



SOUTH DOWNS NATIONAL PARK AUTHORITY

TOWN & COUNTRY PLANNING ACT 1990

(SECTION 78 PLANNING APPEAL)

	Planning Inspectorate Reference:	South Downs National Park Reference:
Appeal	APP/Y9507/W/23/3314274	SDNP/21/04848/FUL

PROOF OF EVIDENCE

(PLANNING)

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DEVELOPMENT MANAGEMENT LEAD

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I. Introduction

Qualifications and Experience

- I.1 My name is Richard Ferguson. I have a Bachelor of Science degree (with Honours) in Geography from the University of Plymouth and a Master of Arts degree in Town Planning from the University of Westminster. I have been a Chartered Member of the Royal Town Planning Institute since 2008.
- I.2 I have been a Town Planner for 19 years and have worked in both public and private practice. I have been employed by the South Downs National Park Authority (SDNPA) since February 2012 and became a Development Management Lead in 2015.
- I.3 Previously, I worked for Chichester District Council between 2010-2012 as a Development Management Officer and prior to that I worked for WYG Planning (now Tetra Tech) between 2003-2009. I have spent the majority of my career in the UK but I have also had experience of Planning overseas whilst working for WYG Planning.
- I.4 I deal with a caseload of 'called-in' planning applications which are considered to be significant in terms of their potential impact on the purposes of designating the National Park. These can range in scale and type of use but typically include larger scale applications such as the appeal proposals. My role covers four local authority areas within the National Park which are Winchester, East Hampshire, Chichester and Arun. I also manage a small team of planning officers.
- I.5 This Proof of Evidence gives my professional view of the appeal proposals and is based on my assessment and judgement of the proposed development. The evidence I have provided in this proof of evidence is true and it has been prepared and is given in accordance with the principles in the Royal Town Planning Institute's Code of Professional Conduct. I confirm that the opinions expressed are my true and professional opinions.

Scope of Evidence

- I.6 I provide evidence as the planning witness for the SDNPA in respect of its decision to refuse Planning Permission for the appeal proposals. I was also the author of the July 2022 report to the SDNPA Planning Committee (Core Document CD3.2) and Members accepted my recommendation following detailed consideration and a site visit.
- I.7 The reasons for refusal are outlined in the SDNPA's Statement of Case. Below, I have structured the focus of my evidence in the order of the reasons for refusal cited on the Decision Notice and the following areas.

Structure of Evidence

- I.8 My evidence is structured as follows:
- i. Sections 2 and 3 deal with the site description and planning history;
 - ii. Section 4 confirms the description of the appeal proposals in the Statement of Common Ground (SOCG);
 - iii. Section 5 describes the development plan policy position;
 - iv. Section 6 sets out what I consider to be relevant other material planning considerations;
 - v. Section 7 outlines affordability issues and housing need in the National Park.
 - vi. Section 8 sets out my analysis of affordable housing provision, within which I address the following matters raised by the reasons for refusal.

Reason for refusal 1 – affordable housing

- a. I consider whether the proposed development would provide an acceptable level of affordable housing (main issue 1). As part of this, I consider Development Plan policy; NPPF paragraph 58; factors affecting weight to be given to viability as a matter for the decision maker; and an analysis of Mr Castle's viability appraisal.

Reason for refusal 2

b. I consider whether the necessary infrastructure provisions via financial contributions would make the development acceptable in planning terms (main issue 2). I outline the relevant heads of terms required for a S106 Legal Agreement that would secure the matters raised in reason for refusal no.2.

c. Other Matters

vii. Section 9 sets out my summary and conclusions, including assessing the harm and benefits of the proposed development.

Other Evidence Provided on behalf of the SDNPA

1.9 Written evidence on behalf of the SDNPA is also submitted by:

- Mr Fraser Castle MSc MRICS in relation to affordable housing viability.

1.10 I consider and draw upon his analysis in making my overall planning assessment.

2. Site Description

2.1 A description of the appeal site and surroundings is set out in the Statement of Common Ground (SOCG).

3. Planning History

3.1 The planning history of the site is set out in the Planning SOCG.

4. The Appeal Proposals

4.1 A description of the appeal proposals is set out in the Statement of Common Ground.

5. The Development Plan

5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

- 5.2 The relevant statutory Development Plan comprises the South Downs Local Plan (SDLP) adopted in July 2019.
- 5.3 Relevant SDLP policies are outlined in the Statement of Common Ground and the SDNPA’s Statement of Case. The most pertinent policies to my Proof of Evidence are cited in table one below. These are referred to, where necessary, in Section 8.

Topic	Relevant Development Plan policies
Principle of development	SD25 (Development Strategy), SD26 (Supply of Homes), SD71 (site allocation policy).
Affordable housing	SD28
Legal Agreement	SD9 (Biodiversity and Geodiversity), SD10 (international sites), SD19 (Transport and Accessibility), SD20 (Walking, cycling and equestrian routes).

Table One: Most pertinent Development Plan policies regarding the reasons for refusal.

- 5.4 SDLP policies are up to date and consistent with the National Planning Policy Framework (NPPF) (2021). The SDLP contains a comprehensive framework of policies for determining all forms of development within the National Park. SDLP policies should, therefore, be given full weight in decision making.
- 5.5 The SDLP was adopted within the last five years and the SDNPA can demonstrate a 5.9 year housing land supply with no shortfall (Core Document CD5.1- Annual Monitoring Report 2022). Furthermore, the Government’s Housing Delivery Test does not apply in National Parks.
- 5.6 The ‘tilted balance’ in NPPF paragraph 11(d) is not engaged in this case as the adopted Development Plan is not out of date. Therefore, the application is determined with reference to the ordinary planning balance (i.e is the development in accordance with the Development Plan, unless material considerations indicate a decision otherwise than in accordance with the Development Plan).
- 5.7 A Neighbourhood Plan area for Greatham is defined but no draft Neighbourhood Development Plan (NDP) has been published.

6. Material Planning Considerations

National Park Statutory Purposes

- 6.1 National Park Purposes are a fundamental statutory starting point for consideration of all applications in National Parks. All policy and decision making is required to take into account these purposes, which are also enshrined within SDLP policy.
- 6.2 The two statutory purposes of National Park designation, in the National Parks and Access to the Countryside Act 1949, are:
1. To conserve and enhance the natural beauty, wildlife and cultural heritage of their areas;
 2. To promote opportunities for the public understanding and enjoyment of the special qualities of their areas.
- 6.3 There is also a Statutory Duty, in the 1949 Act “to seek to foster the social and economic well-being of communities living within the National Park.” In exercising the Duty, it must be undertaken through pursuing National Park Purposes.
- 6.4 It is relevant to note that the Purposes and Duty are not exclusive to the planning system and assessing development. They also underpin other functions and activities of National Parks, such as promoting them as places to live, work and visit.
- 6.5 For the reasons that I explain in my evidence, I consider that the proposals are contrary to the Statutory Duty on the basis that an unacceptable provision of affordable housing is proposed, notwithstanding the fact that some social (affordable housing) and short term economic (construction) benefits would arise in redeveloping the site.

Environment Act 1995 (as amended)

- 6.6 Section 62 of this Act requires all relevant authorities, including statutory undertakers and other public bodies (including The Planning Inspectorate), to have regard to National Park purposes. This ensures that relevant authorities take these into account when reaching decisions or carrying out their activities relating to or affecting land within these areas.

6.7 The Sandford Principle (which is explained in paragraph 5.2 of the SDNPA's Statement of Case) is enshrined in Section 62 which states "*if it appears that there is conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.*" Therefore, decisions should give precedence to Purpose 1.

English National Parks and the Broads: UK Government Vision and Circular 2010

6.8 Government policy relating to National Parks is set out in this Circular. Its principal objective or 'golden thread' is delivering National Park Purposes throughout its stated environmental, social and economic aims and the work of National Park Authorities, including as planning authorities, whose primary responsibility is to deliver upon the statutory purposes.

6.9 The Circular specifically addresses affordable housing and the relevant paragraphs 77-79 can be summarised as follows:

- The lack of affordable housing has important implications for the sustainability of National Parks and their communities and can have a detrimental effect on the local economy and undermine social networks (para 76);
- Affordability of high property prices versus relatively low wages in the local economy, a declining stock of council housing and modest affordable housing growth can affect the social and economic diversity of rural communities, making them less sustainable (para 77);
- National Park Authorities have an important role to play in the delivery of affordable housing and, through the Development Plan, should include policies that pro-actively respond to local housing needs. The expectation is that new housing will be focussed on meeting affordable housing requirements (my emphasis) (paragraph 77);
- The Government expects National Park Authorities to maintain a focus on affordable housing and retain it for the long term (paragraph 79).

- 6.10 I, therefore, consider that by not achieving satisfactory affordable housing provision on site the appeal proposals conflict with the objectives of the Circular in terms of its social aims and focus on delivering affordable housing.
- 6.11 Regarding reason for refusal 2, the Circular promotes sustainable modes of transport and nature conservation and enhancement, which is relevant to the contributions sought via the legal agreement. Subject to the completion of the SI06, and appropriate planning conditions, the environmental aspects of the Circular would be accorded with.

Special Qualities of the South Downs National Park

- 6.12 Capturing the essence of what makes the National Park important, every National Park has developed a list of attributes that make it special. Documenting National Parks’ special qualities is required by the Circular.
- 6.13 The seven special qualities of the South Downs National Park are set out in Figure one below. These do not sit in isolation, rather they are interconnected and mutually reinforcing. Landscape is the key to all of the other special qualities and is therefore shown at the centre of the diagram.
- 6.14 The Special Qualities are relevant in decision making and of particular relevance is “the rich variety of wildlife and habitats including rare and international important species” regarding reason for refusal 2.

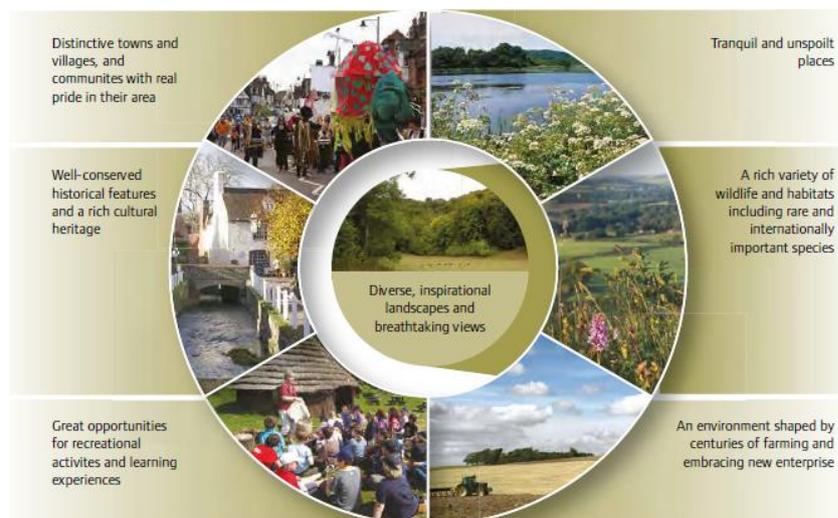


Figure 1 – The Special Qualities of the South Downs National Park

The National Planning Policy Framework (NPPF) 2021

- 6.15 NPPF paragraph 12 reiterates the statutory status of the Development Plan as the starting point for decision-making:

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. (My emphasis) Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

- 6.16 The NPPF should be read as a whole and there are broad range of priorities to be weighed within the overall planning balance. Under S38(6) of the 2004 Act and the SDLP, plus the NPPF, it is relevant to take into account the benefits of the proposal and I do so in my planning balance in section 9.

The NPPF and viability

- 6.17 Of key consideration in respect of affordable housing is paragraph 58 which outlines:

“Where up to date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable (my emphasis). It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker (my emphasis), having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”

The NPPF – the status of national parks and major development

- 6.18 NPPF paragraph 176 sets out that National Parks have the highest status of protection in relation to landscape and scenic beauty. It states that great weight

should be given to conserving and enhancing landscape and scenic beauty in National Parks.

- 6.19 In light of the scale of development, for completeness, I do not consider that the appeal proposals represent major development for the purposes of NPPF paragraph 177. This is my opinion based upon the nature, scale and relatively localised effects of the development together. The impacts of the appeal proposals would not have a significant adverse effect on the purposes for which the National Park has been designated.

The South Downs National Park Partnership Management Plan (PMP) 2020-2025

- 6.20 The Environment Act 1995 requires National Parks to produce a Management Plan setting out strategic management objectives to deliver the National Park Purposes and Duty. National Planning Practice Guidance (Paragraph 040, Reference ID: 8-040-20190721) confirms that PMPs may contain information which is a material consideration when assessing planning applications. I consider that the South Downs PMP is relevant.

- 6.21 The latest PMP (adopted in December 2019 and covering 2020-2025) (core document CD4.13) consists of a vision of what the National Park Authority would like to achieve by 2050. It focusses on 10 overarching outcomes and 21 priorities (within those outcomes) for the next five years. The outcomes and priorities work together and have equal importance and these are supported by 57 policies in its Appendix 1.

- 6.22 The PMP should be afforded some weight in decision making. A key outcome for present purposes is (whole document included in Core Documents library):

- Outcome 9: Great Places to Live – 9.1 – Increase affordable housing.
- PMP policy 50 - Housing and other development in the National Park

Supplementary Planning Documents (SPDs)

- 6.23 The SDNPA has adopted various SPDs, as identified in the Statement of Common Ground. The most pertinent is the Affordable Housing SPD (2020) which supports the implementation of SDLP policy SD28.

7. Affordable housing need in the National Park

- 7.1 There is a pressing and unmet need for affordable housing in the National Park which the SDLP seeks to address. There are also significant affordability issues in the National Park and, in addition to the SDLP evidence base, this issue is highlighted in the appended press notice from Lloyds Bank in 2020 (**Appendix 1**). It outlines that properties across National Parks are 12.4 times the average local earnings and 16.5 times specifically in the South Downs (a worse position than that stated in supporting paragraph 7.51 in the SDLP). This represents a stark affordability gap which impacts on local communities, with the South Downs being the second least affordable National Park in the UK.
- 7.2 The Housing and Economic Development Needs Assessment (HEDNA) 2017, part of the SDLP evidence base, also outlines how affordability has worsened and that the housing market area which Greatham is located within has high prices well above national averages, which compounds affordability issues. The State of the South Downs National Park Report (2012) (**Appendix 2**) also highlights that house prices are highest in the western part of the National Park, including the East Hampshire area.
- 7.3 These are significant affordability issues for the National Park and the vibrancy and sustainability of its rural towns and villages, especially given a demographic of predominantly older generations living in the South Downs (State of the South Downs National Park Report 2012 – figure 8.2, page 113, **Appendix 2**).
- 7.4 The SDNPA is tackling these social and economic issues through SDLP policy and the PMP to deliver upon its Statutory Duty. Hence, a 50% affordable housing requirement for larger scale schemes has been set, following a robust Local Plan examination, to maximise affordable housing delivery.

Need for Affordable Housing

- 7.5 The SDLP supporting paragraph 7.19 (accompanying SD26) outlines that 293 affordable homes are needed per year to meet demand for affordable housing in the National Park. This was informed by the HEDNA. However, as per the SDNPA's

December 2022 Annual Monitoring Report (core document CD5.1) the net number of affordable homes completed in the National Park were as follows:

Financial Year	Net number of affordable homes completed
2014/15	68
2015/16	35
2016/17	10
2017/18	36
2018/19	59
2019/20	62
2020/21	11
2021/22	28

Table two: Net number of affordable homes completed in the National Park by financial year

7.6 The most up to date information on local housing need has been sourced from East Hampshire District Council's Housing Team. This is shown in table three and highlights those households accepted onto the housing register in need of affordable housing.

Bedrooms	Greatham	Selborne*	Hawkley	Whitehill*	Liss
1	8	7	0	171	68
2	2	2	2	122	35
3	1	2	1	55	23
4	0	1	0	18	8
Total	11	12	3	366	134

Table three: Local housing need. *Areas of the parish fall outside of the National Park.

7.7 From the two tables above, it can be seen that there is a pressing – and largely unmet – need for affordable housing in both the National Park as a whole and, more specifically, in Greatham and in its neighbouring parishes cited in table three above.

The Development Plan strategy for meeting this need is the anticipated provision of 50% affordable housing from sites allocated for residential development in the SDLP.

7.8 I consider that it is an important part of the planning balance to take account of the role in the Development Plan of the site making a real contribution towards meeting this allocation of need, which is outlined below.

8. Analysis of affordable housing provision

8.1 This section addresses reason for refusal I. The main issue is whether the proposed development would provide an acceptable level of on site affordable housing. As I explain, I consider that it is necessary to consider the wider need context, the National Park's priorities and the anticipated role of the site in addressing affordable housing need in deciding how to weigh the specific viability evidence which has been put forward to justify the 21.6% provision proposed.

8.2 It is a matter for the decision maker to consider how to weigh viability considerations in the National Park context. My assessment is that significant weight should be attached to the shortfall of affordable housing proposed against the Development Plan expectations as this goes to the heart of what is expected from large scale residential schemes on sites such as this.

8.3 I consider that the the appeal proposals conflict with NPPF paragraph 58 and, as a result of not maximising affordable housing provision, and with the Statutory Duty and Circular, which are important parts of the planning context relevant to reason for refusal I.

8.4 I explain this view by addressing the following matters:

- 1) Development Plan policy;
- 2) Paragraph 58 of the NPPF;
- 3) Factors affecting weight to be given to viability, under which the following are relevant:
 - a) National Park context;
 - b) Viability testing of the Local Plan;

- c) Planning history of the site;
- d) Expectations of the Affordable Housing SPD;
- 4) Assessment of weight to be given to viability, given factors 3(a)-(d) above;
- 5) Viability Appraisal Analysis;
- 6) Any increased affordable housing provision as determined by the Inspector.

1) Development Plan Policy

- 8.5 As outlined in section 7, there is a pressing and unmet need for affordable housing in the National Park, which the SDLP explicitly seeks to address.
- 8.6 Policy SD28 is of key consideration because it is a strategic policy for the delivery of affordable housing across the National Park and enables the SDNPA to deliver it through new residential development. The SDNPA also has the added important mandate to deliver affordable housing as set out in the Circular and in undertaking its Statutory Duty.
- 8.7 Policy SD28 does not differentiate between allocated or unallocated sites. Criterion (1) outlines its primary aim which is:
- “Development proposals for new residential development will be permitted that maximise the delivery of affordable housing to meet local need...”*
- 8.8 Policy criterion 1(a) then outlines what larger residential developments must achieve:
- “on sites of 11 dwellings or more homes, a minimum of 50% of new homes created will be provided as affordable homes on site, of which a minimum 75% will provide a rented tenure.”*
- 8.9 These requirements are the starting point from which any larger scale residential development needs to be assessed against. Importantly, the viability of this policy has been tested at the Local Plan Examination and was found to be sound. Consequently, SD28 policy requirements are achievable in terms of viable schemes being delivered across the National Park.

8.10 Where an applicant considers the development of a site at these affordable housing levels to be unviable the onus is on the developer to robustly demonstrate, through an appropriate viability appraisal, that there is a genuine barrier to delivery (paragraph 7.64 of the SDLP supporting text).

8.11 Criterion (2) of policy SD28, exceptionally, allow for some scope to deviate from these requirements as follows:

“where, exceptionally, provision of affordable housing which complies with part 1 of the policy is robustly shown to be financially unviable, priority will be given to achieving the target number of on-site affordable homes over other requirements set out in this policy.”

8.12 Criterion (2) focusses on achieving the highest possible number of affordable dwellings within a scheme. In regard to ‘other requirements’ it refers to, this is primarily in respect of the tenure of affordable housing as advised in paragraph 7.65 of the supporting text accompanying policy SD28.

2) Paragraph 58 of the NPPF

8.13 NPPF paragraph 58 is critical for the determination of the Appeal. It sets out that the weight to be given to a viability assessment is a matter for the decision maker. It states:

“Where up to date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable (my emphasis). It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker (my emphasis), having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”

8.14 The main aspects of this paragraph can be distilled as follows and are addressed in sub-section 3 below:

- The onus is on applicants to demonstrate why viability should be a consideration.
- Policy compliant proposals should be assumed to be viable.

It is then up to the decision maker to determine the weight to be given to a viability assessment, having regard to:

- Local Plan policies and the viability evidence underpinning them.
- All relevant circumstances, including since a Local Plan was adopted.

3) Factors affecting the weight to be given to viability appraisals

a. The National Park context

- 8.15 The Statutory Duty is of key consideration. The provision of affordable housing, through its delivery via the SDLP when development is proposed, is an important way the SDNPA can deliver upon its duty.
- 8.16 This legislation differentiates National Park Authorities from district and borough councils because the specific National Park statutory provisions must be taken into account in Planning decisions. Furthermore, the Circular is also highly relevant in decision making regarding affordable housing delivery, as it places an impetus on National Park Authorities to address housing need.
- 8.17 In tackling social, housing need and affordability issues, SDLP policies SD25 (Development Strategy) and SD26 (Supply of Homes) spatially set out a dispersed pattern of growth and levels of new housing across the National Park to support towns and villages, with SD26 outlining a housing target of 4,750 net dwellings up to 2033.
- 8.18 National Parks are not subject to meeting their objectively assessed need (OAN) and the housing delivery test. However, given that over 50% of the identified OAN (as identified in the Local Plan evidence base) is for affordable homes, the SDNPA actively seeks to deliver new housing growth through allocations with a focus on providing affordable housing via policy SD28, thus exercising its Statutory Duty and the Circular.

8.19 This culminated in the adoption of policy SD28 with a minimum requirement of 50% affordable housing on larger sites, which, given their scale, can make an important contribution in addressing need and affordability issues across the National Park.

The role of the appeal site in addressing need

8.20 The allocated site has a significant role to play in addressing need as, in the National Park context, it is a reasonably large site compared to other SDLP allocations as a whole.

8.21 Greatham is a location where, through the SDLP adoption process, it was determined that an appropriate level of growth was acceptable to provide for affordable housing. Policy SD26 identifies housing growth for Greatham of 38 dwellings. This resulted in the allocation of the appeal site under policy SD71, which extended the former settlement policy boundary of Greatham.

8.22 The Appellants' representation on the draft Local Plan in 2017 (**Appendix 3**) acknowledged Greatham's role within the overall development strategy of policy SD25 and states "*We support the inclusion of Greatham within policy SD25 and emphasise its important role as the Settlement Facilities Assessment ranks Greatham as the joint ninth most sustainable settlement within the South Downs.*" An extract from the Settlement Facilities Assessment (2015) is appended (**Appendix 4**) and in respect of its scoring, clearly, the appeal site would be an appropriate location to maximise affordable housing.

8.23 Apart from large allocated sites in Liss, some of which have now been developed, there are no other significant allocated sites in the vicinity within the National Park to address local affordable need. Furthermore, the Greatham NDP is at an early stage and there is significant uncertainty as to whether this would allocate new housing sites.

8.24 I support the delivery of the site, but not at the expense of providing an inappropriate provision of affordable housing, given affordability issues and unmet need locally and in the wider parishes, policy SD28 requirements, the National Park context, and NPPF paragraph 58.

8.25 The decision maker must, in my view, reflect not only on what provision is proposed but also on the fact that the appeal scheme as proposed would remove the opportunity to deliver on the SDLP's expectations for the site. This is relevant to considering the weight to be placed on the viability justification advanced by the Appellants in support of the approach of the appeal scheme.

b. Viability testing of the Local Plan

8.26 The development of policy SD28 is important to consider in the context of NPPF paragraph 58 and the weight to be given to viability by the decision maker.

8.27 The Preferred Options draft Local Plan was published in September 2015. It included an affordable housing policy (previously SD24) which outlined a 40% affordable housing requirement on developments of 11 or more dwellings.

8.28 Subsequently, the Pre-Submission draft Local Plan was published in September 2017. It included an updated affordable housing policy (now policy SD28) which increased the affordable housing requirement to 50% for developments of 11 dwellings or more (**Appendix 5**). This increase was supported by the Local Plan and Affordable Housing Viability Assessment (the 'Assessment') prepared by BNP Paribas in August 2017.

8.29 The Assessment used an accepted methodology and practice in RICS guidance and is consistent with Planning Practice Guidance (PPG). It includes a range of 17 typologies to assess different viability options dependent on site circumstances (eg greenfield vs brownfield), their location, housing type and values, mix and scale of development.

8.30 The typologies tested were representative of the range of development that was anticipated to likely come forward through the SDLP. This was based on past housing delivery in the National Park through smaller sites with 47% of development being on sites of 10 dwellings or less, hence the typologies reflected this trend. The Assessment reached conclusions for each typology on how viable new residential schemes would be with policy compliant affordable housing, including tenure.

8.31 The Assessment adopted a conservative approach in its inputs. It used upper quartile build costs (with allowance for regional costs), factored in sustainable construction

requirements (policy SD48), a prescribed housing mix in policy SD27, and a 20% developer profit. The profit is at the limit within the PPG (Paragraph:018 Reference ID: 10-018-20190509). Also, the assumed return on affordable units was 6%, which is consistent with the viability SOCG.

- 8.32 A background paper was published by the SDNPA in September 2017 which accompanied the Pre-submission draft Local Plan 2017 (Core Document CD5.3). This paper summarises the BNP Paribas report (its paragraphs 6.7 and 6.8). In paragraph 6.8 it outlines that many of the appraisal assumptions are at the pessimistic end of the reasonable range of inputs and, consequently, concludes that that future proposals are likely to be more viable than suggested given the conservative inputs used.
- 8.33 The background paper also re-enforces my comments in section 7 above on the need for affordable housing. Paragraph 5.2 outlines many consequences of the affordability of homes in the National Park for people on average or lower incomes. Its paragraph 5.5 outlines that the greatest need is for social/affordable rent (68%) versus 32% for intermediate (i.e shared ownership) housing. Comparing the affordability issues at its paragraph 5.6 with the more recent Lloyds Bank press notice in **Appendix I** the situation has worsened further.
- 8.34 Furthermore, its paragraphs 5.7 and 5.8 refer to the HEDNA which considered OAN which, again, highlights the aforementioned affordability issues. The conclusion of the background paper, at paragraph 8.1, outlines that *“the affordability of housing goes to the heart of the National Park’s statutory duty, and is a major barrier to sustainable communities in the National Park. A robust policy approach, focused on small as well as larger sites, is therefore required to meaningfully address the issues.”*

Applying the Assessment to the appeal proposals

- 8.35 The Assessment identified opportunities and challenges for different types of sites. Generally, brownfield sites have lower margins of viability compared to greenfield sites, largely due to generally higher existing use values. Notwithstanding, as below, the Assessment outlines that proposals on sites such as the appeal site are viable, and by using conservative figures.

- 8.36 The closest typology to the appeal proposals is no.13 (**Appendix 6**), which is characterised as previously developed land ‘town centre infill’ and a development of 25 units. In a scenario of policy compliant 50% affordable housing, including a 75% and 25% tenure split of affordable rent and shared ownership, proposals would be viable in Greatham – which is identified as a settlement in Group 3 within the Assessment. Typology 13 applied to Greatham highlights a policy compliant scheme is viable when higher value properties are proposed that exceed £4,200sqm (**Appendix 6**).
- 8.37 The Appellants’ representations to the Pre-submission draft Local Plan (2017) (**Appendix 3**) responded to the draft SD28 and the Assessment, in the context of the appeal site. Concerns were raised about the Assessment, as follows:
- Build costs in typology 13 are under-estimated if flats were to be proposed;
 - Property values were over-estimated and a viable scheme was only possible with higher value units;
 - Density of development on the site would be low. The report used a density of 30dph but on a site of 2.4ha allocated for 35-40 dwellings this equates to 16.7dph and an under utilization of the site.
- 8.38 Consequently, they recommended a cautious approach to the proposed affordable housing policy and considered that the BNP Paribas report (in their view) provided an optimistic view of viability of sites such as the appeal site, particularly where a low density of development was being proposed. This was also in the context of a housing mix policy which favored smaller dwellings.
- 8.39 It was also contended that the draft policy did not offer sufficient flexibility to allow for less than 50% affordable housing provision. In conclusion, the Appellants considered the policy to be unsound. It was also contended that the site allocation policy was unsound because it artificially capped the amount of housing, whereas the site could accommodate more development and also incorporate a care home to meet the recognised needs for older people through a more flexible policy.
- 8.40 The Appellants’ representations were considered during the Local Plan process. The SDNPA published its responses to representations made on the draft Local Plan in

August 2018. This included commentary on the 50% affordable housing requirement (**Appendix 7**), where page 141 of this document states:

“The Whole Plan Viability Study undertaken by BNP Paribas (Core 13) demonstrates the deliverability of 50% affordable housing on the majority of site typologies tested, including previously developed ones (e.g. Typology 13 – town-based infill, houses). The study concludes: “Our assessment indicates that most development typologies providing 11 or more units can viably provide 50% affordable housing, with the exceptions being those at the very bottom of the value range. The unviable scenarios could come forward with alternative tenure mixes or with reduced affordable housing percentages if a proven viability case is submitted reflecting site specific factors. We would also expect improvements in market values over the plan period to extend the range of viable typologies to these lower value cases.” (para. 8.4) The BNP Paribas study uses more up-to-date evidence on market conditions and real estate values, and also factors in greater certainty on CIL (which has now been adopted by the SDNPA). It is therefore considered the more reliable of the two studies undertaken on this matter.”

- 8.41 Given the above, the Appellants’ critique of the Assessment being overly optimistic was not justified, based on the conservative approach to inputs used within it. In my view, the 17 typologies in the assessment sought to cover a broad range of scenarios and typology 13 offers the closest comparable, albeit the proposals are much larger in scale.
- 8.42 I also draw from Mr Castle’s evidence at paragraphs 6.8.2 – 6.8.4 where he outlines that the average property values in the Assessment utilised second hand sales values, as opposed to new build properties which would be expected to achieve more of a premium. Hence, higher values would be likely in comparison.
- 8.43 Regarding the Appellants’ comments about density, a notional 30dph was used in typology 13, however, in this particular case there have been other aspects to consider such as how the scale and design of the development would integrate with its surroundings, including the requirement in policy SD71 to achieve a transition in density across the site due to its rural context and the settlement pattern. In these respects, a range of 35-40 dwellings was considered to be the most appropriate and not an “unnecessary suppression” of development as contended by the Appellants (**Appendix 3**).

- 8.44 Whilst the proposals comprise of a lower density than typology 13, density should not be the only determining factor. An increased number of larger dwellings compared to the prescribed mix in SD27 was also acceptable in the appeal scheme in order to address SD71 requirements and support viability – as part of the overall planning balance.
- 8.45 The Appellants made representations at the time of the SDLP Examination in 2018 (**Appendix 8**). Following the examination hearings in November and December 2018, further representation was submitted in response to the main modifications to the draft SDLP for consultation, which took place between February 2019- March 2019. The Appellants contended that the allocation underutilised the site.
- 8.46 The SDNPA considered in its Main Modifications Report (2019) that the allocation as proposed was necessary to balance the number of dwellings with the landscape sensitivities to make the most appropriate use of the site. Fundamentally, the process resulted in the retention of a range of 35-40 dwellings in policy allocation policy.
- 8.47 The Local Plan Inspector’s Report (June 2019) found the Local Plan sound and in doing so supported policy SD28 and its evidence base. This establishes that the policy requirements of SD28 are achievable in terms of viable schemes being delivered across the National Park. **Appendix 9** is an extract from the report which outlines the Inspector’s conclusions on policy SD28 and the Assessment.
- 8.48 In conclusion, policy SD28 was robustly viability tested, found sound, and is now an up to date adopted policy which should be afforded full weight. In my view, these reasons are a significant factor in assessing that limited weight should be placed on the viability assessment in the determination of the appeal.

c. Planning history of the site

- 8.49 The allocation of the appeal site is important to consider because it provides context to the appeal proposals. The appeal site was promoted by the Appellants as an allocation throughout the Local Plan adoption process, as above.

Pre-application advice 2017

8.50 In addition to the Local Plan process, the Appellants engaged with the SDNPA through pre-application advice in 2017 for larger scale residential development and the possibility of a care home on site. The Authority's response is included as core document CD6.3. This clearly outlined the Authority's position on affordable housing, along with the 40% requirement of the East Hampshire Joint Core Strategy (2014) which formed part of the Development Plan at that time.

8.51 The advice is summarised below:

- Loss of a business use in favour of housing being considered through the emerging Local Plan;
- All three development options were an unacceptable scale of development;
- Proposals to meet emerging policies, specifically the allocation policy;
- Provision of care home contrary to policy;
- Considered major development in NPPF terms;
- Proposals for a shop need to be considered;
- Appropriate housing mix is required;
- Policy compliant affordable housing provision is required;
- A landscape-led and ecosystems services approach is required.

8.52 It is clear that the SDNPA's policy position on affordable housing has been known by the Appellants for a significant period of time, given their involvement in the Local Plan process.

8.53 Historically, the emerging policy SD28 and pre-application advice do appear to have been understood because the previous planning application for 37 dwellings (SDNP/18/03611/FUL) proposed a 48.6% affordable housing contribution from the outset. Unfortunately, it was not until the latter stages of the previous application that it was communicated to the Authority this was not achievable, albeit no viability appraisal was provided. The application was subsequently refused on design and affordable housing matters.

- 8.54 The land registry entries for the site appended to the Appellants' existing use valuation of the site indicate that an Option Agreement was completed on 16 June 2017. Whilst this pre-dates the publication of the Pre-submission draft Local Plan (September 2017), there was at the time an adopted 40% affordable housing requirement in the Joint Core Strategy (2014) and a similar emerging position for the draft SDLP.
- 8.55 The PPG expects that "Landowners and site purchasers should consider policy requirements when agreeing land transactions" (Paragraph: 013 Reference ID:10-013-20190509). Paragraph 7.64 of the SDLP also outlines that, in addition to development costs, land purchases take full account of adopted and emerging Development Plan policies.
- 8.56 The Purchase Price for the site is, however, unknown. The decision maker is not being told how this policy position was taken into account when the purchase price was agreed. This is a material omission because the Appellant has not undertaken the disclosure expected in the Affordable Housing SPD – which I now discuss.

d. Expectations of the Affordable Housing SPD

- 8.57 Paragraph 2.29 of the SPD outlines that the minimum content for an applicant's viability appraisal is detailed in its appendix 3. This contains a range of inputs to understand the residual land value and the benchmark land value. Point 3 of the information requirements outlined in appendix 3 relates to details of the purchase price for the site. This has previously been requested but details have not been provided. It would greatly assist the decision maker in understanding the level of affordable housing contribution the scheme could achieve, rather than relying only on a residual appraisal approach (in which much can turn on small changes in input levels).
- 8.58 This missing information is material. It reduces the ability of the decision maker to make necessary sense checks of the specific viability justification advanced. I consider that this is relevant to the consideration that limited weight should be placed on the viability assessment.

4) Assessment of weight to be given to viability, given factors 3(a) – (d)

- 8.59 The proposals are located on an allocated housing site within an up to date Local Plan. The viability evidence which underpinned the Local Plan is up to date. Paragraph 7.63 of the SDLP outlines that “insufficient affordable housing provision which runs contrary to policy SD28 will be a significant factor weighing against approval, irrespective of any viability barriers.
- 8.60 NPPF paragraph 58 sets a ‘high bar’ insofar as development that complies with contributions set out in up to date policies should be assumed to be viable and the onus is on applicants to demonstrate otherwise in regard to any particular circumstances.
- 8.61 In terms of particular circumstances, the Site’s condition remains materially unchanged (as an active horticultural nursery) and the appeal proposals are within the range of 35-40 dwellings envisaged in policy SD71. Furthermore, the proposals include a greater proportion of larger properties than the prescribed mix in policy SD27, which was agreed in order to support the delivery of affordable housing and to accord with policy SD71(2)(a) to provide a transition in density through the scheme. Furthermore, no shop has been proposed which, although referred to in the policy and is not an explicit requirement. The omission of the shop will have aided the viability of the scheme.
- 8.62 In these respects, it is difficult to justify that, exceptionally, viability should be given significant weight to justify that a non-policy compliant scheme is achievable – contrary to NPPF paragraph 58. Between the SDLP adoption process, the previous application and now, the only particular circumstances used to justify the need for a viability assessment is the broader market and economic conditions at this time (eg. Inflation).
- 8.63 Given the scale of the allocation and its location, it clearly has an important role to play in addressing the need for affordable housing in this area of the National Park. As previously outlined, the focus on allocating housing sites and policy SD28 requirements have sought to maximise affordable housing and meet the Statutory Duty and Circular.

- 8.64 The approach to affordable housing in National Parks and the weight to be given to a viability assessment in a National Park context has been re-enforced by Appeal Decision APP/C9499/W/22/3295101 (core document CD7.1) in Giggleswick in the Yorkshire Dales National Park. The Inspector considered the weight to be attached to viability in a National Park context.
- 8.65 In summary, the Inspector concluded that whilst there was some pragmatism in the wording of the affordable housing policy to enable a consideration of viability, the policy was primarily concerned with the delivery of housing to meet identified local needs in a National Park context, and in referencing the Circular concluded that as an aspect of providing affordable housing “*scheme viability should not be read in isolation but in its proper context and having regard to the aims of the policy*” (paragraph 18). This is consistent with the emphasis that I place on having regard to the lost opportunity that would arise if planning permission were to be granted with affordable housing levels materially lower than those anticipated by the Development Plan allocation.
- 8.66 The proposals, if granted planning permission, would make an affordable housing contribution albeit of a form of affordable tenure that would not be contributing to the greatest area of need of social/affordable rented dwellings and, more locally, local housing need in table 3 above (paragraph 7.6).

5) Viability appraisal analysis

- 8.67 Mr Castle outlines, in his proof of evidence, that a greater provision of affordable dwellings is achievable. He provides evidence to describe and justify how he has come to his view and provides updated residual appraisals. It can be seen from Mr Castle’s proof of evidence that there is disagreement between the SDNPA and Appellants on the Gross Development Value (GDV) of the new houses and the developer’s reasonable profit for example. The Appellants have also failed to confirm the purchase price, as above. There is also now a dispute as to the determination of the Benchmark Land Value.
- 8.68 Regarding developer’s profit, Mr Castle relies upon a lower percentage of 18.5% than the Appellants 20%. I support this view on the basis of his evidence and also it is supported by a recent appeal within the National Park at Astley House, Lewes (core document CD7.2) where an Inspector considered 18.5% was reasonable, having

considered the PPG, the 20% profit adopted in the BNP Paribas assessment which underpinned the Local Plan and the merits of the case. Furthermore, in my recent experience, other sites within the National Park have seen developers outlining a lower 17.5% profit in their viability appraisals (eg, proposed residential (flats) development at 34 Lavant Street, Petersfield, which is a brownfield site occupied by a large vacant industrial building– SDNP/22/04504/FUL), to which Mr Castle refers (paragraph 8.18.9).

8.69 I would also consider that the increase in GDV appears reasonable given the evidence he presents and indeed the valuation of the existing bungalow on site.

8.70 Mr Castle has undertaken the following viability scenarios from which to assess whether the proposals can achieve a greater affordable housing provision:

1. The development as proposed;
2. A policy compliant scheme;
3. Alternative approach of solely the 1 and 2 bed dwellings being affordable dwellings (shared ownership);
4. Sensitivity testing with adjusting inputs within a reasonable percentage tolerance (eg. build cost, GDV, profit).

8.71 Scenario 3 indicates that a greater provision of 13 affordable dwellings (35% contribution) would be viable. It uses an approach which would be consistent with policy SD28 and its supporting paragraph 7.65 in maximising the number of affordable dwellings and is clearly a material difference to the 21.6% proposed. Furthermore, the sensitivity testing of scenario 4 shows how reasonable differences in inputs can yield significant improvements in viability towards achieving a policy compliant scheme, via a residual appraisal method.

8.72 Consequently, the appeal proposals are: (a) contrary to policy SD28 by failing to maximise the affordable housing, and (b) fail to reflect the extra impetus on National Parks to deliver affordable housing in line with the Circular and the Statutory Duty applicable to the National Park. The appeal scheme also fails to accord with Priority

9.1 of the Partnership Management Plan to increase affordable housing stock in the National Park.

6) Any increased affordable housing provision as determined by the Inspector

- 8.73 In the event that the Inspector determines weight should be given to viability, the draft S106 Agreement includes the 21.6% provision and a 'blue pencil' clause to enable an increased affordable housing provision if appropriate.
- 8.74 However, before any such considerations, the weight to be given to viability is a prior key consideration. Viability should be given limited weight as explained in detail above. There are no overriding exceptional circumstances within the appeal scheme or the site to justify giving it significant weight.
- 8.75 Furthermore, the North York Moors appeal decision highlights that the policy aims for affordable housing, and weight to be given to viability, should be viewed in its National Park context. These factors would also apply if the proposal was amended to include a figure for affordable housing above 21.6%, but well below 50%.
- 8.76 Furthermore, were the Inspector to consider the Appellants' proposed 21.6% contribution was insufficient and determine to increase this provision, this in itself demonstrates that the viability is not sufficiently robust to accord with policy SD28 and it would be contrary to NPPF paragraph 58, the Circular and the Statutory Duty.
- 8.77 On this basis, the Inspector would be invited to dismiss the appeal rather than increase the level of affordable housing to a higher figure than 21.6%, but below 50%.

Reason for refusal 2 - absence of a completed Legal Agreement

- 8.78 Should the Inspector be minded to allow the appeal, I set out below what I consider to be appropriate heads of terms for a Section 106 legal agreement in table four below.
- 8.79 These heads of terms apply insofar as meeting policies cited in table one above and the Habitats Regulation Assessment concerning mitigation for increased recreational pressures from increased population in close proximity to the Wealden Heaths Special Protection Area.

Matters to be secured via a Section 106 legal agreement	Details	Justification
Measures to secure the public open space requirements of the development	Open space provided within the design of the scheme.	To ensure sufficient open space is retained in perpetuity and maintained.
Mitigation for increased recreational pressures upon the Wealden Heaths Phase II Special Protection Area (SPA) and the Woolmer Forest Special Area of Conservation (SSSI and SAC).	£15,000 contribution for specific projects, managing visitor access (eg. new finger posts/signage, interpretation boards, gates/styles, and community engagement).	To address the Appropriate Assessment undertaken in accordance with The Conservation of Habitats and Species Regulations 2017.
Financial contribution and measures to support sustainable modes of transport.	£65,000 for improvements to bus stops (including shelter and real time display information) and crossing points.	To improve sustainable transport links to/from the site.
To secure a permissive path between Petersfield Road and the eastern site boundary for improved accessibility to the adjacent Public Right of Way.	To improve the connectivity of the site with its surroundings.	As required by allocation policy SD71(2)(g).
Requirement to enter into a S278 Highways Agreement	To cover the formation of accesses, crossing points and proposed pavement amendments.	To provide a legal framework for alterations that the developments propose to make to the public highway.

Table Four: S106 Heads of Terms

8.80 It is considered that the above heads of terms meet the tests for legal agreements set out in paragraph 57 of the NPPF in that they are necessary to make the development acceptable in planning terms (without prejudice to the SDNPA's view that the appeal should be dismissed), they directly relate to the development and they are fairly and reasonably related in scale and kind to the development.

- 8.81 The heads of terms are consistent with the requirements of Community Infrastructure Levy (CIL) Regulations.
- 8.82 It is acknowledged that the matters identified in table four could be satisfactorily dealt with by a suitable S106 Legal Agreement and a draft is currently in discussion with the Appellants. In the absence of a completed legal agreement SDNPA maintains its objection to the appeal proposals on reason for refusal 2.

The Community Infrastructure Levy

- 8.83 The SDNPA's Community Infrastructure Levy (CIL) was approved on 31 January 2017 and came into effect across the National Park from 1 April 2017. Should the Inspector decide to grant planning permission, CIL would be chargeable based on the relevant adopted rate including any indexation.
- 8.84 The Statement of Common Ground includes a CIL calculation, which would be subject to the issuing of a CIL Liability Notice.

Other Matters

Housing mix – policy SD27

- 8.85 Policy SD27 was based on the evidence in the HEDNA and deliberately focuses on providing smaller and medium sized dwellings. This takes on added importance when one considers the Statutory Duty. The proposed housing mix is acceptable.

Allocation policy SD71

- 8.86 The appeal proposals are substantially compliant with the allocation policy SD71. The 37 dwellings proposed is within the range identified in SD71(1). Criterion (1) also permits a shop on site if this were to be proposed, but it is not a policy requirement and it was an acceptable approach to not include it.
- 8.87 SD71(2) and (3) outline a range of requirements and overall, the appeal proposals could meet with these, due to its design and subject to the completion of the S106 legal Agreement and planning conditions.

8.88 The appeal proposals were not refused on the following matters. Where relevant, draft planning conditions are proposed (without prejudice to the outcome of the Appeal) to address consultee advice during the course of the application:

- Principle of residential development;
- Design and sustainable construction;
- Residential amenity;
- Cultural heritage;
- Flood risk and drainage;
- Pollution (ground contamination);
- Ecosystems services, ecology and biodiversity net gain;
- Access and parking arrangements;
- Dark night skies and light pollution.

Minerals safeguarding (silica sand)

8.89 The site lies within a minerals safeguarding area for silica sand, as identified in the Hampshire Minerals and Waste Plan (MWP) (2013). Policy 15 of the Plan safeguards mineral resources within the area but allows development where it would not be appropriate to extract this resource or hinder its extraction, or the merits of the development outweigh the need to safeguard this resource.

8.90 This brownfield site is in use as a commercial operation and so it is not available for minerals use. A partial update to the MWP has undergone public consultation in November 2022- 31 January 2023. Given its draft stage it is currently afforded limited weight and in light of the adopted SDLP policy position within which the site has been allocated for residential redevelopment.

The Conservation of habitats and Species Regulations 2017

8.91 Following an Appropriate Assessment, the residential scheme has the potential for likely significant effects upon the SPA from recreational pressures, which would need

to be mitigated. It has been determined that an off-site contribution of £15,000 to largely be spent on specific projects associated with the Heathlands Re-united scheme would be sufficient to mitigate the impact.

8.92 The SDNPA adopted the Appropriate Assessment and Natural England did not object to it.

9. Summary and Conclusions

9.1 The proposals would facilitate the re-development of a brownfield and allocated site. However, its residential development should not fail to provide an appropriate provision of affordable housing on site.

9.2 I consider that limited weight should be given to viability in the first instance in light of an up to date Development Plan and affordable housing policy and the aims of this policy in a National Park context.

9.3 It is considered that the appeal proposals conflict with SDLP policy SD28 for the reasons outlined. I consider there are no material considerations of such weight or significance that would outweigh this conflict. Conversely, the NPPF, Circular, the Statutory Duty and Affordable Housing SPD strengthen my views, particularly in light of the evidence presented by Mr Castle and his opinion, that a greater provision of affordable housing can be achieved.

9.4 Other than the main issues above, no further substantive matters are raised. The Statement of Common Ground outlines all other aspects concerning the development which are not in dispute.

9.5 Table five below summarises the overarching harm and benefits. It is my opinion that the harm caused by the proposals would demonstrably outweigh the benefits. In coming to this opinion, I recognise that a balanced view must be taken and I am cognisant that the proposals could deliver benefits as below.

Harms	Benefits
Insufficient affordable housing.	Deliver the redevelopment of a brown field allocated site.
Lost opportunity to deliver the development plan's expectations for meeting the significant unmet need for affordable housing in the locality in accordance with the Statutory Duty.	Some affordable housing would be provided (albeit shared ownership).
	Acceptable scheme in design terms.
	Economic benefit during construction (albeit short term).
	Contributions would contribute to improve infrastructure and mitigate the development (provided S106 legal Agreement completed).

Table Five: Summary of harm vs benefits.

- 9.6 In this case, and following my assessment together with review of Mr Castle's evidence, I consider that the appeal proposals are contrary to policy SD28, the NPPF, Circular, the Statutory Duty and the PMP outcome and policy.
- 9.7 The 'tilted balance' in NPPF paragraph 11(d) is not engaged in this case as the adopted development plan is not out of date. Therefore the application is determined with reference to the ordinary planning balance. In this respect I have set out above the lack of compliance of the appeal proposals with the development plan and there are, in my opinion, no material considerations which warrant a decision other than in accordance with the development plan.
- 9.8 Accordingly, it is respectfully submitted that the Appeal should be dismissed.

Appendices

- 1. Lloyds Bank Press Notice 2020 on affordability within National Parks.**
- 2. Extract from The State of the South Downs National Park Report (2012).**
- 3. Appellants' submission to the South Downs Local Plan Pre-Submission draft (2017).**
- 4. Extract from the Settlement Facilities Assessment (2015).**
- 5. Extract from South Downs Local Plan Pre-submission draft (2017).**
- 6. Extract from the Local Plan and Affordable Housing Viability Assessment (2017) by BNP Paribas.**
- 7. SDNPA publication – NPA Responses by policy and site: Revised Appendix 4 of the Submission Consultation Statement (August 2018)**
- 8. Appellants' submission at Examination stage of the Local Plan (November 2018).**
- 9. Extract from Local Plan Inspector's Report (June 2019).**