



Department for  
Communities and  
Local Government

Simon Packer  
Director  
Turley  
6th Floor North  
2 Charlotte Place  
Southampton SO14 0TB

Our ref: APP/P1425/W/16/3145053  
Your ref: LW/15/0607

14 March 2017

Dear Mr Packer

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 - APPEAL MADE BY BOVIS HOMES LTD - ERECTION OF UP TO 95 DWELLINGS AT LAND EAST OF DITCHLING ROAD, WIVELSFIELD, EAST SUSSEX - APPLICATION REF: LW/15/0607**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Terry G Phillimore, MA MCD MRTPI, who held a public local inquiry on 14-16 September 2016 into your clients' appeal against the decision of Lewes District Council ("the Council") to refuse planning permission for an application for planning permission for the erection of 95 new dwellings with the provision of two new bus stops, associated pedestrian and cycle access via Blackmores, landscaping and parking at Land East of Ditchling Road, Wivelsfield, in accordance with application ref: LW/15/0607, dated 17 July 2015.
2. On 6 September 2016 the 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 1990 because the appeal involves a proposal for residential development of over 25 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local authority but the relevant plan has not yet been made.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation and dismisses the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Matters arising since the close of the inquiry**

4. Following the making of the Wivelsfield Parish Neighbourhood Plan (WNP) and the publication of the Written Ministerial Statement on Neighbourhood Plans, the Secretary of State invited additional comments from the main parties to the appeal on 6 January 2017. A list of the representations received is at Annex A and copies may be obtained on written request to the address at the foot of the first page of this letter. The Secretary of State has given careful consideration to all representations received but, for the reasons given below, does not consider that they raise any further issues on which he requires additional information before proceeding to a decision on this case.

## **Policy and statutory considerations**

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case the development plan comprises the saved policies of the Lewes District Local Plan (LP) adopted in March 2003; the Lewes District Local Plan Part 1: Joint Core Strategy (JCS) 2010-2030, adopted by Lewes District Council on 11 May 2016 and by the South Downs National Park Authority on 23 June 2016; and the Wivelsfield Parish Neighbourhood Plan (WNP) made on 7 December 2016. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR18-28 and, following the making of the WNP, those policies set out at IR31-34.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

## **Agreed matters**

8. The Secretary of State notes that, ahead of the inquiry, a Planning Statement of Common Ground was agreed between the appellant and the Council as described in the Inspectors report IR 35-38.

## **Main issues**

9. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR 254.

## **The relationship of the proposal to the development plan**

10. For the reasons given at IR 255–257 the Secretary of State agrees that the scheme is in conflict with saved policy CT1 and that there is no dispute on this. Like the Inspector, the Secretary of State considers the weight that should be attached to this policy is considered later in this decision letter (IR258-259). The Secretary of State has considered carefully the Inspector's analysis at IR260-264, and agrees that, despite the degree of compliance with other policies, and given the fundamental nature of the conflict with policy CT1, the proposal was not in accordance with the development plan as considered at the inquiry (IR264). The Secretary of State notes that, following the close of the inquiry, the WNP has been made and now forms part of the development plan. Having considered carefully the representations received following the making of the WNP, and noting that none of the relevant policies referenced by the Inspector at IR267-

269 have changed from the emerging WNP to the made WNP, the Secretary of State agrees with the Inspector that the proposal is in breach of the `made` WNP (IR270).

11. Overall, and despite the degree of compliance with a number of policies in the LP, JCS and WNP, given the fundamental nature of the conflicts with policy CT1, and WNP Policy 1, the Inspector concludes that the proposal is not in accordance with the development plan as a whole.

### **Five year land supply**

12. The Secretary of State notes that whether the Council can demonstrate a five year land supply is in dispute, with the Council calculating the existing supply as 5.6 years, and the appellant at 2.6 years (IR274). The Secretary of State has considered the Inspector's analysis and approach at IR275-296 and the further representations received from the appellant. The Secretary of State notes that the additional representations, and the main parties position regarding the 5 year land supply, effectively mirror the evidence considered by the Inspector at the inquiry. He agrees with the Inspector that the appropriate buffer should be set at 5% and that the `Liverpool method` should be applied in this case.
13. The Secretary of State considers like the Inspector, and based on the evidence before him and the representations received, that the Council can demonstrate a five year land supply – and given this there is no reason to find the agreed policies for the supply of housing should be considered out of date (IR297-299).

### **Sustainable development**

14. For the reasons set out at IR317-321, the Secretary of State agrees with the Inspector that, overall, the site is one that performs relatively well in environmental terms and within a constrained district with an extensive housing requirement, this is a factor in favour of the appeal scheme and significant weight should be given to this in the balancing exercise (IR322). He further agrees that substantial weight should be given to the housing gain that would result from the proposal (IR323-325).

### **Plan-led**

15. The Secretary of State has considered the Inspector's analysis around whether the appeal proposal is genuinely plan-led and the weight to be given to the identified conflict with the current development plan (IR326). For the reasons set out at IR327-328, the Secretary of State agrees that LP policy CT1 is not out of date (either by operation of paragraph 215 or paragraph 49 of the Framework) and that the conflict with it should be given significant weight in the decision. While he notes and agrees with the Inspector's analysis at IR331-335, the position has now changed as the WNP is now part of the development plan. Having considered the representations made following the inquiry, he concludes that there is a clear conflict with the WNP.

### **Planning conditions**

16. The Secretary of State has considered the proposed conditions at IR Annex B, the Inspector's analysis at IR300-309, the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

## **Planning obligation**

17. Having had regard to the Section 106 Agreement and submitted at the Inquiry, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusions (IR310-315), the Agreement complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligation overcomes his reasons for deciding that the appeal should be dismissed.

## **Planning balance and overall conclusion**

18. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with saved policies CT1 and WNP Policy 1, that these policies should be considered up to date, and is therefore not in accordance with the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State attaches significant weight in favour of the appeal to the delivery of housing, including affordable housing. While recognising the benefits of the scheme in terms of the economic and social roles of sustainable development the Secretary of State concludes that the material considerations weighing in favour of the appeal scheme are not sufficient to outweigh the conflict with the development plan.

## **Public Sector Equality Duty**

19. In accordance with section 149 of the Equality Act 2010, due regard has been given to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The Secretary of State has considered the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. In this regard and in coming to this decision, the Secretary of State has considered the negative impact that would arise given that affordable homes will not be built.

## **Formal decision**

20. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for up to 95 dwellings (including affordable housing), with the provision of two new bus stops, associated pedestrian and cycle access, landscaping and parking in accordance with application ref: LW/15/0607, dated 17 July 2015.

## **Right to challenge the decision**

21. 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 Town and Country Planning Act 1990.

22. A copy of this letter has been sent to Lewes District Council and Wivelsfield Parish Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Ray Colbourne*

Ray Colbourne  
Authorised by Secretary of State to sign in that behalf

## Annex A Schedule of representations

<b>Party</b>	<b>Date</b>	<b>Nature of response</b>
Mrs Sarah Sheath Senior Planning Officer Lewes District Council	10/01/17	Response to reference back of 06/01/2017 consultation
John Kay CPRE Sussex	11/01/17	Response to reference back of 06/01/2017 consultation
Jason Stoner	13/01/17	Response to reference back of 06/01/2017 consultation
Wivelsfield Parish Council	13/01/17	Response to reference back of 06/01/2017 consultation
Simon Packer Director Turley	13/01/17	Response to reference back of 06/01/2017 consultation
Mrs Sarah Sheath Senior Planning Officer Lewes District Council	18/01/17	Response to Final reference back of 16/01/2017 consultation
Simon Packer Director Turley	20/01/17	Response to Final reference back of 16/01/2017 consultation
Wivelsfield Parish Council	20/01/17	Response to Final reference back of 16/01/2017 consultation