feasible having regard to aerodrome safeguarding. In terms of character, there are already existing bulky buildings associated with the airport. Subject to

²⁵ Deducting circa 13ha which, as submitted by GAL, may not be operationally suitable for car parking.

layout, design and landscaping there are no reasons why additional large-scale development for parking associated with the operation of the airport would be incompatible with the character to the east of the airport. If the Gatwick Green allocation is delivered, MSCP and decked provision would likely occur close to large logistics units. The submitted spatial strategy anticipates significant change in the character in this part of the Borough, a location that is already divorced from the wider countryside by the existing airport, the M23 and the M23 spur road. GAL's concerns that MSCPs or decked provision would not be supported on land east of the airport are overstated and speculative.

89. In conclusion on this matter, we find that parking demand (per million passengers) is likely to be lower than when envisaged at the time of the 2014 work for the Airports Commission. This is consistent with the ongoing and sustained efforts of the Airport to support modal shift for passengers and staff, such that we consider that the number of parking spaces determined through the 2014 work would represent a significant overprovision. There is ample scope with more efficient parking formats and methods to accommodate the likely parking demand within the extent of the 94ha of safeguarded land proposed. As such there is not the robust evidence required to safeguard the full extent of land east of the airport as shown in the GAMP.
90. We understand land to the east of the airport is an optimum location to consolidate parking provision, forming part of the planned, incremental growth for the airport. However, a very significant area of safeguarded land would remain to enable this. Whilst the shape and location of the Gatwick Green site would intrude into the safeguarded area, we are nonetheless satisfied most of the residual areas could logically come forward for parking. The worst-case scenario leaves 81ha but we consider that a very pessimistic situation given the size of the land remaining between the Gatwick Green site and the M23 could accommodate an appreciable number of parking spaces. Whilst this location would feel slightly detached from the remainder of the airport, due to the intervening Gatwick Green site, it would not be that remote (it would be closer than a number of existing off-airport parking sites). Moreover, masterplanning of the Gatwick Green site would have regard to inter-relationships to this area, including the extent to which connectivity to safeguarded land east of the site could be secured through and around it.
91. We note the previous examination into the 2015 Local Plan was not particularly positive regarding the extent of land safeguarded to the east of the airport, with the Inspector describing that a large area of land for surface car parking represented a sub-optimal use given the general scarcity of land in the Borough. Nonetheless, safeguarding in this location was found sound on a precautionary basis and the need for some flexibility to implement a major infrastructure project. Matters have now moved on such that the balance of evidence on both the land required for car parking to support an expanded airport and the need for employment land tips firmly in favour of the submitted Plan's reasonable approach to modestly amend the overall extent of safeguarded land to facilitate

a new strategic employment site. It would do so in a location that would not fundamentally prejudice the ability to implement a second wide-spaced runway.

92. Continuing to safeguard the full extent of this peripheral area primarily for surface car parking would be a profligate approach given the scarcity of land and the competing demands for it, particularly in terms of securing wider sustainable patterns of development in the Borough. We do not consider it has been sufficiently demonstrated that alternative, and more land efficient, forms of parking provision would be unviable, unattractive and otherwise detrimental to the successful implementation of an enlarged airport operation based on a second wide spaced runway. Accordingly, we consider the approach to safeguarding based on removing part of the area for surface car parking and focusing on protecting the core but extensive areas for the second wide-spaced runway to be an effective and justified approach, and entirely consistent with NPPF paragraph 106c.
93. Section 3.7 of the OEMP also refers to 35ha of land that may be needed to relocate commercial uses displaced from the southern runway. Ultimately, safeguarded land is for critical infrastructure. The 35ha relates to notional businesses that may still exist in the affected area by the time the second wide spaced runway is to be implemented. Relocated employment land is not critical infrastructure as it would be principally compensatory provision, likely to fall outwith any DCO for a Nationally Significant Infrastructure Project in terms of the legal powers to secure land for relocating uses.
94. Bringing this all together, we find the over-arching approach to continue safeguarding land that would be critical for an expanded Gatwick Airport to be justified. The proposed extent of the area to be safeguarded in the Plan appropriately reflects this. Excluding the proposed Gatwick Green site from safeguarded land would be part of an appropriate strategy that can sustainably meet the Borough's employment needs without fundamentally inhibiting those areas necessary for critical infrastructure for the airport's potential expansion for a second wide-spaced runway.

Plan Period

95. The Plan as submitted is titled the Borough Local Plan 2024-2040. The Plan was submitted for examination in July 2023 and contains housing and employment land trajectories with a base date of 31 March 2023. To ensure clarity and consistency with the evidence base, the Plan period should be clearly identified as 1 April 2023 to 31 March 2040. In accordance with NPPF paragraph 22, on adoption in 2024, the strategic policies of the Plan would look ahead over a minimum 15-year period. **MM1** would clarify the Plan period in various parts of the Plan and we recommend it for effectiveness and so that the Plan would be justified.

Conclusion

96. Subject to the MMs identified above the Plan's Spatial Strategy and approach to safeguarding for Gatwick Airport is based on robust evidence and would be justified, effective and consistent with national planning policy.

Issue 2 – Whether the housing need for Crawley is soundly based and the supply-based housing requirement justified and positively prepared?

Housing Need

97. The housing need for the Borough has been established using the standard method. It applies the 2022 work placed-based affordability ratio (published in March 2023) and average annual net changes in households from the 2014-based projections in accordance with the methodology set out in the PPG. Having regard to the PPG²⁶, and considering the ongoing, but yet to be determined NRP at Gatwick, it would not be necessary for soundness to plan for a higher housing need figure than the standard method indicates. Accordingly, the minimum housing need for Crawley of 755dpa is soundly based.
98. In light of the findings above on the Plan period (extending from 16 years to 17 years), the overall housing need for the Borough should be adjusted upwards from 12,080 to 12,835 homes. **MM4** would make the required changes and we recommend it for effectiveness and so that the Plan is positively prepared.

Principle of a supply-based housing requirement

99. As set out above under our consideration of the DtC, the Borough is a geographically small area, and as such it is widely recognised that it is not possible to accommodate the full extent of the Borough's housing need. Given the influence of Gatwick Airport on remaining greenfield land to the north of the Borough (by virtue of safeguarding and noise), land supply for housing is focussed within the existing urban area of Crawley and at the remaining capacity at the Forge Wood allocation from the 2015 Local Plan. At submission, it was assessed that the Plan could accommodate only 42% of its housing need.
100. The NPPF at paragraph 11b) states that strategic policies should, as a minimum, provide for objectively assessed needs for housing. Given the geographical limitations of the Borough and the need to safeguard land for Gatwick Airport, there is little dispute that land supply in the Borough for new

²⁶ PPG Paragraph 2a-010-20201216

housing is limited. As such there are strong and practicable reasons why the overall scale of housing development in the plan area would be restricted.

101. We are mindful, however, that given the significant sustainability benefits of delivering homes in Crawley, that the Plan should nonetheless set an ambitious but realistic housing requirement. There are relatively few new housing sites allocated in the plan. Given the grain and character of a largely planned new town it is logical that there are relatively few sites that remain clearly anticipated for development. Those that are identified in Policy H2 and on the Policies Map have been appropriately identified and assessed through the SHLAA and SA processes following various calls for sites and assessments of publicly owned land. There are no obvious omission sites that should be additionally allocated to increase the supply and in turn the housing requirement.
102. In terms of the capacity of sites identified as part of the 2015 Local Plan we are satisfied that the latest housing trajectory [PS/H/HD/14] has increased them where sustainable to do so and this has been accounted for (a net gain of some 1,170 dwellings)²⁷. For the small number of allocated sites under Policy H2, we find the capacities of these sites and their anticipated timeframes for delivery to be robustly considered through the SHLAA and housing trajectory processes. This includes a more positive re-assessment of the Desmond Anderson site at Tilgate (increased from 100 in the 2015 Local Plan to an indicative capacity of 205 homes) and at Breezehurst Drive (moderately increased from 65 to 85 dwellings).
103. One of the principal housing allocations in the Plan is the Tinsley Lane site, which was previously allocated in the 2015 Local Plan, with an indicative capacity for at least 120 homes. The site is subject to a development brief published in 2017. Whilst there is local concern regarding existing football pitch provision at the site, Policy H2 sets out what is required of the development, including replacement provision and additional publicly accessible green space. Whilst the land budget at the Tinsley Lane site would need to be carefully overseen, there is no persuasive evidence before us that the site cannot sustainably accommodate the mix of uses for which it has been allocated, including improvements to sport pitch provision such as 3G artificial grass pitch provision. The Council has sought to make some changes to the policy in terms of expressing the various open space and green infrastructure elements as “at least” and to clarify the 3G pitch provision. Whilst that may add clarity to the policy, they are not changes that we need to recommend for plan soundness.
104. The submitted policy for the site requires allotment provision (compared to previously seeking “consideration should also be given to the provision of

²⁷ Paragraph 3.4.1 of Topic Paper 4

allotments.”). We are not advocating that the policy should be modified for soundness given the development brief for the site identifies a deficiency in allotment provision in this part of the Borough. We note that progress in developing outline schemes for the site has not been able to accommodate allotment provision due to asserted viability issues within the tight land budget available. However, that does not persuade us that the ambition to secure some form of allotment provision should be dropped from the policy given there may be some flexibility to balance competing policy requirements.

105. Land is allocated at East of Balcombe Road/Street Hill, Pound Hill for a maximum of 15 dwellings. This site was allocated in the 2015 Local Plan notwithstanding the site being then a Site of Nature Conservation Importance (now a Local Wildlife Site) for meadow grassland habitat. The site has not been maintained and is currently predominantly scrub and young trees, which in themselves will have biodiversity value. Whilst the Council have prepared a draft Supplementary Planning Brief for the site [PS/H/HD/16] this has not been adopted. As such, there has not been a concerted effort to deliver the existing allocation. Nonetheless, given the acute housing need in the Borough and the opportunity to achieve an appropriate balance between a modest amount of additional housing and securing an appropriate long-term biodiversity management regimen for most of the site, we conclude that the allocation of the site (as a mixed use site for ‘Housing, Biodiversity and Heritage’) is justified, consistent with national planning policy and therefore sound. Given the constraints, it is also justified that Policy H2 expresses the site allocation capacity as a maximum figure.
106. From the evidence before us, including the Crawley Compact Residential Development Study 2023, we find that the submitted plan has set a policy framework in Policies H3a-f and CL4 that carefully consider character areas and provide a positively prepared basis for optimising windfall delivery. The capacity work is consistent with the findings of the SHMA in terms of the housing mix required in the Borough. The submitted plan roughly doubles the windfall allowance from 55 to 100²⁸. We consider this in more detail under Issue 7 below but find for this issue that windfall has been realistically and appropriately factored into a supply-led housing requirement.
107. The plan has taken a positive approach to identified town centre redevelopment opportunities, including around the railway station, and this is reflected in key opportunity sites and the town centre being identified as a ‘broad location’ for additional housing. The Plan also contains a policy framework to support a significant increase in the residential population of the town centre. From the evidence before us we are satisfied that town centre capacity has not been under-estimated, including the cumulative indicative capacity of Town Centre key opportunity sites at 1,500 dwellings over the plan period. Reference is made

²⁸ As detailed in the Windfall Statement 2023 [document H/HD/06]

to 'estate regeneration' being an underestimated source of capacity but there are no large-scale regeneration initiatives or schemes being contemplated that could justifiably feed into the Local Plan as a 'broad location' in accordance with NPPF paragraph 68b.

108. As a purposefully planned New Town there is a clear demarcation between residential and the main employment areas. Consequently, mixed use developments within the main employment areas are not an option for increasing the housing capacity within the Borough. Notwithstanding the need to maintain the provision of employment land and premises²⁹, the incursion of housing into main employment areas would create challenging issues for living conditions and the 'Agent of Change' principle³⁰. Several main employment areas are subject to Article 4 directions restricting PD, including Class MA.
109. Overall, we consider that the Plan has sought to accommodate as much of the housing need as reasonably practicable and that no stone has been left unturned. The Plan takes a positively prepared approach to town centre redevelopment and to windfall capacity such that we are satisfied that it is justified and effective that the housing requirement in the Plan reflects the likely supply.
110. As a consequence of clarifying the plan period it would be necessary to extrapolate the housing requirement by an additional year to increase the overall minimum requirement from 5,030 to 5,330 dwellings. **MM2** and **MM24** would do this, and we recommend them so that the Plan would be effective. Allied to this, the extent of unmet housing need would increase from 7,050 to 7,505 dwellings. **MM5** and **MM26** would clarify this figure within the Plan and again we recommend them for effectiveness.

Conclusion

111. Subject to the MMs identified above the housing need would be soundly based and the supply-based housing requirement would be justified and positively prepared.

Issue 3 – Does the Plan positively and proactively encourage sustainable economic growth through its policies and the identification of Gatwick Green as a strategic employment location, to flexibly meet anticipated needs over the plan period?

²⁹ As assessed in the review of existing employment stock and premises in the EGA

³⁰ NPPF paragraph 187

Employment Land Requirement

112. In terms of the context for determining the employment land requirement, the NPPF at paragraph 81 states that planning policies should help create the conditions in which businesses can invest, expand and adapt. Account should be taken of local business needs and wider opportunities for development. In assessing business needs, PPG paragraph 2a-026-20190220 advises that strategic policy making authorities will need to liaise closely with the business community and take account of the Local Industrial Strategy.
113. Crawley, because of the sub-regional significance of the Manor Royal employment estate and the presence of Gatwick Airport, is a key part of the Northern West Sussex Functional Economic Market Area (FEMA). Consequently, the Coast to Capital LEP Gatwick 360 Strategic Economic Plan 2018-2030 [DS/LEP/01] and the Gatwick Diamond Local Strategic Statement 2016 [DS/GD/01], both of which are documents produced within the local business community, identify Crawley as a key location for economic growth, including new sites. Proximity to Gatwick Airport is clearly a key factor.
114. At a more local level, the Borough Council's 'One Town Crawley Economic Recovery Plan' (2021) [PS/EGSM/EG/11] reflects local intelligence and knowledge, identifying what needs to be done to support the Borough's post-Covid economic recovery. The Recovery Plan includes delivering sufficient suitable land for new sites to both support various economic sectors and enhance the Borough's economic resilience to changes in circumstances.
115. Overall, from our assessment, four things are very clear from the various economic plans and strategies. Firstly, Crawley currently is, and will continue to be regarded over the plan period, by the LEP and others, as the largest and one of the most significant economic centres in the sub-region. Secondly, a lack of land supply is consistently recognised as one of the key risks and inhibitors to the expansion of existing businesses and securing inward investment. Thirdly, Crawley has significant locational strengths including proximity to Gatwick Airport, rail connections to London and the M23 and nearby M25. Fourthly, whilst there is some variability in the quality of existing employment land and premises in Crawley, they are highly utilised, reflected in strong market demand, high rents and limited vacant properties³¹. Underpinning this, it is evident that Crawley is not immune from wider re-structuring in the economy that is seeing increasing demand for industrial and logistics floorspace, typically through large hub buildings that can facilitate strategic storage. Accordingly, and as a starting point, we are satisfied that submitted Policy EC1, as the strategic policy on

³¹ The exception is the trend of office space lost to residential under recent PD rights.

sustainable economic growth, is consistent with economic priorities for the LEP and Gatwick Diamond.

116. Plan preparation has been informed, amongst other things, by the Northern West Sussex Economic Growth Assessment (January 2020) (NWSEGA) which considered employment and economic development needs over the period to 2036 across a wider FEMA. Whilst this evidence has provided a consistent baseline for plan preparation in this part of Sussex, it is nonetheless justified that various supplementary updates of the Economic Growth Assessment (EGA) specific to Crawley were prepared in September 2020 and January 2023 [EGSM/EG/05]. This approach has ensured that the submitted Plan is accompanied by up-to-date evidence, not least in respect of circumstances which have had a particular bearing on the local economy including the impact of the Covid-19 pandemic and the degree of recovery³². The updates, including the estimates of floorspace requirements, are in broad conformity with the initial wider NWSEGA methodology, allowing for the plan period to 2040. As part of the examination further submissions have been provided by the NWSEGA authors on market signals for industrial and warehousing needs.
117. In headline terms the EGA process has considered a range of economic growth forecasts for the Borough. This approach is in accordance with the PPG at paragraph 2a-027-20190220. These forecasts produce a broad range of net employment land requirements extending from 21.4 hectares (ha) to 69ha.
118. The advised forecast in the EGA is the Experian baseline labour demand projections in terms of meeting labour demand, which derives a minimum employment land requirement of 26.2ha over the period to 2040. The Experian outlook, particularly with regards to transportation and storage more closely reflects recent circumstances in the Borough and so it is appropriate that this has been used to inform a labour demand figure.
119. These outputs are closely aligned to the labour supply approach utilising the supply-led housing growth in the Plan (modelled at 314dpa) which generates a requirement of 26.1ha. The labour demand forecast generates a minimum requirement for 113,390sqm new floorspace for business purposes over the period to 2040. This is predominantly in the warehouse and distribution and manufacturing sectors. At least 26.2ha of land would be required to deliver the minimum floorspace. This is supported by market feedback and analysis³³, including within the wider FEMA, which indicates a strong demand being experienced in the industrial and logistics sectors to locate in Crawley, but this is being frustrated by a lack of land supply particularly for larger footplates. Whilst the Council's monitoring evidence reveals a supply of mid-size

³² Not least the significance of Gatwick Airport, both directly and indirectly, on the Borough's economy

³³ NWSEGA [EGSM/EG/07] and Manor Royal Economic Impact Study 2018 [EGSM/EG/09]

warehouse units are coming forward in Manor Royal, it is evident that typical plot sizes at this location will constrain the ability to deliver larger units on the estate. As such existing employment areas will not meet the needs for modern warehousing and logistics developments.

120. The EGA identifies a modest need for additional office and research and development uses at 3.3ha. There is an existing quantitative land supply to meet this need although it is recognised that new development may seek qualitative alternatives to Crawley's existing offer. In this regard, the sub-regional Horley Strategic Business Park site in adjacent RBBC would assist in accommodating Class E(g)(i) and (ii) development within this part of the FEMA close to Crawley and Gatwick. As such Crawley's employment land requirements fundamentally relate to accommodating "industrial" space, in particular storage and distribution uses. This is consistently reflected in the labour demand, labour supply and past development rate scenarios.
121. The 26.2ha broadly aligns with historic take-up trends³⁴ and projections on this basis (32ha). We recognise past take up in the Borough has been influenced by the extent of land safeguarded for Gatwick Airport and to a degree by the impact of Covid-19 towards the end of the assessment period. As such there may have been some suppression such that past take-up rates, whilst useful, should be treated with some caution in Crawley. Nonetheless, the PPG confirms that past development rates (amongst other things) are reflective of market signals. In our view, the past trends evidence for Crawley, reaffirms that the 26.2ha to accommodate labour demand should be firmly treated as a minimum figure.
122. The historically constrained employment land supply in the Borough is reflected in the market signals evidence which indicates that there is a significant unmet demand for logistics floorspace at Crawley. Whilst some sites have been reconfigured on the Manor Royal estate to provide for storage and distribution uses, we share the Council's concern that without a new strategic employment site for warehouse and distribution uses, there is a risk that the mixed-use nature of Manor Royal, as a reasonably high density employment area, could be detrimentally unbalanced by further churn and redevelopment of sites.
123. The market signals for warehouse and distribution uses clearly exceeds the scale identified under the labour demand scenario in the EGA. Submissions to the examination seek to quantify the figure for these uses over the plan period as being somewhere between 48ha to 118ha. To assist matters the Council commissioned a separate Market Signals Assessment (MSA) for Industrial and Warehousing Needs (November 2023)³⁵. The methodology has looked at net

³⁴ In the period 2011-2021

³⁵ Prepared by Lichfields [PS/EGSM/EG/12]

take-up over time (floorspace occupied and vacated) and latent demand (factoring in a vacancy rate) to generate a market signals requirement for Crawley. Such a methodology is not embedded within national policy or guidance, albeit PPG paragraph 2a-031-20190722 deals separately with the need for space for logistics and this can be informed by, amongst other things, an analysis of market signals, including trends in take up and the availability of logistics land and floorspace across the relevant market areas. As such we have treated the MSA as a further sensitivity test of the EGA work. The MSA identifies a total land requirement for industrial/warehousing uses of 48.7ha. This is within the range of the outputs in the EGA. In our assessment it reaffirms that the 26.2ha figure would be sound subject to being presented as a minimum figure. Additionally, land releases moderately above this figure are likely to align with market signals whilst remaining reasonably related to the likely workforce arising from the planned scale of housing growth at Crawley.

124. In broad terms, across the wider sub-region, the Coast to Capital LEP Strategic Economic Plan identifies that demand for new business land outstrips available supply. Whilst new employment sites are planned within the Gatwick Diamond, these are primarily aimed at office, research and development and incubation/starter premises³⁶. These sites would not meet the identified need for additional storage and distribution uses in Crawley.
125. We recognise that the economy in Crawley was particularly affected by the Covid-19 pandemic, due to the significance of the aviation sector. However, that was 3 years ago such that there has been a period for stabilisation and the start of recalibrating the local economy on a more diverse footing. In support of this the Council has produced an Economic Recovery Plan 2022-2037, which seeks, amongst other things, to renew Crawley as a diverse and resilient economic centre. As set out elsewhere in this report, market signals evidence points to a strong, latent demand for new floorspaces for growing sectors such as logistics and warehousing, in part due to the past constrained land supply. As such we are not persuaded that a more cautious approach, applying the more restrained Oxford Econometrics forecast, which anticipates a slower recovery from Covid and more modest economic growth thereafter (61 jobs per annum), would be an appropriate strategy for employment needs over the plan period. Such an approach would, in our view, harmfully suppress the economic potential of both the Borough and the wider Gatwick Diamond area over the 15 year plan period. It would also be contrary to the need for a clear economic vision and strategy at NPPF paragraphs 81 and 82a as well as the flexibility advocated in the NPPF at paragraph 82d. The identified employment land requirement would be consistent with the need to create conditions in which businesses can invest, expand and adapt, in particular, allowing areas to build on their strengths. Given the proximity to Gatwick and the strategic road

³⁶ Horley, Burgess Hill & North Horsham/Novartis [SA Report, page 440]

network³⁷, there is a clear demand and attractiveness for storage and distribution at Crawley.

126. Positively planning for storage and distribution uses at Crawley would also be consistent with NPPF paragraph 83 in terms of recognising and addressing specific locational requirements of different sectors, including specifically for storage and distribution operations at a variety of scales and in suitably accessible locations. It would also reflect the One Town Crawley Economic Recovery Plan 2021 which seeks to diversify the Borough's economy and curb its reliance on the aviation sectors. Failing to provide sufficient land for industrial and logistics uses would, in our view, result in dispersal of provision, potentially to sub-optimal locations.
127. Overall, we find applying a labour demand scenario would comprise part of an appropriate strategy for the Borough. The 26.2ha factors in a modest allowance at 10% buffer, based on a general lag period between any permission and implementation. There is little before us on the scale of lost (non-replaced stock) as a trend and projecting this forward to provide sufficient flexibility in the land requirement. The evidence is generally mixed (high demand for existing employment areas versus loss of office floorspace to other uses, including residential). For this Plan we accept the 10% allowance as providing a reasonable degree of headroom within a minimum land requirement in accordance with NPPF paragraph 82d), but future monitoring may inform an alternative figure.
128. In adopting the labour demand forecasts we are satisfied that the existing pipeline of supply (principally within the Manor Royal Estate) is likely to meet most needs for manufacturing and light industrial uses over the plan period. Additionally, a combination of Manor Royal, opportunity sites within the town centre and at the Horley Strategic Business Park allocation in RBBC would meet quantitative needs for additional office floorspace to support Crawley's economy. As such, we find that when the existing supply of available employment land is accounted for, the need for new land release would be principally for warehouse and distribution uses.
129. Whilst opportunities within Manor Royal may enable some additional warehouse and distribution floorspace to come forward this would not in itself be sufficient to meet the minimum quantitative need or provide the qualitative offer for larger footplate demands. As such plan preparation was justified in considering options for new strategic employment locations. When subtracting the available land supply for industrial/storage and distribution uses, there remains a net need for a minimum additional supply of 17.93ha over the plan period.

³⁷ Described in the "One Town" Economic Recovery Plan as being "hyper-connected"

130. In contrast to the previous Local Plan, the submitted Plan seeks to meet employment needs in full. These would be met in part by the protection and positive policy framework for existing main employment areas. This is particularly the case for Manor Royal where policies (supported by the Manor Royal SPD) will allow for investment and flexibility at this location without harmfully diluting its core mixed used business function. However, Manor Royal, including any minor peripheral areas not covered by safeguarding for Gatwick will not be sufficient to meet employment land needs over the plan period.
131. In using the labour demand scenario to forecast employment land, this is in the context of the Plan only meeting 42% of its housing need and therefore suppressing population growth within the Borough that would otherwise occur and generate demand for employment. The EGA has considered a higher labour supply figure factoring in wider 'At Crawley' housing growth at 544dpa for potential urban extensions to the town in Horsham and Mid Sussex. This scenario generates a significantly higher employment land requirement for 69ha. Whilst it remains to be seen whether urban extensions would be allocated and found sound 'At Crawley' (including potentially some employment related land/uses), we do not consider it necessary for soundness that this Plan contains an employment land requirement above that needed for the labour demand scenario associated with the Plan's housing growth. There remains appreciable uncertainty around wider growth 'At Crawley'. Through the DtC process neither Horsham nor Mid Sussex are confirming that any planned growth adjacent to Crawley would be meeting Crawley's unmet housing need. Nonetheless, the higher labour supply figure reaffirms in our minds that the 26.2ha employment land requirement in the submitted Plan should be treated as a firm minimum, so as to potentially provide some flexibility to meet employment needs which may arise and to do so as part of a wider pattern of sustainable growth 'At Crawley'. We return to this matter when considering the extent to which the 44ha allocated at the proposed Gatwick Green site is available in this plan period to meet employment needs.
132. Furthermore, the DtC process has established that other than the Horley Business Park site, there are limited signals that unmet employment land associated with Crawley's full local housing need of 755dpa (potentially up to 113ha) could be accommodated in adjoining authority areas. As such, were the Plan not to release new strategic employment land, we consider there would be a significant risk of employment needs not being met, with significant harm to the sub-regional economy and Crawley's vital role within it.
133. In addition to the EGA and ELAA evidence, matters relating to employment land provision have been appropriately considered as part of the SA process. This includes three alternatives for Policy EC1³⁸: (1) do nothing and rely on the NPPF; (2) seek to accommodate growth in existing employment areas and in

³⁸ Submission SA May 2023 [KD/SA/01] pages 230-233

neighbouring authority areas; and (3) plan positively for growth through a combination of existing employment areas and a new strategic allocation to meet industrial and warehouse requirements. The assessment and rationale contained in the SA for selecting the preferred approach to employment land as an appropriate strategy for the Borough is cogently set out.

134. The SA has also specifically assessed the option of a strategy that does not allocate new strategic employment land in the Borough (effectively the 'do nothing option' for SEA purposes (and a continuation of the 2015 Local Plan))³⁹. We concur with the analysis in the SA that not releasing additional land for storage and distribution uses as part of this Plan would have a significant negative impact on the economies of Crawley and the wider Gatwick Diamond for the reasons given above.
135. On the issue of the employment land requirement, we find the proposed minimum net requirement of 26.2ha, principally for storage and distribution uses, and the objective of seeking to positively accommodate this within the Borough, as set out in submitted Policy EC1, to be an appropriate strategy.
136. As submitted the Plan would not appropriately reflect the employment land trajectory as of 31 March 2023. As a consequence of further monitoring, the available employment land supply is less than as identified in the submitted Plan and so the minimum residual need for employment land over the plan period would need to be increased from 13.73ha to 17.93ha. **MM3**, **MM13** and **MM14** would do this in respect of the spatial strategy, the relevant parts of the economic growth section of the Plan and Policy EC1 respectively. As such we recommend them so that the Plan would be justified and positively prepared.

Main Employment Areas

137. As submitted the Plan identifies 11 main employment areas of varying scale and character. However, this broad-brush approach would not appropriately make a necessary distinction between four employment areas of strategic significance and the other areas. These four areas including Manor Royal, Gatwick Airport, the town centre and the proposed strategic employment site at Gatwick Green would provide for a variety of employment and land uses which are recognised in location-specific policies elsewhere in the Plan. As such Policy EC2 as submitted could result in undesirable internal tensions in decision-making and so be ineffective. Accordingly, we recommend that the Policy makes an appropriate distinction between the four strategic employment locations and other main employment areas. **MM15** would do this, and we recommend it for effectiveness.

³⁹ Submission SA/SEA May 2023 pages 439-441

138. The principal established employment area in Crawley is the Manor Royal estate. We are satisfied that submitted Policy EC3, in combination with the Manor Royal Design Guide SPD, provides an appropriately protective but flexible approach in ensuring the economic vitality and viability of this sub-regionally significant employment location. This includes a justifiable balance between protecting the area from an incursion of non-business uses likely to erode the principal employment function of the area whilst allowing ancillary uses likely to support the area including the needs of employees. We recognise there are concerns regarding flexibility within Use Class E and potential impacts this may have on the character and mix of employment uses at Manor Royal. However, such flexibility within Class E is purposefully deemed not to comprise a change of use and so it would not be justified to amend Policy EC3 to set a more restrictive approach.

Gatwick Green – Proposed Strategic Employment Site

139. As set out elsewhere in this report, the Plan's over-arching approach to safeguarded land is sound. As such the area proposed to be allocated for strategic employment land at Gatwick Green would not fundamentally prevent the implementation of the core elements of 2019 Airport Masterplan including areas critical to delivering a second wide spaced runway. In the context of the circa 523ha land safeguarded in the 2015 Local Plan, the proposed Gatwick Green site at 44ha would represent just over 8% of this land.

140. The Gatwick Green site has been suitably assessed as part of both the SA⁴⁰ and ELAA processes. These documents provide an appropriately high-level assessment that the proposed allocation would be both deliverable and capable of meeting employment land requirements in the Borough during the plan period. This includes the borough's need for large-format warehouse and distribution uses and other industrial uses. There are limited alternatives for such provision within the borough. Allied to this, as set out above, there is a clear market demand for larger-scale warehousing units, which cannot be accommodated within the existing employment sites including Manor Royal. Accordingly, a new, unconstrained strategic greenfield site of a sufficient scale would accommodate a market that currently struggles to find suitable provision within the FEMA.

141. The proposed shape of the Gatwick Green allocation is distinctive, reflecting the land promoted. Nonetheless, we are satisfied that the extent and configuration of the proposed 44ha could come forward as a coherent employment site, in accordance with the requirements set out in the site allocation policy, without relying on any additional adjacent land. This includes the land at 'Fernlands' which was promoted as either an alternative to or a consolidation of the Gatwick Green site. As set out elsewhere there would be no strict need in quantitative

⁴⁰ Document KD/SA/01 Appendix H pages 397-399

terms to allocate additional employment land beyond the Gatwick Green site as part of this Plan to meet identified minimum land requirements. SA of the Fernlands site assesses the site at 8.8ha such that on its own it would not be of sufficient scale to meet strategic employment land requirements. Additionally, the Fernlands site is adjacent to operational land at Gatwick Airport and so it is justified that the area remains safeguarded as part of this Plan. Overall, it would not be necessary for the soundness of this plan to extend or amend the proposed Gatwick Green allocation to include the Fernlands site.

142. Land around the Gatwick Green allocation would remain safeguarded for Gatwick Airport including areas of land between the allocation and the M23 and the M23 spur road. This is land identified within the 2019 Airport masterplan. We accept that the Gatwick Green allocation would limit the practical use of these small residual areas close to the M23, although we do not consider it necessary for soundness that safeguarding is removed from these areas of land. Whilst hypothetical alternative propositions have been presented, which the Airport considers would be a more efficient land arrangement, the land that has been allocated for employment would be deliverable. There is not the persuasive evidence that the Gatwick Green allocation should be reconfigured to include alternative land. Overall, we are satisfied that the proposed Gatwick Green allocation accords with the requirements in the PPG at paragraph 3-001-20190722 for employment land to be suitable, available and achievable.

143. The alternatives for strategic employment land provision within the Borough, have been appropriately assessed as part of the ELAA and SA⁴¹. This includes land at the edge of the Manor Royal main employment area at Rowley Farm, Jersey Farm and Hydehurst Lane. We recognise that consolidating the sub-regional role of Manor Royal through adjacent land releases would align with local industrial strategies and bring significant economic benefits contributing to sustainable development in the Borough. However, having found the principle of safeguarding to remain sound, all of these alternative sites have been appropriately discounted due to being within an area that is required to be safeguarded for the physical land take of a second wide-spaced runway and essential highway diversions, amongst other reasons. This is demonstrated by reference to the work to the Airports Commission in 2014, and the OEMP [PS/EGSM/GA/16] (Appendix A5) which sets out operational requirements for a southern runway including safety distances from the runway and noise attenuation infrastructure. Consequently, we are not persuaded there are reasonable options to narrow the extent of safeguarded area adjacent to the proposed second wide-spaced runway thus potentially releasing land for employment adjacent to Manor Royal and/or at County Oak.

144. In terms of alternative options that would avoid the area previously safeguarded for Gatwick Airport there are few in the Borough. Most are generally small in

⁴¹ Document KD/SA/01, pages 400-438

scale, such that they would not in themselves be of a sufficient size to meet the identified employment land requirements. Potentially disaggregating supply across multiple smaller sites would not meet the identified need for larger warehousing premises. The largest single alternative site outside of current safeguarded land is Land East of Brighton Road, to the south of the town, adjacent to the A23. The site has been considered as part of the SA and reasonably discounted due to various issues, not least ancient woodland, biodiversity, and disconnection from Manor Royal and Gatwick Airport. Accordingly, plan preparation has not overlooked or irrationally discounted a better performing alternative to the Gatwick Green site.

145. As submitted the Plan seeks to allocate a wider strategic site of 44ha but to then make a distinction within the site allocation policy between the land required to meet the minimum net employment land requirement for the plan period and the remainder of the site. In respect of any development for employment floorspace beyond 13.73ha (modified to 17.93ha) Policy EC4 as submitted requires it to be justified. In light of the evidence that the employment land requirement (based on the constrained housing requirement) is lower than past development rates and other forecasting scenarios and the Council's emphasis that the Gatwick Green site provides flexibility⁴², we find this distinction is neither justified or positively prepared and therefore would not be sound.
146. It is clear, that the whole site at 44ha is proposed to be allocated in the Plan. The balance of the site is not described or identified as a reserve site. Moreover, the Council's latest market signals evidence on warehousing and distribution, together with the potential for wider housing growth 'At Crawley', points to a quantum of employment land slightly higher than 44ha potentially being required over the plan period. Whilst we do not consider it necessary for soundness to modify the minimum 26.2ha employment land requirement in submitted Policy EC1, taking a more positive approach to the Gatwick Green allocation, in terms of its full 44ha capacity would provide a more flexible approach in response to wider market signals amongst other things.
147. Accordingly, we recommend **MM16** which would clarify that in light of the updated employment trajectory and residual land supply over the plan period, the minimum amount of employment land required at the site would be 17.93ha. This would ensure that the policy would be justified. Furthermore, we recommend through **MM16** the deletion of that part of the policy requiring any additional floorspace beyond this amount to be demonstrated as being necessary through appropriate evidence. This would ensure the policy is effective in light of market signals evidence of a stronger demand for logistics and warehouse development above the jobs demand forecast used and

⁴² CBC Matter 4 statement, response to MIQs 4.1, 4.4 and 4.5

providing headroom for any jobs demand arising from planned housing growth immediately adjacent to Crawley.

148. Notwithstanding its location in the north-east corner of the Borough, the Gatwick Green site would be sustainably located. It can be served by bus from Crawley and Horley including enhancements to existing services already on Balcombe Road. The site would also be accessible by modes of active travel, being within easy cycle distances of most of Crawley and nearby communities such as Horley. In this regard the site would benefit from identified routes in the Crawley Local Cycling and Walking Infrastructure Plan 2021, aimed at improving links from Crawley north to Gatwick Airport. Additionally, should the NRP DCO come to fruition, this would provide improved connectivity from Balcombe Road to Gatwick train station, further improving accessibility to Gatwick Green. Initial evidence, including an Outline Transport and Access Appraisal⁴³ shows positive signs of a collaborative outlook with WSCC, National Highways and Metrobus (current operators of the Fastway network) that the site could be sustainably brought forward.
149. Transport modelling for the Plan considered an area of 24.1ha (equivalent to 77,000sqm). We recognise that the potential impacts associated with the full 44ha have not been directly modelled, albeit the indication is that the net site area would be closer to 30ha once other site requirements are accounted for⁴⁴. That said, the principle of allocating the 44ha site is established through this Plan. In doing so, both National Highways and WSCC are cognisant of the allocation, including the additional modelling sensitivity testing work for trip generation comparisons at Gatwick Green. Neither has requested additional modelling work (including in response to the proposed main modifications). Proposed policy content in respect of securing modal shift would reflect the principles of vision-led transport planning embedded in Dft Circular 01/22 ('Vision and Validate'), which is supported by National Highways.
150. Subject to the relevant criteria in the allocation policy and strategic transport policy in the submitted Plan, we are satisfied that the Gatwick Green allocation would come forward in accordance with the objective of accelerating the shift to more sustainable patterns of development as set out in Dft Circular 01/22 and the West Sussex Transport Plan 2022. The general 'monitor and manage' approach is supported by National Highways and WSCC as set out in the latest SoCGs.
151. The transport modelling work for the Local Plan, overseen by WSCC, is based on types and amounts of employment use, which vary in terms of traffic generation. Depending on the future detailed development of Gatwick Green, in

⁴³ Appendix 2 to Gatwick Green Limited Regulation 19 representations REP055(2023).

⁴⁴ Gatwick Green Limited Matter 4 Statement in response to MIQ4.22

terms of precise types of development and floorspace, further analysis would be required as part of any detailed transport assessment. To mitigate impacts, the policy for the site appropriately details that HGV traffic would not be permitted to enter or exit the site to the north.

152. The transport assessment work for the Plan (Scenario 2) does not identify the need for significant (strategic) highway mitigation arising from the Gatwick Green proposal, such that off-site highway mitigation measures are likely to be only relatively minor in scale. Highways access to the site would be from the B2036 Balcombe Road. A new link connection from the B2036 to the A2011 (and then the M23) is committed to and funded as part of the Forge Wood development and expected to be completed in 2025/26 as identified in the Infrastructure Delivery Schedule (IDS) [CBC/KD/IP/07, page 4]. The IDS also identifies known mitigations relating to the merge/diverge at M23 Junctions 10 and 11 to support growth in the North East Sector of the Borough. The site allocation policy requires contributions to off-site highway mitigation where required. We consider this a sound approach and that industrial and warehousing development at Gatwick Green could be safely and adequately accessed from the M23 strategic road network.
153. Delivery and earliest completions at Gatwick Green are anticipated in 2026/27 following delivery of the link road at Forge Wood and associated improvements at M23 Junction 10. As such we are satisfied that the Gatwick Green site could deliver in line with the overall employment trajectory [EGSM/EG/01] and that the minimum land requirement is capable of being met within the plan period. In respect of any changes in the circumstances to the off-site highway works identified above and the transport consequences of positively allocating the balance of the site above the 17.93ha minimum, the policy requires further transport work at various early stages.
154. Concern is raised by GAL regarding the impact of Gatwick Green on the ability to deliver future surface access improvements for the Airport. From the evidence before us⁴⁵ we are satisfied that the allocation has been devised so as to enable the re-alignment of the A23 and the re-routing of the Balcombe Road. The extent of the allocation would not preclude the provision of new slip roads to the M23 Spur Road. There will need to be close alignment between the details of how the Gatwick Green proposal comes forward and the Airport's future operations. In this regard and following consultation on the proposed MMs, we recommend various refinements below to the proposed MMs to ensure a genuinely coordinated approach.
155. To ensure that the detailed planning of Gatwick Green secures effective outcomes in relation to sustainable transport, we consider the policy as

⁴⁵ Including Appendix 1 to the SoCG between GGL and CBC [PS/CBC/SoCG/20 – January 2024]

submitted would not be sound in ensuring a necessary sequence of activity. This approach has become more important in light of DfT Circular 01/22 and the scope to set a robust transport vision for the development to secure modal shift rather than the increasingly uncertain approach of predict and provide transport planning. As such we recommend **MM16** which would require a vision-led approach to transport planning as part of the master planning for the site. We also recommend through **MM16** additional policy content requiring a Construction Management and Phasing Plan to be submitted to ensure that impacts on the local and strategic road networks are taken into account and where necessary mitigated during the construction phase(s). This would ensure the policy would be effective for what would be a major development.

156. In terms of sequencing and implementation, we consider the policy is justified in requiring both a master plan and a mobility strategy prior to the submission of a planning application. It is not necessary that a full transport assessment is required at the master planning stage. The mobility strategy, encompassing the modified requirement for a vision-led approach to transport, would be sufficient at the early stages of developing the details for the Gatwick Green site. Processes around the Local Plan and the concurrent DCO process for the NRP have already to some extent considered the inter-relationship between plans for the airport and the Gatwick Green site. We are not persuaded that there are any fundamental conflicts but accept that matters of detail will be important to ensure that the precise layout and highway arrangements for Gatwick Green dovetail with the ability to deliver potential growth at the airport. As such the policy remains justified in requiring the detailed Transport Assessment at the planning application stage when there is more certainty on mix of uses and scale and layout of development.
157. As a consequence of the consultation process on the proposed MMs we have amended the structure and wording of Policy EC4 in **MM16** so that it is clear that the mobility strategy is to be prepared first and that a transport assessment is submitted as part of the initial outline planning application. This would aid the effectiveness of the policy. It would not fundamentally alter the policy as previously consulted on. We do agree, however, that it should be clarified that the early Mobility Strategy is prepared in consultation with Gatwick Airport and transport stakeholders including National Highways, WSCC, public transport operators and accessibility groups. This would ensure the complementary development of major employment growth and airport expansion in this part of the Borough. Again, we consider no one would be prejudiced by this further clarification, which does not alter the substance of the policy.
158. Finally, in respect of the sequencing of policy requirements for the site, in light of the responses to the MM consultation, we consider additional text in the final paragraph of the policy would be necessary to clarify how the master plan will be prepared, who will be engaged in its preparation and its status. Accordingly,

we have modified the text as part of **MM16** and again these changes aid the effectiveness of the policy rather than change its substance. In respect of the status of the master plan, we do not consider it necessary for soundness that this must be approved by the Planning Committee prior to the submission of any planning application. The requirements more generally for masterplans, including the need for consultation, are set out in other policies of the Plan such that, as for other strategic sites in the Plan, delegated agreement would be appropriate.

159. On submission, the Plan anticipated that the Gatwick Green site would be built out over the latter part of the plan period to 2040. Given the likely pent-up demand for warehousing and logistics uses and the evidence from the site promoter on its anticipated timeframe for delivery, the timeframe in the policy and trajectory for the site is not sound. As such we recommend **MM17** which would make clear that the site is likely to come forward sooner rather than later within the plan period.

160. Overall, there would be no significant adverse impact on accessibility for current plans for the airport (DCO NRP and in the long-term the southern runway). With the various MMs recommend above, as modified, the policy framework for a strategic employment site at Gatwick Green would be sound.

Employment Uses at Gatwick Airport

161. Policy GAT4 would provide a flexible approach for employment floorspace at Gatwick Airport enabling the re-use of vacant or surplus airport-related floorspace within the airport boundary. It would also allow for new non-airport related employment floorspace within the airport boundary provided it would be compatible with the long-term plans for the airport and not have an unacceptable impact on the role and function of other main employment areas and town centres within the Borough and beyond its boundaries. We consider this to be a pragmatic approach considering the declining demand for airline related office accommodation and increasing efficiencies for other airport related operations within the airport boundary. It would not be sustainable to allow existing buildings and sites at the Airport to not be in active use. Accordingly, it would not be justified to impose a restrictive policy. Similar to hotel accommodation and retail, the policy framework of the Plan should positively respond to the particular circumstances of Gatwick as a significant centre within the Borough.

Employment Policies

162. Policy EC5 requires major developments to contribute towards the most up-to-date Crawley Employment and Skills Programme [PS/EGSM/EG/13]. The intention is that this would comprise a proportionate financial contribution, with

the details of how that would be calculated set out in the Planning Obligations Annex. There is a clear disparity between the qualifications of the resident workforce and those in-commuting to Crawley which is reflected in the fact that the Borough ranks as one of the lowest local authority areas for social mobility (304 out of 324). Enabling local residents to attain qualifications and access higher skilled (and higher paid) employment is a key priority reflected in local economic strategies for the LEP area and Gatwick Diamond. As such the principle of a policy seeking contributions for enhancing employment and skills is justified and consistent with NPPF paragraphs 57 and 81.

163. In terms of the contributions sought these are set out in the Planning Obligations Annex to the Plan. In accordance with NPPF paragraph 58 this has been considered as part of the Plan-wide viability assessment. As submitted, the intended implementation of the policy would not flexibly allow for other mechanisms, which could secure greater benefits than a financial contribution, for example, a bespoke skills programme as part of a particular major development. As such we do not find the sole focus on financial contributions would be effective in securing skills and employment opportunities for Crawley residents that would arise through new developments taking place in the Borough. **MM18** would introduce necessary flexibility to the reasoned justification of Policy EC5 to clarify that measures in lieu of a financial contribution that would demonstrably secure greater skills and employment benefits would be supported. **MM39** would make corresponding changes within the Planning Obligations Annex where it relates to implementing Policy EC5. Accordingly, we recommend these modifications so that the Plan would be effective.

164. The Planning Obligations Annex sets out a formula for calculating a contribution towards employment and skills. Given the Council's aim is to target the share of workers at a major development who live in Crawley, it is the employment self-containment rate that should be used, not the resident self-containment rate. This should be the definition of "c" in Box 5 of the Planning Obligations Annex, which based on the latest 2021 Census data would be 52% (not the 65.7% resident self-containment rate submitted). **MM40** would update the Annex accordingly and we recommend it for effectiveness.

Conclusion

165. Subject to the MMs identified above the Plan would positively and proactively encourage sustainable economic growth through its policies and the identification of Gatwick Green as a strategic employment location, to flexibly meet anticipated needs over the plan period.

Issue 4 – Is the Plan’s policy framework for Gatwick Airport, including within the safeguarded area, justified and effective?

Gatwick Airport

166. The Plan identifies a ‘Local Plan Airport Boundary’ (LPAB). This is not intended to define operational land⁴⁶ or the extent of GAL’s ownership. It is a planning policy designation identifying where airport related uses should be located, and where specific Gatwick Airport policies in the Plan would apply. The boundary is drawn relatively tightly to include land which is clearly identifiable as part of the existing airport. On this basis it is justified that areas included in the LPAB in the 2015 Local Plan which are not essential to the operation of the airport because they are not in airport related uses are excluded from the proposed LPAB in the submitted Plan. We recognise that the change for some sites from previously being within the LPAB to now being in safeguarded land for the airport would result in a potentially more restrictive approach. However, the Plan’s policy framework within the LPAB still requires compatibility with the safe, secure and efficient operation of the airport, such that wholesale redevelopment and intensification of sites within the LPAB could not be assumed. The general policy framework in the Plan would support the continued use of sites that were previously in the LPAB including the scope for some changes of use and adaptation and refurbishment.
167. Alternative approaches to defining a boundary have been appropriately considered and discounted in the SA on wider sustainability grounds. It is not necessary for soundness that the boundary should be consistent with the ‘airport boundary’ in the GAMP (at Plan 4) which would entail wider areas of land in GAL’s ownership, including areas of countryside close to the airport. A wider LPAB would potentially dilute necessary focus for efficient and sustainable on-airport development. If matters change in terms of the configuration of the airport, either through the NRP DCO or positive movement to implement a second wide spaced runway, then plan review would provide an appropriate mechanism to revisit the delineation of the planning policy boundary.
168. Policy GAT1 is necessarily a strategic policy for development of the Airport. The policy addresses the Airport in terms of its current single runway operation. Whilst the Airport is concurrently pursuing the NRP to create additional capacity, the DCO application was accepted shortly after the Plan was submitted for examination. The DCO process remains to be determined with the Examination period taking place from February to August 2024. Accordingly, the submitted Plan is justified in setting out a policy framework on the basis of a single

⁴⁶ As per the 2019 Lowfield Heath Inquiry APP/Q3820/W/17/3173443 [PS/EGSM/GA/24]

runway, two terminal airport and to provide some contingent flexibility that the criteria in Policy GAT1 would similarly apply to the DCO proposal. If circumstances change, and the DCO is approved (in whatever form), that would be a matter for Plan review.

169. The airport operator benefits from various permitted development rights but nonetheless the principle of Policy GAT1 is justified in ensuring that where development does require planning permission and in responding to prior approval consultations, the development plan seeks to secure an appropriate balance between minimising and mitigating impacts and maximising opportunities. This is entirely consistent with national planning policy (including NPPF paragraphs 106e) and 185) and wider national aviation policy.
170. Criterion iii) of Policy GAT1 supports proposals at the Airport that would provide for biodiversity net gain and then sets out a sequential approach where this cannot be secured ensuring impacts are mitigated and then, as a last resort, compensated. As submitted the Plan seeks compensation on a “like for like” basis. This may not be practicable, and compensation is not expressed as such at paragraph 180a of the NPPF. As such the approach to securing compensation would not be sound. **MM19** would remedy this by stating that equivalent or greater value for biodiversity compensation would be secured and we recommend this for effectiveness and consistency with national planning policy.

Development within the safeguarded area

171. Development would not be precluded within the safeguarded area but necessarily there needs to be an appropriate balance between ensuring the area remains as unfettered as possible to enable the implementation of a second wide-spaced runway, if required. There is also the sustainability of constructing development that may well need to be demolished short of a reasonable building lifespan. Policy GAT2 would allow for small-scale development within the safeguarded area. As submitted, the Policy lacks clarity on what would comprise ‘small-scale’ and paragraph 10.19 would not provide sufficient clarity on proposals that would refurbish or seek to improve existing employment sites within the safeguarded area. As such we find the overall approach to enabling appropriate small-scale development within the safeguarded area would not be effective.
172. **MM20** would clarify in Policy GAT2 that small-scale would comprise, but not be limited to, changes of use, minor building works and residential extensions. It would widen the policy to confirm that improvements to existing employment buildings would also be acceptable by way of small-scale extensions and refurbishment provided it would not lead to a significant intensification or increase in scale of development. This would require decision-makers to

exercise judgements on what would amount to “significant” but this is a commonplace practice that should not impede effective or timely decision-making. Additionally, the proposed modification would helpfully clarify that temporary planning permissions may be appropriate. To reflect these recommended changes to the Policy, **MM21** would provide corresponding amendments to paragraph 10.19 of the Plan in terms of what may comprise minor building works and in the case of employment uses what may constitute small-scale improvements. In recommending **MM20** and **MM21** we consider the Plan would be effective in terms of the balance needed between avoiding undue constraints to implementing a second wide-spaced runway whilst enabling appropriate investment in existing employment sites and premises within the area.

173. There are multiple existing employment areas and uses within the safeguarding area proposed within this Plan, including the main employment area at Lowfield Heath. These areas are currently within the safeguarded area in the 2015 Local Plan. There is no compelling evidence that safeguarding has been detrimental to the vitality of existing employment uses and areas proximate to the airport or inhibited the continued occupation of employment buildings or land. As such there is no soundness issue in identifying Lowfield Heath as a main employment area subject to the provisions of Policy GAT2 (as modified), which would still allow for proportionate investment in the employment stock at this location.

Hotel Accommodation and Airport related car parking

174. Hotels are a main town centre use as defined in the NPPF and so should be ordinarily subject to a sequential test of town centre locations first, and then edge of site, and only if suitable sites are not available should out of centre sites be considered. The situation in Crawley is strongly influenced by the presence of a major international airport, which generates significant demand for hotel accommodation for both passengers and aircrew. The airport already has existing hotels that can be readily accessed from the terminals and by those arriving by train, coach and car.
175. As such there is a locally specific logic that the Airport be identified, together with the town centre, as a starting point for locating proposals for additional hotel accommodation in the Borough. Policy EC7 would also enable the long-term operational needs of the airport to be assessed when looking at individual accommodation proposals at the airport. Importantly, the policy would enable a consistent approach that any car parking provided either at on-airport hotel developments or at sequentially acceptable hotel and visitor accommodation proposals outside of the town centre or Gatwick Airport accords with the need to

control the amount of airport related parking. This would encourage modal shift⁴⁷ and to necessarily restrict unsustainably located off-site parking provision.

176. Policy GAT3 in relation to Gatwick Airport Related Parking is fundamentally a continuation of the restrictive policy approach found sound for the 2015 Local Plan, with the Inspector concluding the airport was the most sustainable location for parking provision and there was “obvious logic” to providing car parking as close as possible to the airport terminals. Latest 2023 monitoring outputs⁴⁸ show appreciable levels of existing authorised and unauthorised off-airport parking within the Borough and neighbouring local authority areas. Given the scale of existing off-airport provision we consider this should represent something closer to a high tide mark rather than a foundation from which to further disperse parking provision. Various appeal decisions in the Borough, including at Inquiry, have upheld the approach of focusing airport related parking at the airport as an appropriate strategy. The policy has been amended since the 2015 Local Plan to insert the word ‘and’ to clarify that both limbs of the policy need to be satisfied. This necessarily clarifies matters following the 2016 High Court challenge and 2019 Lowfield Heath inquiry and would ensure the submitted Policy would be effective.

177. We have been referred to various decisions in support of the sustainability of off-site parking for airports and providing consumer choice. These decisions generally date back to 2012/13, predating the policies of the 2015 Local Plan, and are therefore of very limited applicability. In terms of the general effectiveness of the policy requiring airport related parking to be justified by a demonstrable need within the wider context of achieving a sustainable approach to surface transport access to the airport, we consider this a reasonable and valid approach in avoiding a harmful dispersal of parking provision and securing the bold modal shift targets sought for the airport.

178. In terms of the effectiveness of the policy we recognise that much of the land within the LPAB will be operational land where the airport operator benefits from PD rights including for their car parking. It is important to note that the rights only apply to the ‘*relevant airport operator*’ and not third parties such as hotel operators at the airport. Additionally, PD rights would not apply to any land within the LPAB which was not ‘*operational land*’. Accordingly, and having regard to the evidence of how parking proposals have been assessed by way of “demonstrable need” in the context of the 2015 Local Plan, we do not consider the second limb of Policy GAT3 would be ineffective. This matter was comprehensively dealt with as part of the Lowfield Heath inquiry in 2019⁴⁹ and we share the conclusions of that Inspector that enforcing Policy GAT3 is a

⁴⁷ As per targets set out in the Airport Surface Access Strategy

⁴⁸ Document PS/EGSM/GA/26

⁴⁹ APP/Q3280/W/17/3173443 Appeal by Holiday Extras Ltd [document PS/EGSM/GA/24]

matter for the LPA “in a manner they consider appropriate”⁵⁰. The overall approach in Policy GAT3 would enable a greater share of airport car parking within the LPAB so as to necessarily secure sustainable patterns of parking proximate to the airport.

179. We are not persuaded that circumstances have changed in the Borough to indicate that an alternative, more permissive approach to off-airport parking provision is necessary as part of an appropriate strategy for the Borough. On the contrary, the latest Airport Surface Access Strategy of 2022 requires the Airport operator to manage how passengers and staff access the airport, including an ambitious target of 52% of passenger journeys by public transport by 2030. Moreover, the latest S106 agreement with the Airport (2022)⁵¹ requires ‘sufficient but no more on-airport car parking spaces than necessary to achieve a combined on- and off-airport supply that is proportionate to 48% of non-transfer passengers choosing to use public transport for their journeys to and from the airport by end of 2024’. Accordingly, we find that the principle of the policy approach of carefully controlling the location and amount of airport related parking is justified.

180. We accept that additional parking at the airport may well require shuttle transport to get passengers and baggage to the terminals. However, consolidation of parking around the airport would provide scope for a more efficient, reliable and sustainable shuttle services as opposed to alternative meet and greet or park and ride services ferrying passengers to and from dispersed sites, over likely longer distances. This is notwithstanding more innovative technology and business models (for example ride-sharing and ride-hailing services, electric vehicles and connected and autonomous vehicles). These general concerns with the sustainability of off-site airport parking provision have been echoed in a recent Bristol Airport appeal decision⁵² and similarly apply to Gatwick. As such focusing, long stay parking provision at the airport, in our view, presents the best option for meeting important modal split targets and avoiding the potential for the harmful over-provision of car parking.

Other Matters

181. Noise related to Gatwick Airport, including under the scenario were a second wide spaced runway implemented, is a significant environmental issue for the Borough. The Plan largely addresses it under Environmental Protection policies and so we address noise principally at Issue 9 below and further in relation to gypsy and traveller accommodation in Issue 5.

⁵⁰ Paragraph 14 of the decision, citing the judgment in 2016 EWHC 3246 admin

⁵¹ Document EGSM/GA/05 – Obligation 5.6

⁵² APP/D0121/W/22/3293919 – [document PS.EGSM.GA.25]

182. The Plan introduces Policy DD5 on Aerodrome Safeguarding to ensure that the safe operation of Gatwick is taken into account in the design of development. This also includes minimising risk of death or injury in the event of an aircraft accident on take-off or landing. As submitted the policy is sound and consistent with evidence⁵³ that Aerodrome Safeguarding should be embedded within Local Plan policy rather than applied ad hoc through DfT Circular 01/2003 at the development management stage.

Conclusion

183. Subject to the MMs identified above the Plan's policy framework for Gatwick Airport, including within the safeguarded area, would be justified and effective.

Issue 5 – Is the Plan justified and effective in its approach to meeting the housing needs for different groups in the community, including provision for affordable housing and the accommodation needs of gypsies and travellers?

Affordable Housing

184. There is a pressing need for affordable housing for the Borough, with the 2019 SHMA [H/HN/01] identifying a need for 739 affordable homes a year. In addition to the Council's active programme to deliver affordable homes on land that it owns it is justified that the Plan sets out a demanding but pragmatic policy approach to securing affordable housing as part of new residential developments. Consequently, all new residential development is required to contribute to the delivery of affordable housing. The Plan Wide Viability Assessment shows that 40% provision would not harm the delivery of the Plan in combination with other policy costs and CIL across most of the Borough. The exception is the town centre where higher development costs associated with sites, a need for denser development and a nascent market justifies the application of a lower headline requirement of 25% affordable housing. To aid delivery the Plan also justifiably varies affordable housing tenure by these two locations by reducing social rented and increasing intermediate provision at the town centre.

185. On this basis, the Council calculates that across all sites, including small sites and windfalls, approximately 15% of the affordable housing need would be met through the anticipated housing supply during the plan period. As such there would remain a severe unmet need for affordable housing. The SA process has considered a number of alternative policy options (blends of thresholds and mixes) but none are to be reasonably preferred to the submitted policy. It would be challenging on viability grounds to increase the Borough 40% requirement

⁵³ Safely Landed. Is the Current Aerodrome Safeguarding Process fit for purpose? Lichfields 2018

and town centre 25% requirement without denting overall housing delivery. Increasing the Borough's housing requirement to meet affordable housing needs as a proportion of new development (it would take 1,848dpa to deliver the 739 affordable dpa at 40%) would be ineffective in our view, given the DtC process has already identified the significant unmet housing need for Crawley (based on the LHN of 755dpa) is unlikely to be accommodated by neighbouring authorities. That said, we consider the evidence of an acute unmet affordable housing need supports the case that any strategic housing growth at the edge of Crawley should seek to positively respond to this issue if growth 'At Crawley' is to be genuinely sustainable for the town and its immediate hinterland.

186. Policy H5 as submitted seeks affordable housing on all residential developments resulting in a net increase of at least one dwelling with a general presumption of financial contributions for sites of 10 dwellings or less. Given the acute scale of the affordable housing need in the Borough and the significance of smaller sites to the overall delivery of housing in a land constrained Borough we consider the policy is justified and effective notwithstanding NPPF paragraph 64. The policy would be a continuation of 2015 Local Plan policy found sound in the context of the NPPF and subsequently upheld in various appeal decisions.

187. In terms of the practical application, the policy needs to be clearer that on site provision is the default expectation, with off-site contributions in lieu to be considered in exceptional circumstances. **MM30** would address this for effectiveness, and we return to this below. For smaller schemes of 10 dwellings or less, the policy recognises that a financial contribution would be the more practical approach. The Plan appropriately recognises that there is a need to avoid placing a disproportionate burden on smaller sites such that a tapered approach on sites of 1-10 dwellings is fairly applied. This has been viability tested in accordance with NPPF paragraph 58.

Self-Build and Custom Housing, Housing for older persons and Build to rent

188. Policy H4 sets out a housing mix test for major residential developments. This is supported by a recommended mix for market and affordable tenures for the town centre and the rest of the Borough. The evidence in the SHMA and through annual monitoring of recent completions shows that there has been an over-provision of smaller properties (especially 1 bed) and a shortfall of larger units (3 & 4 beds). Consequently, the Plan is justified in seeking larger units (3 beds) as part of town centre and flatted developments. Whilst some in the market appear resistant to this, the Plan Wide viability assessment of residential typologies has nonetheless demonstrated that such provision would be viable. In the context of the current over-provision of smaller 1 bed and studio flats (which may well be meeting (in part) a wider housing need outside of the Borough), we do not consider that a moderate re-balancing to include a greater element of family sized accommodation, including in the town centre, would be

detrimental to the housing market or affordability for younger households forming in the Borough.

189. It is recognised that the Plan would result in unmet needs for those seeking to self-build or custom-build their own homes. In a Borough where land supply is severely limited, required for other forms of housing (particularly affordable housing) and otherwise in town centre locations where there is a sustainability imperative for higher density development, this is perhaps unsurprising. The Council has identified the unmet need in self-build through the DtC process. Consequently, it would be reasonable that authorities within the wider housing market area consider the potential to meet this element of Crawley's unmet housing need, particularly in any greenfield urban extensions to Crawley.
190. There is clear evidence in the SHMA of a significant need for specialist housing for older persons, including sheltered and extra care housing and care bedspaces. Two sites are purposefully identified in the Plan at Policy H2 for older persons housing (Oakhurst Grange and the St Catherine's Hospice site). For similar reasons as for self-build, the constrained nature of land supply in the Borough severely limits the scope to allocate sites for older persons housing. As such we are satisfied that the Plan is justified and positively prepared in identifying two specific sites. Having regard to the SHLAA, we note that there are consented proposals that include provision for older persons accommodation which gives us confidence that there is likely to be further windfall provision for older persons housing over the plan period, including through the change of use and adaptation of existing buildings. We do not consider a specific policy on older persons housing would be necessary for soundness that would meaningfully add to the policy framework in the Plan that generally supports housing delivery where proposals would comprise sustainable development.
191. Policy H5 on affordable housing specifically addresses provision in relation to older persons' housing and accommodation. This includes both housing schemes likely to comprise residential use (Class C3) including sheltered housing and extra care housing where there is a degree of self-containment and in respect of what the Plan describes as "traditional care homes", which are likely to be more institutional facilities (Class C2). As submitted the policy requires 40% and 25% affordable provision for the wider Borough and town centre respectively for older persons' accommodation.
192. With regards to an older persons' development that is likely to comprise a residential use (Class C3), as the recent Rectory Homes judgment [PS/H/HN/10] and the PPG advises at paragraph 63-014, matters are not straightforward and so it will largely be left to the judgement of the Local Planning Authority, dependent on the specifics of the proposed development. As such we do not consider the policy requires modification to contain

prescription on what schemes would comprise a C3 use or to specifically exclude forms of specialist older persons' housing. There is wide variation in the types of schemes that come forward, including blends of provision on larger proposals. It is not for the policy to countenance all conceivable development scenarios or for these to be individually viability tested. Accordingly, as a starting point, the policy should remain flexibly worded as submitted to enable assessment on all older persons' housing proposals.

193. In terms of seeking affordable housing provision on older persons' schemes including retirement living, sheltered housing and extra care housing where there is a degree of independent living, the Plan-wide viability assessment has assessed this. This includes in relation to the St Catherine's Hospice allocation and more generally to sheltered flats and extra care flats typologies (assessed at Appendix IIIa of the Local Plan & CIL Viability Assessment (LPCVA)). The plan-wide evidence shows that viability is likely to be variable resulting in a more frequent use of viability review and negotiation [LPCVA para 3.7.21, p76]. To devise a policy that sought to deal with the wide variation in the nature of such schemes would result in an overly complex approach. As such it remains justified that the policy starts from a position of seeking a requirement with the provision that in exceptional circumstances, on a case-by-case basis, this could be relaxed.
194. In terms of the principle of seeking an element of affordable care provision within care/nursing homes schemes, this is justified by the circumstances in the Borough. This includes the evidence in the SHMA that confirmed a significantly higher proportion of older households in Crawley in tenures other than owner occupation. Accordingly, a significant proportion of the need for care home accommodation arising from Crawley is from households that do not have existing equity to fund their care.
195. The Plan seeks affordable care provision in terms of an equivalent percentage in affordable care beds. The viability and practicality of delivering this within the Borough has been contested by the sector. We note that the Plan wide viability assessment has tested a nursing home scheme as a commercial typology (at Appendix IIIc) with broad ranging outcomes reflecting that care home developments in the Borough are likely to come forward on previously developed sites with varying existing use values. Whilst the assessment did not specifically factor in the requirements and likely costs of Policy H5 we nonetheless note the residual land value when compared with likely benchmark values creates a potential viability 'headroom'. Additionally, the LPCVA in respect of sheltered and extra care schemes has factored in the costs of CIL, which would not apply in the case of schemes that fell squarely into the C2 use

class. In this regard we share the Council's assessment⁵⁴ that a likely cost using the commuted sums calculator could be accommodated within this buffer.

196. In terms of aiding viability, an approach of basing the requirement on the net sales area and excluding communal areas is likely to result in beneficial outcomes, particularly for care/nursing home schemes. We see no serious difficulties in implementing this, with communal areas being distinct from individual room provision. The practical application of a net sales area through the commuted sum calculator is likely to result in a significant reduction on the respective 40% or 25% requirements sought by policy⁵⁵. The starting point for such provision should be on-site in the form of affordable care beds and Policy H5 and the Obligations Annex need to be modified to reflect this to ensure that the policy is effective. That does not preclude financial contributions as set out elsewhere in the policy, where justified as an exception. The submitted Plan needs to be modified to introduce necessary clarity on the net sales area approach. **MM31** would do this in terms of supporting text to Policy H5 and **MM41** would make the required changes to the Planning Obligations Annex. We recommend both MMs for effectiveness.
197. On-site provision for affordable bed space capacity or financial contributions generated for 'affordable care' would meet the necessary tests. Similar to other forms of affordable accommodation where there is no local authority (WSCC) acceptance to the spaces available, private occupancy would be the fallback and a commuted sum payment sought. The commuted sum payment would need to be used for capital rather than revenue expenditure. In determining the formula for a capital contribution this would reflect the cost to the development had affordable housing been provided on site in the form of a floorspace levy to be applied to the net sale area of the gross internal area. The amount of the levy would vary dependent on the location, with a lower levy reflecting viability issues within the town centre.
198. Bringing together the various issues on Policy H5 and 'affordable care' we consider the Policy requires modifying to provide a clearer approach and additional assurance that it can be implemented viably in order for the policy to be sound. As such, various modifications are needed for Policy H5 and the related parts of the Planning Obligations Annex. This includes improving the structure of the policy to remove unnecessary repetition. The policy also needs to be amended to clarify that financial contributions for off-site provision would be determined using the Commuted Sums Calculator for the town centre and outside of town centre zones, and this would be formulated on net sales areas excluding communal areas. Finally, additional content is required in the Plan regarding on-site provision of affordable care, including the role of West Sussex County Council in supporting any package and whether that would inform

⁵⁴ Further explained in response to our post MM consultation correspondence

⁵⁵ Illustrated in examples presented in CBC Matter 6 Statement, response to MIQ6.17

exceptional circumstances for a commuted sum, with any such sum being tapered on sites of 10 or less. **MM30**, **MM31** and **MM41** would make the necessary changes to address these matters and so we recommend them so that the Plan would be justified and effective.

199. The Plan positively addresses the emerging Build to Rent sector in accordance with the PPG and as defined in the NPPF. There are already some sizeable schemes built in the town centre. Policy H6 sets out specific requirements in relation to affordable private rent provision by location (town centre/rest of Borough) which is appropriately supported by the Plan wide viability assessment. Overall, the Plan's approach to Build to Rent is sound.

Gypsies and Travellers

200. On submission the Plan was not accompanied by an up-to-date Gypsy & Traveller Accommodation Assessment (GTAA). The final GTAA was provided in November 2023 and as such various parts of the Plan as they relate to gypsies and travellers are no longer justified or effective in light of the latest evidence. The national Planning Policy for Traveller Sites (PPTS) was also updated in December 2023.
201. Whilst we have some reservations about the GTAA in terms of the extent to which there has been engagement with those households in bricks and mortar, we do not consider that this necessitates further examination or potential delays in adopting this Plan. Whilst the situation regarding households in bricks and mortar is not conclusive and would benefit from further face-to-face survey work, the evidence from other indicators does not point to a pressing need for forms of culturally appropriate accommodation from households within bricks and mortar in the short term. As with the previous 2015 Local Plan, which applied an assumed growth calculator, if a need does materialise from within bricks and mortar, a reserve allocation would provide an appropriate option during the plan period.
202. We note the other methodological concerns that the GTAA may have potentially under-estimated existing need in the Borough, as well as potential in-migration from elsewhere in the south-east from public to private sites. There is no evidence through the DtC statements that neighbouring authorities are looking to Crawley to assist in accommodating any unmet needs for gypsy and traveller accommodation. Given the proposed Broadfield Kennels allocation we do not consider that the Plan needs to identify or allocate additional sites for plan soundness. Further private site provision can continue to be managed through the application of submitted Policy H8. Following the latest GTAA evidence post plan submission, various parts of the Plan would need to be updated to reflect its findings. **MM28** and **MM29** would do this, and we recommend them so that the Plan would be justified and effective.

203. Whilst the GTAA does not identify a short-term need for pitch provision within the first five years, should that arise we are satisfied that Policy H8 provides a positive basis for assessing individual proposals, subject to the MMs recommended below. In line with the latest PPTS Policy H8 does not limit itself by reference to the previous 'planning definition' and so would apply to those seeking culturally appropriate accommodation. Ultimately, the allocated site at Broadfield Kennels could generously accommodate up to 10 pitches including potential needs from existing Traveller households in the Borough, together with any need to relocate from sites within the safeguarded area for Gatwick Airport during the plan period, should that requirement materialise.
204. The Broadfield Kennels allocation was previously found sound as part of the 2015 Local Plan against a similar national planning policy framework. It is a sustainably located site, where, notwithstanding its position in the HWNL, the principle of the allocation is established, including with the nearby settled community. The site is owned by the Borough Council who have the control to bring it forward. The site is not in use and so is available. Works are required to improve access from the A264 in terms of upgrading the current layout. There are no detailed costs on this, but it is recognised that they would be significant. There is nothing at this stage to substantiate that such works are insurmountable (noting the highway authority did not object to the allocation). The Borough Council has indicated that it would seek grant support from national funding for gypsy and traveller site delivery, which we consider to be a reasonable approach. Overall, given the tightly constrained nature of the Borough, we find that the Broadfield Kennels site to be soundly allocated as a developable site for the period 2029-2040 and to have been appropriately assessed against the reasonable alternatives as part of the SA/SEA process.
205. Private individual site provision has focused on land between the northern edge of Crawley and Gatwick Airport, nearly all of which is covered by safeguarding for the airport. As such it is justified that temporary planning permission may be appropriate until such time that there is certainty regarding the second wide-spaced runway. Criterion f) of the Policy H8 requires proposals to meet an identified local need. We are mindful that paragraph 24 e) of the PPTS states that Local Planning Authorities should determine applications for sites from any travellers and not just those with local connections. Nonetheless, physical land supply in Crawley is highly constrained and so it is justified that the policy refers to meeting local need, which would include those households on existing sites in the Borough and any concealed need within bricks and mortar.
206. The evidence, similar to the 2015 Local Plan, demonstrates that caravan accommodation offers a notably lower level of acoustic attenuation compared to bricks and mortar. As such a precautionary approach is justified, including retaining the protection of a lower Unacceptable Adverse Effect Level for aviation noise and gypsy and traveller accommodation, as was found sound as

part of the 2015 Local Plan. The evidence is clear that sustained and frequent exposure beyond the 57 decibels threshold would be detrimental to day-to-day well-being, as well as child development and various long-term health conditions. There is little before us to demonstrate that caravan and other forms of culturally appropriate accommodation can be appropriately mitigated against the levels of noise associated with the intensity of operations at Gatwick Airport. Whilst the 57 decibels threshold may result in a more restrictive approach, the alternative of a more flexible policy approach (i.e. on a case-by-case basis or sequentially if no alternative sites are available beyond the 57decibels contour) could result in Gypsy, Traveller and Travelling Showpeople households experiencing environmental conditions that would otherwise be unacceptable, contrary to paragraph 13e) of the PPTS and the high standard of amenity sought at NPPF paragraph 130 f).

207. Consequently, for permanent sites (including those granted on a temporary basis within the safeguarded area) a noise level applied at the 57 decibel contour is justified in order to protect the health and wellbeing of traveller residents. For temporary and transit sites, higher levels of noise exposure would be acceptable strictly on the basis of the time-limited nature of residential occupation, so as to avoid long-term health impacts. The proposed approach of 60 decibel contour for longer term temporary sites and 66 decibel contour for overnight sites (potentially for up to just a few days) would be justified as set out in Appendix F in the GTAA. This is consistent with and supported by the technical evidence set out in the latest Topic Paper 7: Development and Noise Technical Appendix [PS/DS/TP/07b].

208. A recent planning appeal has illustrated difficulties regarding the terminology in the predecessor⁵⁶ to Policy H8 over temporary stay periods on the issue of noise (as opposed to temporary for the issue of airport safeguarding). **MM32** would provide necessary clarification on the distinction between permanent, long-term temporary and overnight and short-term temporary in respect of noise exposure. The distinction and gradation in levels of noise exposure is justified by the evidence and would be in accordance with paragraph 13e) of the PPTS. Accordingly, we recommend **MM32** to ensure the Plan would be effective.

Conclusion

209. In conclusion, subject to the MMs, the Plan would be justified and effective in its approach to meeting the housing needs for different groups in the community, including provision for affordable housing and the accommodation needs of gypsies and travellers.

⁵⁶ Policy H5 of the 2015 Borough Local Plan

Issue 6 – Does the Plan take a positive approach to the growth, management and adaptation of the town centre, including a justified and effective approach to opportunity sites?

Policy framework for the town centre

210. As set out elsewhere in this report, the submitted Plan sets out a positive framework to bolster and invigorate the town centre as a vibrant retail and visitor destination but also as a dynamic sustainable business growth hub and as a growing residential quarter. This approach aligns with and takes forward the existing programme of regeneration in the town centre which has been secured through a combination of significant funding (including from the Towns Fund and the LEP) and proactive Council work. Existing and committed schemes, reflected in the Crawley 'One Town' Economic Recovery Plan and Crawley Growth Programme, will see further investment in strengthening and diversifying the town centre. The submitted Plan will support the objectives of these plans and identified interventions, whilst providing a necessary degree of confidence to enable sustainable long term decision-making and investment, particularly for a number of high-profile, significant sites around the town centre.
211. There is a balance to be struck between the ambition to optimise the potential of the town centre whilst preserving its character, including heritage assets such as listed buildings and conservation areas (recently extended at Queens Square & The Broadway). We are satisfied that the plan's preparation and the policy framework for higher density development, including in Policy TC3, has taken appropriate account of the town centre character and that the scale of development envisaged in the Plan would be deliverable.
212. The Plan's 'town centre first' approach to development is justified and in line with national policy. We recognise the challenges of retaining the town centre's vitality in current and predicted market conditions and consider the approach taken in Policy TC5, which sets a 500 square metres threshold for requiring an impact assessment for competing uses outside the town centre is appropriate. This lower threshold, compared with the national default threshold of 2,500 square metres, is based on sound research of centres with similar characteristics to Crawley and will not unreasonably restrict suitable development from taking place in out-of-centre locations within the borough. Accordingly, we find the threshold to be justified and consistent with national planning policy at NPPF paragraph 90 in terms of identifying an appropriate locally set threshold.
213. The complementary measures set out within the town centre Policies are necessary to ensuring the town centre remains the primary focus for retail and commercial activity within the borough. These include the appropriately defined extent of primary and secondary shopping frontages together with appropriate

development restrictions and the encouragement of residential development on appropriate sites, to a reasonably high density.

214. The introduction of Use Class 'E' has occurred since the Plan's initial consultation and extends the range of permitted development changes of use for town centre uses. This potentially undermines the Plan's town centre first approach, and to this end the additional reasoned justification for Policy TC5, as set out in **MM23**, is necessary for effectiveness.

Town Centre Opportunity sites

215. Key opportunity sites are set out within Policy TC3 and whilst the majority of new town centre development is envisaged on these deliverable and developable sites, other development is not restricted, which would be accounted for within the Plan's windfall figure for residential use.
216. The Crawley College site is of strategic importance, being one of the largest developable sites and with unique challenges that include maintaining educational use accommodation during any redevelopment. Other constraints include flood risk and heritage considerations. Given the site's size and likely phased redevelopment, the requirement for a masterplanned approach will contribute to the optimisation of the site, in line with the Framework's guidance on such development. **MM22** ensures that this approach is included within the Plan and we recommend it for effectiveness and consistency with national planning policy.

Conclusion

217. Subject to the MMs identified above, the Plan's approach to development, including changes of use within the town centre and the 'town centre first' approach, is soundly based, justified and positively prepared.

Issue 7 – Would the Plan provide for a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against the housing requirement and a developable supply thereafter for the remainder of the plan period?

Housing Trajectory and application of a 10% buffer

218. On submission of the Plan, the Council's correspondence of 31 July 2023 confirmed that the authority was seeking to confirm, through the examination of this Local Plan, a five-year supply of deliverable housing sites under paragraph 74 of the NPPF. This was also made clear in the latest Regulation 19 consultation (May/June 2023). We have examined the Plan on this basis.

219. As submitted the Plan contained a stepped housing trajectory reflecting stronger delivery within the first five years of the plan period before stepping down moderately in years 6-10 and then further in years 10 onwards as the supply becomes more constrained and reliant on windfall provision. In principle, we consider such a stepped approach is justified by the SHLAA and housing trajectory evidence. However, in light of clarifying a 17-year plan period and the increased housing requirement, together with the latest monitoring data for 2022/2023, the housing trajectory as submitted would not be justified and would require amendment in order to be sound. **MM25** would prudently reprofile the trajectory so as to anticipate an average 386dpa being delivered over years 1-10, before reducing to 210dpa in years 11-17. On this basis the minimum 5,330 dwelling housing requirement would be met over the plan period. As such we recommend the MM for effectiveness.
220. In terms of the components of the trajectory, the clarified plan period does not affect the pipeline of supply from existing consents or from the small number of housing allocations identified in Policy H2. In the short term, housing delivery would be largely sustained on the remaining phases of the Forge Wood development and the adjacent Steers Lane site, together with various major housing developments in and around the town centre where there has been a resolution to grant planning permission subject to a mechanism to secure planning obligations (Crawley Station – 308 units; wider Town Hall redevelopment scheme – 182 units; Telford Place – 285 units; and Longley House – 121 units). We are also satisfied that proposed allocations in Policy H2 at Tinsley Lane and Breezehurst Drive are also included within the deliverable supply given the advances to secure planning permission on both sites in tandem to the Local Plan process.
221. In accordance with NPPF paragraph 69, at least 10% of the housing requirement would be met on sites no larger than one hectare. The reality in Crawley is that the confined housing land supply contains a significant proportion of small to medium sized sites.
222. Having regard to the SHLAA evidence and the Five-Year Housing Supply Statement, and the likely contributions from windfall, we are satisfied that the updated trajectory⁵⁷ would reflect the delivery of 2,381 net additional homes in the years 2023/24 to 2027/28. We are mindful that water neutrality has affected housing delivery rates in the Borough in the last few years, but we are satisfied that the housing trajectory has appropriately profiled site delivery to take account of this and the impact of offsetting. In applying the revised stepped trajectory and a 10% buffer, as sought on Plan submission in accordance with NPPF paragraph 74b, we are able to conclude that there would be a 5.6 years

⁵⁷ Document PS/H/HD/14

deliverable housing land supply on Plan adoption on a base date of 1 April 2023.

223. Given the nature of the land supply in the Borough, housing delivery in the mid and latter part of the plan period would be dependent to an appreciable degree on town centre opportunity sites and windfall provision. Approximately 750 units are forecast to be delivered on town centre opportunity sites in the mid part of the Plan period. These are identified as 'developable' sites in Policy H2 and have been appropriately assessed as such in the SHLAA. The sites generally comprise high profile locations at the edge of the town centre where redevelopment would be compatible with the surrounding character of the locality and would reflect the trend of recent residential developments, which have sought to appropriately optimise the use of previously developed sites in and around the town centre. The developable town centre opportunity sites are identified in the growth programme for Crawley Town Centre, which provides further confidence that they will be brought forward as part of the wider efforts to deliver sustainable growth in the town centre over the plan period.
224. The windfall allowance is generally 100 dwellings per annum from year three of the trajectory onwards. Whilst the SHLAA has sought to examine sites down to a relatively low threshold (five or more dwellings), there will inevitably be additional supply that cannot be specifically identified in the SHLAA including changes of use and in some parts of the Borough appreciable scales of development on relatively small site footprints. In recent years windfall delivery has been significantly higher than the anticipated 55dpa in the 2015 Local Plan, in large part due to permitted development rights (particularly office to residential)⁵⁸. To de-risk any future under-estimation of windfall the Council has comprehensively looked at the matter in its 2023 Windfall Statement [document H/HD/06].
225. In setting a new windfall allowance the Council has appropriately set the small sites threshold at four dwellings to align with the fact the SHLAA has looked at sites of five dwellings or more. Additionally, the approach has been revised to ensure that prior approval sites of five or more dwellings are treated consistently with other specific sites. Recent windfall consents and delivery have also been investigated together with an analysis of the likely future trend from office conversions (excluding Gatwick Airport and Manor Royal) applying an updated and reasonable ratio of office floorspace lost and new dwellings built (factoring in the Nationally Described Space Standards). Furthermore, appropriate consideration has been given to the evidence in the 2023 Compact Residential Development Study in terms of properly optimising yields on different site typologies as set out in submitted Plan at Policy H3 and H3a)-f). Bringing this altogether the significant uplift in windfall from 55dpa to 100dpa would be

⁵⁸ 746 dwellings delivered on prior approval schemes 2015-22, compared to 145 dwelling forecast for five-year period 2015-20 (para 5.1 of the 2023 Windfall Statement)

realistic and therefore justified. In accordance with NPPF paragraph 71, the 2023 Windfall Statement is the compelling evidence that there would be a reliable supply of windfall as forecast within the housing trajectory.

226. Whilst there are no recommended modifications to Policy H2 on key housing sites, the reasoned justification to the policy would need to be updated to ensure consistency on delivery over the clarified plan period and in the context of the amended housing requirement. **MM27** would make the necessary changes and we recommend it for effectiveness.

Conclusion

227. In conclusion, subject to the above-mentioned MMs, the Plan would provide for a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against the housing requirement and a developable supply thereafter for the remainder of the plan period.

Issue 8 – Is the Plan's policy framework for matters of character, design and heritage justified, effective and consistent with national policy?

Character, Landscape and Development Form

228. The plan supports a sustainable approach to development, specifying higher density ranges in appropriate locations, in recognition of the compact nature of the borough and its built-up area. The proposed densities would optimise site capacity whilst respecting the character of established areas and allow for the creation of spaces in which people will want to live and interact, also taking advantage of proximity to the town centre and good transport links, where appropriate, and movement networks. The borough's 2009 Area Character Assessments remain relevant. Appropriate parking standards would be applied across the borough in line with the approach adopted by West Sussex County Council.

229. In considering whether the proposed requirements of development applications would be fair when applied across all forms and sizes of schemes, the Council has specified various submission requirements. **MM6** would enable this by ensuring that whilst all proposals would adhere to the overall design principles of the Plan, larger schemes would be required to clearly demonstrate compliance with a design vision and available opportunities. We recommend this MM for the effectiveness and soundness of the plan.

230. Similarly, through the inclusion of **MM7**, major development would be required to consider movement networks within, as well as outside, sites. Masterplans

are recommended for larger sites with design codes to be included where relevant. The alteration of Policy CL5 through **MM8** would ensure that these would be proportionate to the size of the scheme, and we recommend both MMs for the Plan's effectiveness and soundness.

231. Other character policies such as those pertaining to local and wider views and landscaping have been tested and found appropriate. Although the possibility of a tall buildings policy was considered, this is unnecessary as the other policies of the Plan would allow for proportionate development on appropriate sites. Policy CL8 for development outside built-up areas, and Policy CL9 would effectively protect the borough's National Landscape area and protect land outside the built-up area from inappropriate development. Policy CL8 considers the protection of various areas rather than individual sites, whilst allowing sympathetic forms of development that take account of their rural fringe location and particular characteristics.

Design

232. The design and development requirements policies would provide more specific requirements for detailed design matters. Policies pertaining to localised urban design, inclusive design, aerodrome safeguarding, vehicular crossover provision and advertising are straightforward and relatively uncontroversial, and our examination has not resulted in any significant suggested alterations. The application of the Nationally Described Space Standard to new housing developments as set out in Policy DD3 is augmented by additional suggested standards for homes in larger schemes, including consideration of the needs of families living in flatted buildings. The policy is necessary to ensure that such development is attractive to a mix of residents, which in turn would contribute to balanced and vibrant areas and improve market choice.
233. Policy DD4 is no longer a strategic policy, as specified by **MM9**. Strategic landscape matters are covered by other policies in the Plan, and we recommend it for effectiveness.

Heritage

234. No MMs relevant to heritage are considered necessary for soundness. The strategic approach to the management of heritage assets is sound, together with the Council's treatment of statutory and archaeological assets. The Plan also sets out a detailed approach to the management of non-designated heritage assets, in its identification of areas of special local character, locally significant buildings, and historic parks and gardens. These designations are appropriate, having regard to assets that are important to local heritage but do not meet the criteria for statutory designation, nor benefit from the same level of protection as designated assets in terms of national policy.

Conclusion

235. In conclusion, subject to inclusion of the aforementioned MMs, the Plan would be justified and effective in its guiding of the overarching design and form of all new development and its relationship with existing character, approach to detailed development matters, and management of heritage assets.

Issue 9 – Is the Plan’s policy framework for the environment, water resources and green infrastructure justified, effective and consistent with national policy, including in relation to water neutrality?

Green Infrastructure

236. No modifications are proposed to policies for open space, biodiversity and nature conservation, sport and recreation, including the provision of open space and recreational facilities, and the management of rights of way and access to the countryside. The Plan’s approach to these matters is sound.

Water resources, water neutrality and flood risk.

237. Most of the built-up area within the borough lies within the Sussex North Water Resource Zone (SNWRZ), which is within a designated area of serious water stress. Plan Policy SDC3 sets standards for water use in areas outside the WRZ, which are generally on the northern and eastern fringes of the borough and includes Gatwick Airport. For development outside of the SNWRZ, the policy aligns levels for residential development with the Building Regulations optional requirement for tighter water efficiency (at 110 litres of mains-supplied water per person per day), and non-residential development to be designed to achieve BREEAM⁵⁹ ‘excellent’ as a minimum standard within the water use category. No MMs are proposed for this policy. The policy is necessary for reasons of environmental sustainability and so is soundly based.

238. Policy SDC4 would apply to development within the SNWRZ. This proposes the limitation of water use in residential development to a significantly lower rate than that set by national standards, including the level set in SDC3, together with stringent targets for other uses. Eventually it is intended that similarly restrictive targets will be adopted by other authorities within the SNWRZ. Given the environmental constraints facing development in the region, we consider that the standards set out within SDC4 are justified.

239. Within the SNWRZ, new residential development would be expected to utilise no more than 85 litres of mains-supplied water per person per day. New non-

⁵⁹ British Research Establishment Environmental Assessment Methodology

domestic buildings would also be expected to restrict water use. In addition, an offsetting scheme is to be applied across the region. We are satisfied that these standards have been properly tested by the Council and its partners regarding potential alternatives for more or less restrictive limits, and that any risk to economic viability⁶⁰ is balanced by the minimisation of additional harm to natural resources. Importantly, achieving neutrality through the proposed water efficiency targets, in combination with appropriate offsetting, will 'unblock' the development pipeline and enable the continued growth of the Borough and achievement of the aims of the Plan.

240. To this end, **MM33** proposes that Policy SDC4 be made a strategic policy. The policy text would be reordered, and additions made to the reasoned justification text to provide certainty in the development management process. Also necessary is the insertion of an additional criterion within the Policy text, to allow for the possibility of loosened restrictions in the event that a strategic solution to water neutrality is secured through forthcoming water resource improvements, and the need to demonstrate neutrality no longer required. Other minor changes within the policy are proposed for clarity, including the necessity to make the distinction between the constituent local authorities and the separate entity of the South Downs National Park Authority. This MM is necessary for effectiveness and consistency with national planning policy.

241. There is some concern that the onus on achieving water neutrality in the short to medium term rests with the development industry by constructing in accordance with development plan policy, rather than water neutrality being wholly the responsibility of the abstracting water companies. The issue of water neutrality in the Arun catchment first arose in 2020, when this Plan was already in preparation. Whilst longer term water resource management planning should establish a strategic solution to the issue, it is imperative that a policy framework is established in this Plan that will enable and facilitate growth in the short to medium term rather than development being held in a moratorium. Ultimately, the policy approach needs to ensure that there would be no harm on the qualifying features of the protected hydrological sites in order to be lawful under the Habitats Regulations. As such, the proposed policy approach of water efficient design and offsetting is necessary, and this has been endorsed by Natural England in terms of navigating the Habitats Regulations.

242. Part C of the Water Neutrality Study states that offsetting must be in place before water demand is generated. We are assured by the evidence before us of progress being made on a local authority-led water offsetting scheme⁶¹. A particular factor for Crawley is the ongoing progress in retrofitting existing housing stock in the Borough with flow regulators to help create the water

⁶⁰ Costs identified through the Part C Water Neutrality Study and considered in the Plan Wide Viability Assessment

⁶¹ Including October 2023 Update [Document PS.DS.TP.001c]

demand headroom to facilitate some additional development within the SNWRZ part of the Borough. This gives us confidence that some development would still proceed in the Borough in the event that a more strategic offsetting scheme is delayed. Notably, the Gatwick Green site is not within the SNWRZ. **MM33** would introduce further clarifications on the timing of securing offsetting, that the commitment needs to be obtained through the development management process. We recommend this part of the MM so that the Plan would be effective.

Flood Risk

243. The Council's Strategic Flood Risk Assessment was updated during the examination. Plan Policies EP1 and EP2 follow national guidance in avoiding flood risk to development, and **MM34** proposes alterations for clarification and additions in line with the borough's water neutrality aspirations. This MM is justified for the soundness of the Plan.
244. During the MM consultation period, the Environment Agency requested additional changes to the policy, in respect of the Water Framework Directive mitigation measures, together with the inclusion of a new appendix to the Plan which would set out specific projects along watercourses in the borough. The Council was offered the opportunity to comment and suggested additional text within Policy EP1 together with inclusion of the appendix. These alterations are not required for soundness or legal compliance.

Noise

245. The Plan proposes to recognise the upper equivalent sound level of the Significant Observed Adverse Effect Level (SOAEL) for aviation noise as 60 decibels (dB LAeq.16hr), with an unacceptable adverse effect above this level. We recognise that the SOAEL is significantly below the 66db in the previous Plan. However, we consider this level to be appropriate in light of various research within the evidence base identifying noise constraints for development, including the design and use of outdoor spaces, the general nature of aviation noise, and circumstances specific to the operation of Gatwick Airport and its surrounding land.
246. The alternative of not having suggested levels and a bespoke approach to determining the appropriateness of applications for development would affect plan soundness. We consider the inclusion of the levels in Policy EP4 (and carried into Policy H8) provides clarity and certainty for decision-making.
247. Changes to noise levels above 60 dB LAeq.16hr are significant, with each additional 3 dB LAeq.16hr representing the noise equivalent of a doubling of aircraft movements. The Council's evidence advised that mitigation against

noise within residential development, and particularly in outdoor spaces, can result in poor design with limited attenuation opportunities, and have a significant impact on lifestyle.

248. Guidance and advice on setting noise contours for aircraft noise within the plan-making process, and its effects, has been published by various bodies including the Government and World Health Organisation. Research continues to be published indicating a direction of travel in which noise contours would set lower noise levels as aircraft fleets are renewed with modern, quieter vehicles. Taking account of the specific characteristics of Gatwick Airport, such as its setting within rural land and the operation of night flights, the lower levels proposed by the Plan, in comparison with the 2015 Plan, represent a balanced approach between various matters and interests including airport viability, health and the local economy. They do not unreasonably restrict sites allocated for development within the Plan and would continue to provide scope for appropriate development within the SOAEL. We note the collaboration of the Council with surrounding local planning areas in which similar levels are expected to be included in Plans as they are reviewed.

249. In this regard, **MM35** clarifies development parameters within the SOAEL as part of Plan Policy EP4. **MM43** and **MM44** set out changes to the Plan's Noise Annex to align with the Policy and reflect the revised noise contours. We recommend these clarifications as being necessary so that the Plan would be justified and effective and therefore sound.

Other Environmental Sustainability Policies

250. No MMs relevant to other environmental sustainability policies are required for soundness. These include air quality, land and water quality, and external lighting policies, all of which are sound.

Conclusion

251. In conclusion, subject to inclusion of the aforementioned MMs, the Plan's policy framework for the environment, water resources and green infrastructure would be justified, effective and consistent with national policy, including in relation to water neutrality.

Issue 10 – Is the Plan effective and justified in relation to Transport and Infrastructure?

Transport

252. As set out elsewhere in this report, the Plan has taken account of and positively responds to the New Directions for Crawley and the Local Cycling and Walking

Infrastructure Plan. The Borough benefits from a good bus network, rail stations in the town centre, Gatwick, Three Bridges and Ifield and an expanding network of safe cycle routes and parking. The policies of the Plan support further modal shift, consistent with NPPF paragraphs 105, 106 and 152. A key element of this will be the coordinated plans to strengthen the town centre as a focus for the Borough, including as a vibrant residential community.

253. In terms of understanding the highways impacts of the Plan, including in combination with other anticipated growth (Gatwick DCO and west of Crawley), transport modelling work has been undertaken. The approach and outputs of the final transport modelling study (2022) are agreed through statements of common ground with WSCC and National Highways. On the whole, we find the modelling work to be robust and to appropriately reflect the likely impacts arising from the Plan's policies and proposals, in the context of wider background traffic growth. A number of interventions are identified for the highway network, and these are reflected in the latest IDS. Most of the junctions identified where overcapacity is predicted to occur are signal controlled. Various solutions to optimise the performance of these junctions are identified and would be relatively low-cost. There is nothing in the transport modelling work which demonstrates a highways-related 'showstopper' that would impede the delivery of the spatial strategy.
254. Additionally, existing consented growth (largely from the 2015 Local Plan) is required to deliver various highway improvements, including in the early part of this Plan period. The IP also reflects this, including timescales and costs where known.
255. As submitted the Plan contains detailed parking standards, required by Policy ST2 with the detail set out in an annex. In light of the recent amendments to Part S of the Building Regulations it would not be justified or effective for the Plan to prescribe separate local standards for electric vehicle charging infrastructure. **MM36** would amend Policy ST2 and **MM42** would remove unnecessary detail from the Parking Standards Annex and insert new text seeking accordance with the latest Building Regulations. Both modifications would be necessary for effectiveness.

Crawley Western Multi-Modal Transport Link

256. Transport modelling of the Plan's growth, in combination with potential expansion at Gatwick⁶² and a prospective >3,000 home strategic urban extension to the west of the town in Horsham District⁶³ shows that the road

⁶² Additional sensitivity testing to factor in the NRP DCO in document ES/ST/01w

⁶³ Document ES/ST/01a – 3,750 homes West of Ifield and an additional 1,546 homes west of Kilnwood Vale, plus 50,000sqm of employment.

network within the Borough would experience capacity issues. Some junction improvements are identified in the IP during the plan period which would mitigate impacts arising from growth in traffic associated with the Plan's proposals but a longer-term strategic transport solution, in the form of a potential Western Multi-Modal Transport Link is being contemplated. The principle of the road (including shared transport and active travel facilities) is identified in the West Sussex Transport Plan 2022-2036 as a medium term priority for both Crawley and Horsham.

257. The issue of a western multi-modal link comes into particular focus should strategic growth be allocated to the west of the town in Horsham District. Without a strategic transport solution connecting the A23 to the north of Crawley with the A264 near Kilnwood Vale, growth around Crawley would be restricted. The benefits of delivering a strategic multi-modal link are positively identified in the DtC SoCGs with WSCC and Horsham District Council. The long-term potential to reduce demand on Junctions 10 and 11 of the M23 has National Highways' support. Importantly, the link also offers the potential to improve and prioritise other modes of transport around and within Crawley.
258. The Plan does not delineate a specific route alignment and only goes so far to identify an area of search and set out the criteria which the design and route of any link should have regard to from a Crawley Borough perspective. Having regard to NPPF paragraph 106 we consider this to be a reasonable and justified approach in advance of growth being established in other Local Plans. In the interim, Policy ST4 and the associated area of search on the Policies Map is as reasonably far as this Plan can progress the matter at this stage. This is positively reflected in the DtC SoCGs with WSCC and Horsham District. The issue of delivering a multi-modal link to the west of Crawley, across administrative boundaries with attendant improvements for walking, cycling and public transport connectivity on the western side of the town is clearly a strategic matter as per NPPF paragraph 20. As such we recommend that part of **MM37** which would identify Policy ST4 as a strategic policy. This would be necessary for consistency with national planning policy.
259. In terms of the area of search for the link this partially overlaps with land safeguarded for Gatwick. It should be stressed that the area of search is just that, further assessment work would be required dependent on plans for West of Crawley in Horsham District. Initial route assessments are to be regarded as indicative only. Optioneering of route alignments to date has had regard to the need to minimise any encroachment into the safeguarding area, including the potential of avoiding the safeguarded area altogether, should this be necessary. Matters are complex at the eastern end of the area of search at the A23 at County Oak. This location may necessitate an alternative area of search for the interim period until the second wide-spaced runway is pursued by Gatwick. This

interim option requires further assessment, but we consider it justified that it remains an option within the Area of Search in the Plan.

260. The further assessment of the northern section of the link (Systra [ESS/ST/02a]) has examined options to minimise encroachment into safeguarded land to that which would be unavoidable. Again, we have looked at the Systra work as part of the justification for an Area of Search rather than determining a specific route, given Policy ST4 does not seek to safeguard land for a specific route option. The Systra work is clearly a step towards further detailed work and assessment, which would largely be required to support growth outside of Crawley.
261. In identifying interim options (ES3 and ES3a) in land safeguarded for a southern runway we consider these remain reasonable options to explore. Whilst we accept the door has not closed on the possibility of a second wide spaced runway, there is the potential of the NRP accommodating additional capacity (if approved) such that implementation of a southern runway (if required) could be a very long-term prospect. The Plan as submitted (at paragraph 17.30) recognises that interim options are not straightforward, and that agreement would be required with GAL on any solution. On this basis, we consider the Plan would provide a justified and effective approach in attempting to secure the strategic benefits of a western multi-modal link.
262. However, the Plan policy as currently submitted would not appropriately recognise the potential tensions between delivering a western link and the extent of safeguarding for a potential second wide-spaced runway and associated safety buffers and perimeters. As such we consider it necessary that an additional criterion is added to the policy requiring account to be taken of safeguarded land. We therefore recommend that part of **MM37** as being necessary for effectiveness.
263. The area of search within the Borough for the link largely goes through countryside and crosses the River Mole including, potentially or proximate to, protected sites and habitats⁶⁴. This is not reflected in the Policy as one of the factors which the design and route of the link should take into account. To remedy this omission, **MM37** would insert a new criterion into the policy and **MM38** would include new supporting text to the policy related to the new criterion. Accordingly, we recommend both modifications for effectiveness and consistency with NPPF paragraphs 174 and 179.

⁶⁴ River Mole floodplain, ancient woodland, biodiversity opportunity areas, local nature reserves and local wildlife sites.

Infrastructure

264. Policy IN1 of the submitted Plan requires, amongst other things, that development is supported by necessary infrastructure and provides for mitigation where there would be impacts on existing infrastructure and services. The Borough is a CIL charging authority and in terms of site-specific contributions for infrastructure, the Plan contains a detailed Planning Obligations Annex to set out how certain contributions would be calculated.
265. The Plan is accompanied by a comprehensive Infrastructure Delivery Schedule (IDS), as part of the overall Infrastructure Plan (IP), which identifies various infrastructure projects to support the delivery of sustainable growth over the plan period, including in relation to transport. Whilst it is not necessary for soundness to transpose the details from the IDS, as a living document, into the Plan, the lack of a reference to the IDS in Policy IN1, as the key infrastructure policy, may result in a potential disconnect in the formulation of development proposals, including in accompanying transport assessments, and the infrastructure necessary to make the development acceptable in planning terms. As such the Plan as submitted would not be effective. Accordingly, we recommend that part of **MM10** would which identify the IDS at Policy IN1 and in the reasoned justification. Similarly, **MM12** would add a necessary cross-reference to the IDS in Policy IN2 in respect of the provision of new infrastructure, which we recommend for effectiveness.
266. Additionally, the IDS has been developed at time when matters in relation to the strategic road network are now subject to DfT Circular 01/22. This introduces a move away from 'predict and provide' on mitigatory interventions to a 'monitor and manage' process in relation to travel demand. As such, the extent and timing of highways infrastructure identified in the IDS may change. Consequently, we recommend that part of **MM10** which would provide a caveat in relation to the 'monitor and manage' process in relation to the need and timing for improved transport infrastructure. Overall, the various changes in **MM10** would make Policy IN1 effective.
267. We are satisfied that the highway modelling underpinning the Plan is robust, including the further sensitivity testing. The impact arising from growth in the Plan compared to wider background traffic growth is relatively modest although we recognise that certain road junctions, including M23 junctions 10 and 11 are identified as requiring capacity improvements during the plan period, in part because of the envisaged growth in Crawley. To support delivery of the Plan and to coordinate funding and additional evidence, including as part of the ongoing 'monitor and manage' process, the Borough Council intends to convene a Transport and Infrastructure Management Group, which would include WSCC and National Highways. It would not be necessary for soundness to set a policy requirement to establish the group. However, we do consider that the Plan should identify that the Group will be established, and that part of its

role will be to inform updates to the IP and IDS in terms of the deliverability and phasing of transport infrastructure. **MM11** would provide additional content to the Plan in this regard, and we recommend it for effectiveness.

Conclusion

268. Subject to the MMs identified above the Plan would be effective and justified in relation to transport and infrastructure.

Issue 11 – Monitoring and Review

Monitoring

269. The Plan is accompanied by a Monitoring and Implementation Framework [CBC/MC/KD/MIF/01] which contains various indicators to measure the implementation of the Local Plan. These monitoring indicators clearly have synergy with indicators identified in the SA report for assessing performance against the SA objectives that have underpinned plan preparation. It prudently identifies key indicators on critical elements of the plan (economic growth, housing delivery, climate change and water resources) where unsatisfactory performance would stimulate intervention, including potentially policy review. Overall, we find the Monitoring and Implementation Framework would be effective in meeting the Council's regulatory requirements to monitor the implementation of the Local Plan objectives and policies as part of a required annual monitoring report.

Plan Review

270. As set out above we see no cogent basis as to why it would be necessary for plan soundness to include a policy or mechanism requiring plan review within a specific time period or for a review to be triggered by a particular factor known at this time. There are issues that could well evolve in a relatively short time frame, such as an outcome to Gatwick Airport's Northern Runway Project or progress on a strategic solution to water resources as part of the next round of water utility company asset management planning, for example. In large part, we consider the submitted Plan contains necessary flexibility and foresight, for example at Policy GAT1, to deal with potential changes in circumstance in the short term. Overall, we consider the legal requirement on the Council to consider whether to review the plan⁶⁵ on a whole or partial basis within the required five year period, as part of ongoing monitoring on the up-to-datedness and effectiveness of the plan, would be effective in responding to changing circumstances.

⁶⁵ Regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

Conclusion

271. In conclusion, the Plan's approach to monitoring and review is sound and so no MMs are required.

Overall Conclusion and Recommendation

272. The Plan has various deficiencies in respect of soundness for the reasons set out above, which mean that we recommend non-adoption of it as submitted, in accordance with Section 20(7A) of the 2004 Act. These deficiencies have been explained in the main issues set out above.

273. The Council has requested that we recommend MMs to make the Plan sound and capable of adoption. We conclude that the duty to cooperate has been met and that with the recommended main modifications set out in the Appendix the Crawley Borough Local Plan 2024-2040 satisfies the requirements referred to in Section 20(5)(a) of the 2004 Act and is sound.

274. We conclude that if adopted promptly (with the recommended MMs) the Plan establishes a five-year supply of deliverable housing sites on 1 April 2023. Accordingly, we recommend that in these circumstances the LPA will be able to confirm that a five-year housing land supply has been demonstrated in a recently adopted plan in accordance with paragraph 75 and footnote 40 of the NPPF.

Glen Rollings David Spencer

INSPECTORS

This report is accompanied by an Appendix containing the Main Modifications.