



# **PLANNING COMMITTEE REPORT**

**TO:** Planning Committee South

**BY:** Head of Development and Building Control

**DATE:** 26<sup>th</sup> April 2022

**DEVELOPMENT:** Outline Application for the development of 83 residential units, landscaping, access, parking and associated infrastructure on land at Duckmoor, East Billingshurst with all matters reserved except access.

**SITE:** Land at Duckmoor East of Billingshurst Billingshurst RH14 9DZ

**WARD:** Billingshurst

**APPLICATION:** DC/20/2607

**APPLICANT:** **Name:** Reside Developments Ltd **Address:** The Dutch House, 132-134 High Street, Dorking, Surrey

**REASON FOR INCLUSION ON THE AGENDA:** By request of the Head of Development and Building Control

**RECOMMENDATION:** To amend the reasons for refusal being considered under the current appeal by the Planning Inspectorate. This would comprise withdrawing the reasons for refusal on the principle of development and landscape harm and introducing a reason for refusal on water neutrality.

## **1. THE PURPOSE OF THIS REPORT**

- 1.1 To consider revisions to the reasons for refusal for application DC/20/2607, which is subject to an appeal to the Planning Inspectorate. The recommendation is as follows:
- (a) To withdraw the current reasons for refusal relating to the principle of development and landscape harm, owing to the Council's lack of five year housing land supply; and
  - (b) To introduce a new reason for refusal relating to the adverse impact of the development on the Arun Valley SAC/SPA and Ramsar sites, as the development has not been demonstrated to be water neutral.

### **BACKGROUND:**

- 1.2 An outline application for planning permission for the development at land at Duckmoor, East Billingshurst with 83 dwellings was submitted to the Council in December 2020 (ref: DC/20/2607). Following consideration of the proposals planning permission was refused under delegated powers on 06 April 2021 for the following reasons:
- 1. *The development, due to its location outside of the Built up Area Boundary and on a site not allocated for development within the Horsham District Planning Framework (2015), or an adopted Neighbourhood Plan, is unacceptable. The provision of up to 83 residential units in this location, would conflict with the overarching strategy and hierarchical approach of concentrating development to the main settlements and managing development on edges of existing settlements in order to protect the*

*settlement pattern, the rural character and landscape, as set out in Policies 1, 2, 3, 4 and 15 of the Horsham District Planning Framework (2015) and Policy Bill 1 of the referendum version of the Billingshurst Neighbourhood Plan. The proposed development is not essential to its countryside location and does not support the needs of agriculture or forestry. As such, the proposed development would be contrary to Policy 26 of the Horsham District Planning Framework (2015).*

2. *The proposed development, by reason of the size and scale of its outward extension of the settlement edge of Billingshurst beyond the confines of the existing development parcels, would have an urbanising influence in the countryside beyond Billingshurst and views into the undeveloped countryside, resulting in harm to the sense of place and countryside character and linkage between the countryside and the open space network created by the new development landscape strategy of the strategic allocation DC/15/0059 and woods to the west, as well as inappropriate and harmful to the hamlet scale and settlement characteristics of parcels H6 and H7, contrary to policies 25, 26, 31, 32, and 33 of the Horsham District Planning Framework (2015) and Policy Bill 2 of the referendum version of the Billingshurst Neighbourhood Plan.*
3. *Policy 16 requires 35% affordable housing provision on developments of this size. Policy 39 requires new development to meet additional infrastructure requirements arising from the new development. Both the provision of affordable housing and contributions to infrastructure and off-site improvements including sustainable transport commitments, PRow upgrades and link connection to the new development, and air quality mitigation measures must be secured by way of a Legal Agreement. No completed legal agreement is in place and therefore there is no means by which to secure these Policy requirements. As such, the proposal is contrary to Policies 16 and 39 of the Horsham District Planning Framework (2015).*

- 1.3 The delegated officer report is attached at Appendix A, which includes the description of the site and the full details of the application along with all consultee comments and an assessment of all material considerations undertaken at the time of the application was determined.
- 1.4 An appeal against the refusal of permission has now been submitted and is to be heard by way of informal hearing.
- 1.5 Since the refusal of planning permission, there have been material changes to the weight to be applied to the current development plan which necessitate the re-consideration of the principle of development. The Council can no longer demonstrate a five year supply of deliverable housing sites, and the Billingshurst Neighbourhood Plan (BNP) has been made and now carries full weight in decision-making. Furthermore, the Natural England Position Statement of September 2021 raises an important new material planning consideration relating to water abstraction in the Arun Valley. The appeal scheme is now accompanied by a Water Neutrality Statement submitted in response to the issues raised by Natural England in their Position Statement. In addition, the scheme has been amended at the appeal stage to now include 4 self/custom build plots.
- 1.6 Since the submission of the appeal, a new application for approximately 83 dwellings (ref: DC/21/2178) has also been submitted. This application is currently under consideration. This application scheme is now accompanied by the same Water Neutrality Statement as the appeal scheme, in response to the issues raised by Natural England in their Position Statement. The proposed layout for the scheme is the same as the current appeal scheme.

## PLANNING HISTORY AND RELEVANT APPLICATIONS

DC/20/2607	Outline Application for the development of 83 residential units, landscaping, access, parking and associated infrastructure on land at Duckmoor, East Billingshurst with all matters reserved except access.	Application Refused on 06 April 2021. Subject of an appeal.
DC/21/2178	Outline application for the development of the site to provide approximately 83 dwellings, landscaping, access, parking and associated infrastructure on land at Duckmoor, East Billingshurst, with all matters reserved except for access.	Under consideration.

### **3. OUTCOME OF CONSULTATIONS**

- 3.1 The full list of all consultations received as a result of the original application are outlined in the appended report, including objections from 20 individual property addresses, CPRE Sussex and Devine Homes PLC and an objection from Billingshurst Parish Council. These letters, along with all consultation responses, have been forwarded to the Planning Inspectorate as part of the consideration of the current appeal. Residents and all interested parties have also been notified of the current appeal with any further comments to be made directly to the Inspectorate.

### **4. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS**

- 4.1 Under the Equality Act 2010, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality, fostering good relations in respect of Race, Disability, Gender including gender reassignment, Age, Sexual Orientation, Pregnancy and maternity, Religion or belief. The Equality Act 2010 will form part of the planning assessment below.

### **5. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER**

- 5.1 It is not considered that the development would be likely to have any significant impact on crime and disorder.

### **6. PLANNING ASSESSMENTS**

- 6.1 As set out above, since the refusal of planning permission, new material considerations have arisen relating to:

1. Water neutrality, and the consequential impact of development on the integrity of the Arun Valley SAC/SPA and Ramsar sites;
2. The Billingshurst Neighbourhood Plan 2019-2031;
3. The introduction of 4 custom/self-build dwellings in the proposal; and
4. The Council's five year housing land supply position

These new considerations are discussed below along with the officer's recommended re-balancing of the development against these new considerations and the development plan as a whole.

#### **Water Neutrality**

- 6.2 Horsham District is situated in an area of serious water stress, as identified by the Environment Agency. In September 2021, Natural England released a Position Statement which advised all local authorities within the Sussex North Water Supply Zone that it cannot

be concluded that existing water abstraction within the Sussex North Water Supply Zone is not having an adverse effect on the integrity of the Arun Valley SAC/SPA/Ramsar sites near Pulborough. The Position Statement advises the affected local authorities that developments within the Sussex North Supply Zone must not therefore add to this impact, and one way of achieving this is to demonstrate water neutrality. The definition of water neutrality is the use of water in the supply area before the development is the same or lower after the development is in place.

- 6.3 In assessing the impact of development on protected habitat sites such as those in the Arun Valley, decision makers must, as the competent authority for determining impact on such sites, ensure full compliance with the Conservation of Habitats and Species Regulations 2017 (known as the Habitat Regulations). The Regulations require that a Habitats Regulations Assessment (HRA) be carried out to determine if a plan or project may affect the protected features of a habitats site, before the grant of any planning permission. Section 70(3) of the Regulations requires that planning permission must not be granted unless the competent authority (Horsham District Council) is satisfied that the proposed development will not adversely affect the integrity of the affected habitats site. Section 63 of the Regulations sets out the process by which an HRA must take place.
- 6.4 The requirements of Section 70(3) are reflected in paragraph 180 of the NPPF, which states that *'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'*.
- 6.5 The appeal site at land at Duckmoor falls within the Sussex North Water Supply Zone which draws its water supply from groundwater abstraction at Hardham (near Pulborough), adjacent to the Arun Valley sites. The water abstraction issues raised by the Natural England Position Statement are therefore a new material planning consideration relevant to the appeal proposals. Given the requirements of the Habitat Regulations and paragraph 180 of the NPPF, adverse impact on the integrity of the Arun Valley sites must be given great weight in decision making.
- 6.6 In order to demonstrate that no adverse impact will occur at the Arun Valley sites, all new development within the supply zone must demonstrate water neutrality, i.e. that water consumption from the site when occupied will not increase water abstraction in the Arun Valley.
- 6.7 The appeal documents now contain a Water Neutrality Statement (Technical Note 3 by motion 07 Feb 2022 REV C). As this application is now at appeal, the Planning Inspectorate now form the Competent Authority for the purposes of undertaking the Appropriate Assessment required by the Habitat Regulations Assessment. Nevertheless, it is appropriate that the Council undertakes its own assessment of the appellant's water neutrality proposals so as to properly advise the appointed inspector of its position as to whether it can be demonstrated with sufficient certainty that no adverse effect on the integrity of the Arun Valley sites would result from the proposals.
- 6.8 The submitted Water Neutrality Statement (Technical Note 3 by motion 07 Feb 2022 REV C) sets out the following:
- Existing baseline water consumption at the site;
  - Water demand from the proposed development; and
  - Mitigation strategy.

*Existing baseline water consumption at the site*

- 6.9 The existing site comprises of open fields. Water bills provided by the existing landowner confirm that water is supplied to troughs on the site and during the period from 11<sup>th</sup>

September 2020 to 8<sup>th</sup> September 2021 some 468m<sup>3</sup> of water was used on site. This equates to an average of 107.73 litres per day.

*Water demand from the proposed development*

- 6.10 A water calculation in accordance with Building Regulations Part G has been carried out and confirms that the proposed residential development will achieve a water consumption of 92 litres per person per day, which includes an allowance of 5 litres per person per day for external water usage. Applying average occupation rates derived from census data, the proposed development will therefore consume some 16,908.68 litres per day, and increase of 16,800.95 litres per day on the existing consumption. Your officers do not dispute these calculations.

*Mitigation strategy*

- 6.11 The mitigation strategy includes the following measures to achieve water neutrality, to be secured as part of any planning consent:

- Efficient fixtures and fittings within each home to achieve 92 litres per person per day consumption.
- A rainwater harvesting tank will be included on each house and a shared tank will be used for the maisonettes, to be used for flushing toilets and in washing machines. This would supply 35 litres per person per day, which equates to 6,432.65 litres per day, leaving a residual saving of 10,368.30 litres per day to be found.

- 6.12 To achieve this residual saving, the applicants are proposing the following offsetting measures:

- Installation of a rainwater harvesting system at Dedisham Farm, a dairy farm located in the north of Horsham district near Rudgwick and located within the Hardham water supply zone. The water collected in the rainwater harvesting system will then be used to supply drinking water for the cows.
- According to the appellant, Dedisham Farm has 430 dairy cows, 80 heifers and 130 calves, which equates to a daily water consumption of 39,612.12 litres per day.
- Due to suitable available roof catchment area being available on the farm (4,086m<sup>2</sup>), it is proposed that rainwater harvesting will be primarily from the existing roof areas and a new barn which will be constructed over the existing silage clamps, totalling 6,807.99m<sup>2</sup>, to meet the demand to offset the proposed development and provide a daily yield of 12,962.79 litres.
- The proposed rainwater harvesting system for the farm will incorporate a 240,000 litre tank which will provide the necessary storage to provide at least 18 days drought protection.
- According to the appellant, this demonstrates that the offsetting scheme can fully offset the remaining water demand for the development with an excess of 2,594.49 litres per day and therefore they claim it can demonstrate water neutrality.

*Officer's consideration of the mitigation scheme*

- 6.13 Your Officers have raised a number of concerns as to how 78 separate rainwater harvesting systems across the development will be maintained in the long term to ensure the necessary savings are made, and whether the drought storage capacity is sufficiently sized. Aside from these matters, the in-house efficiencies and rainwater system to serve toilets and washing machines can be supported in principle.

- 6.14 In respect of the offsetting proposals, the proposed scheme does not yet provide the necessary certainty to form a robust mitigation scheme. In particular:

- a. There is missing evidence to confirm with certainty that the water to be offset at Dedisham Farm comes from the mains supply
  - b. The rainwater system seemingly relies in part on buildings that are not constructed or that even have any form of consent or approval.
  - d. 18 days drought storage is not considered sufficient.
- 6.15 Of most importance however, is the fact that the appellants are unable to demonstrate that the farm is fully committed to this offsetting proposal. The draft S106 heads of terms submitted with this appeal binds the developer only to provide a Water Offsetting Agreement with a third party 'if necessary' as part of a Water Neutrality Scheme to be submitted and agreed prior to submission of first Reserved Matters application. It does not tie in any specific landowner, with no mention made of Dedisham Farm.
- 6.16 With the absence of Dedisham Farm being a party to the s106, there is significant uncertainty as to whether the mitigation proposed can be delivered. It therefore does not provide the necessary certainty to allow for planning permission to be granted in compliance with the Habitat Regulations. Absent of this direct connection, in essence the appellants strategy could be considered to amount being only to a theoretical solution agreed in theory by Dedisham Farm, with the final strategy to come forward after the grant of outline permission, potentially in a wholly different form.
- 6.17 Accordingly, it has not been demonstrated with the necessary degree of certainty that the proposed development would not result in adverse effects on the integrity of the Arun Valley SPA, SAC & Ramsar sites either alone or in combination with other plans and projects. The proposals are therefore do not comply with s.70 of the Conservation of Habitats and Species Act 2017 and are also contrary to Policy 31 of the HDPF and paragraph 180 of the NPPF.
- 6.18 The officer recommendation is therefore that the following refusal reason be added to the Council's Statement of Case for consideration by the appointed inspector:
1. Insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 179 and 180 of the National Planning Policy Framework (2021), its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

### **The Billingshurst Neighbourhood Plan 2019 - 2031**

- 6.19 Since the refusal of planning permission, the Billingshurst Neighbourhood Plan (BNP) has passed referendum and now forms part of the adopted development plan for Horsham District (it was formally 'made' on 23 June 2021). At the time the application was refused the BNP had passed through examination and was given significant weight in the decision made.
- 6.20 The Neighbourhood Plan controls windfall development outside the Built up Area Boundary (BuAB) under the provisions of Policy BILL 1: *Billingshurst Built Up Area Boundary*. This policy defines the extent of the Built up Area Boundary for Billingshurst, which, via the Neighbourhood Plan process, has been subject to recent review, and encompasses those sites that have been completed or are with planning permission. Policy BILL 1 A requires development in Billingshurst parish to be focused within the built up area boundary of Billingshurst village. Policy Bill 1 B states that development proposals outside the BuAB will only be supported where they are in accordance with the development plan policies on appropriate countryside uses, or relate to necessary utilities, or satisfies the requirement of Policy BILL 11 in relation to tourism, or are on sites allocated for development in the HDPF

or its successor. Consequently, the principle of housing on this unallocated site would run contrary to Policy Bill 1 B of the BNP.

- 6.21 As well as defining a Built up Area Boundary, the Billingshurst Neighbourhood Plan also sets out a suite of policies that are now part of the development plan. These include topics relevant to the consideration of the outline development proposal at appeal, including provision of leisure and recreation facilities (BILL 4) and integrated infrastructure (BILL 6); and Multi-value Sustainable Drainage Systems (BILL 16). The application of these policies does not alter the balance of considerations for this appeal.

### **The introduction of 4 custom/self-build lots to the development proposals**

- 6.22 The scheme, as submitted under the appeal, has been amended to include 4 self / custom build units. This equates to just over 5% of the housing provision. As this proposal is for outline permission, the exact location and design of the units will be assessed under a reserved matters application. The draft legal agreement submitted with the appeal requires the provision of the units with an obligation for the units to be delivered. The exact wording of the agreement is to be agreed. The original refused application did not include the provision of custom / self build units, however the inclusion of the units is welcomed as a benefit of the development and will assist in helping meet this demand in the district. If the original refused scheme had included the custom / self build units, reason for refusal no. 3 would have included a requirement for a legal agreement for the proposal to also make reference to those units to secure their provision. As such, a minor amendment is recommended to the wording of reason for refusal no. 3 to include reference to the custom / self build units and Billingshurst Neighbourhood Plan policy BILL 6 as the reason for refusal concerns securing integrated infrastructure requirements arising from the new development:

3. *Policy 16 requires 35% affordable housing provision on developments of this size. Policy 39 requires new development to meet additional infrastructure requirements arising from the new development. Both the provision of affordable housing and contributions to infrastructure and off-site improvements including sustainable transport commitments, Public Right of Way resurfacing and link connection to the new development, and air quality mitigation measures must be secured by way of a Legal Agreement. No completed legal agreement is in place and therefore there is no means by which to secure these Policy requirements or a requirement for the provision of 4 custom / self build units. As such, the proposal is contrary to Policies 16 and 39 of the Horsham District Planning Framework (2015) and Policy BILL 6 of the Billingshurst Neighbourhood Plan (2021).*

- 6.23 The appellants have submitted a draft legal agreement to include the provision of these 4 custom / self build plots.

### **Landscape Harm**

- 6.24 At application stage, the development proposal was assessed by your Officers, informed by the expert advice of the Council's qualified Landscape Architect. Detailed assessment was undertaken of the submitted Barton Willmore Landscape Capacity Assessment and submitted plan and Dec 2020 LVIA. It was considered that the development proposal is likely to have both adverse landscape and visual impacts and taken with the current extension to Billingshurst (Land East of Billingshurst) it will present an intrusion of the built environment into the rural setting of the town.
- 6.25 This assessment remains unchanged. The Rummey Design Framework Plan for land east of Billingshurst indicates the retention of the tree and hedge belt (landscape buffer) forming the eastern boundary of that extension area (alongside parcels H7 and H9) and creating a strong visual and landscape edge/buffer/screen to the development area. This extension to

Billingshurst was considered as a plan led approach with the layout intending to provide comfort in respect of the landscape setting and visual containment which could be achieved.

### *Landscape Impacts*

- 6.26 Your Officer's have given very careful consideration to the reasons given for the objection of the Council's Landscape Architect to the development proposal, as set out in the delegated report appended to this item.
- 6.27 The proposed development would introduce residential development within a countryside location which forms part of the settlement edge of Billingshurst. Views of the development proposal are experienced in the context of the recently completed development adjacent and there will be some adverse effects, but these would be limited by the current localised context. The overall extent of the development would though be significant and it would erode the semi-rural character of the immediate area. This loss of countryside would be particularly apparent to users of the local PRoW network.
- 6.28 However, the appeal site is reasonably visually well contained due to its topography and the extent of existing landscape features, including the mature trees and extensive soft landscaping to the boundaries of the site. The site itself sits lower in the landscape. Accordingly, views of the proposed development would be localised. Direct landscape impacts on existing trees and landscape features will be limited, and there is scope to reinforce some of the landscape buffer with some new planting. The overall density of the proposed development would appear well related to the existing settlement pattern.
- 6.29 Layout is a reserved matter at this stage. Nevertheless, an indicative layout has been submitted which shows a significant proportion of the existing landscape perimeter buffer and landscape features within the site would be retained. The long-term maintenance of this can be secured by appropriate measures in place within a landscape management and maintenance plan via condition. This assists with delivering a layout which could successfully transition from the urban context of Billingshurst into the surrounding open countryside. Such a successful transition is necessary for the development to respond sympathetically to its surroundings.
- 6.30 Overall, officers retain the view that the proposals would result in landscape harm contrary to Policy 25 by virtue of its urbanising influence in the countryside beyond Billingshurst and constraining views into the undeveloped countryside. This would result in harm to the sense of place and countryside character and linkage between the countryside and the open space network created by the new development to the west. In making this judgement it is acknowledged that the impact is very much localised, with there being no harm in longer more strategic views. The localised character harm though remains.

### **The Council's five year housing land supply position:**

- 6.31 The application was refused planning permission at a time when the Council was able to demonstrate a five year supply of deliverable housing sites. Accordingly, the identified conflict with Strategic Policies 2, 4, and 26 of the HDPF was afforded full weight and the principle of development on this unallocated greenfield site was considered unacceptable.
- 6.32 Since this decision was made, recent appeal decisions at Rascals Farm, Southwater (DC/20/0695), Newhouse Farm, Horsham (DC/20/0470) and Sandy Lane, Henfield (DC/20/0427) have established that the Council is no longer able to demonstrate a five year housing land supply, with the supply calculated to be between 4.2 and 4.4 years. This is reflected in the Council's latest Authority Monitoring Report, which calculates the five year supply from 1<sup>st</sup> April 2021 to 31<sup>st</sup> March 2026 to now be 4.0 years.



- 6.33 The absence of a five year housing land supply is a significant new material consideration that in itself engages paragraph 11d of the NPPF; the presumption in favour of granting planning permission, unless the application of policies in the NPPF provide a clear reason for refusing development, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

### **Revised Planning Balance**

- 6.34 In light of the Council's five year housing land supply position and the other new material planning considerations identified above, it is necessary to re-balance the benefits of the proposed development against the harms identified.
- 6.35 The proposals would provide for a collective of benefits including 83 dwellings, a policy compliant 35% affordable housing and increased local spend. The provision of 4 custom / self build plots would provide a small benefit in helping meet the demand for such plots on the Council's custom / self build register. No harm is identified in respect of highways impacts, neighbouring amenity, air quality, trees, flood risk, and heritage. The resurfacing of the Public Right of Way 1941 is a material benefit. The current offer is for 160 metres with discussions between Officers and the appellant for circa 270 metres (100m additional) to make the footpath usable up to Wooddale Lane, as it is currently poached and water logged and would gradually decline given increased usage. The cost comparison quoted by WSCC is £15k for 270m and £9k for 160m.
- 6.36 The proposals however remain contrary to the Council's spatial strategy for new housing development as set out in Strategic Policies 2, 4 and 26 of the HDPF and BNP Policy BILL 1, in that the site is located outside a defined settlement boundary, remains unallocated for housing development, and does not meet any of the exceptions for new development in the countryside. Additionally, harmful landscape impact is identified contrary to HDPF Policy 25.
- 6.37 Given the Council can no longer demonstrate a five year housing land supply, Paragraph 11d of the NPPF is triggered in decision making. Paragraph 11d requires of decision makers that *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (see footnote 8), granting permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*
- 6.38 In applying Paragraph 11d, it is important to first understand the policies which are most important for determining the application and whether they are to be considered out of date. In making this assessment, footnote 8 to Paragraph 11d advises that for applications involving the provision of housing, this includes situations where the Local Planning Authority is unable to demonstrate a five year housing land supply.
- 6.39 In this case, the most important policies for determining the application are HDPF Policies 2, 4, 25 and 26 and BNP Policy BILL 1. Applying Paragraph 11d in the context of the Councils lack of five year housing land supply and footnote 8, HDPF Policies 4 and 26 and BNP Policy Bill 1, which are spatial policies that constrain the location of housing, must be considered out of date. This does not mean that conflict with these policies does not attract weight, rather the weight to be given to their conflict is to be reduced in the overall planning balance. HDPF Policy 25 seeks to protect the natural environment and landscape character and is considered fully consistent with the NPPF, and therefore continues to attract full weight.
- 6.40 In finding that HDPF Policies 4 and 26 and BNP Policy Bill 1 are out of date, it follows that the policies most important in the determination of this appeal overall are out of date. In this situation the NPPF requires that permission be granted (the 'tilted balance'), unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

6.41 In assessing whether this 'tilted balance' takes effect, regard must be had to NPPF Paragraph 14 given the recent adoption of the Billingshurst Neighbourhood Plan (BNP). Paragraph 14 sets out that:

*14 In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:*

- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;*
- b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;*
- c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 74); and*
- d) the local planning authority's housing delivery was at least 45% of that required<sup>10</sup> over the previous three years.*

6.42 In this case, the provision of housing would conflict with BNP Policy Bill 1 as set out above, therefore the four subsequent tests must all be considered and met for the 'tilted balance' to be disengaged. In respect of test a), c), and d), these are met. In respect of test b), the BNP identifies a housing need from 2017 to 2031 of some 360-380 homes which it considers to have been met by existing commitments including the development of some 492 homes at Land East of Billingshurst. On this basis the BNP does not include additional site allocations.

6.43 The HDPF sets out a district-wide housing need of a minimum 16,000 homes through to 2031, of which a minimum 1,500 are to be allocated via neighbourhood plans to enable local communities to control where development in their areas takes place. The strategy for meeting the 16,000 minimum target comprises sites with existing consent as of 2015 as well as the proposed HDPF allocations, allocations via neighbourhood plans, and an element of windfall development. The existing commitments and HDPF allocations in effect reach some 14,500 homes only given the remaining 1,500 homes are to come forward via neighbourhood plans. As a consequence of this, the identified housing needs of each neighbourhood plan area can only be met from developments granted within their area after 2015 to avoid double counting.

6.44 At the time the HDPF was adopted in 2015, the Land East of Billingshurst development of some 492 homes and HDPF allocated site at Land South of Billingshurst (Policy SD11- 150 homes) were existing commitments to meet the district-wide housing need (in effect the 16,000 homes minus the additional 1,500 homes from neighbourhood plans). Accordingly, it is not correct that the identified need for 360-380 homes in Billingshurst between 2017 and 2031 has already been catered for by existing development, as the existing development is already committed in the HDPF strategy to meet the wider district need. The inclusion of these 360-380 is therefore double counting local need with wider district need.

6.45 Accordingly, the identified need for 360-380 homes in Billingshurst has not been fully met by developments granted after 2015, therefore the identified housing needs of Billingshurst are not met by policies and allocations within the Billingshurst Neighbourhood Plan. Test b) of

Paragraph 14 is therefore not met. That the cumulative number of allocations within neighbourhood plans is currently 1,448 (rising to 1,880 when including the remaining post-examination plans) is immaterial, as the 1,500 figure to be delivered by neighbourhood plans within the Policy 16 is not a cap. On this basis, the view of Officers is that the protections afforded by Paragraph 14 do not apply in the determination of this appeal.

- 6.46 Returning to Paragraph 11d, Footnote 7 identifies that conflict with policies relating to habitat sites are those capable of forming a clear reason to refuse permission under part i).
- 6.47 In respect of habitat sites, the NPPF at paragraph 180 states that *'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'*. Paragraph 182 of the NPPF further states that *'the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.'* In this instance, the proposal has not demonstrated water neutrality and therefore would result in harm to the Arun Valley habitats sites. This constitutes a clear reason to refuse permission applying paragraphs 180 and 182 of the NPPF.
- 6.48 Whilst the harm to the Arun Valley habitat sites provides a clear reason to refuse permission, it is nevertheless no longer considered reasonable to otherwise resist the principle of development on this site. The provision of 83 dwellings carries significant weight in decision making, and, in the view of your Officers, exceeds the reduced weighting to be applied to the conflict with the out-of-date HDPF Policies 4 and 26 and BNP Policy Bill 1. In particular, it should be noted that the proposal otherwise accords with parts 2) -5) of Policy 4, in that the level of expansion is appropriate to the scale of Billingshurst; will help meet identified local housing needs and support local services; would not prejudice longer term development; and sits within an existing defensible boundary. Further, the location of the site immediately adjoining the defined settlement boundary of Billingshurst ensures it is sustainably located in transport terms, supporting easy walking and cycling to local services and facilities. The conflict with Policy 4 is therefore simply one of the site not being allocated for development in the development plan.
- 6.49 The benefit of the delivery of the quantum of market housing and policy compliant provision of affordable housing proposed in this particular appeal case would make a sizeable contribution to the Council's current shortfall. Given the extent of the Council's housing shortfall and identified need for affordable housing within the District, these benefits are judged by your Officers to attract significant weight, weight that outweighs the conflict with these out-of-date spatial policies. As such, officer's advice is that the first refusal reason can no longer be supported.
- 6.50 In considering the second refusal reason, landscape harm, it remains that the proposal would cause localised harm to the landscape character of the area contrary to HDPF Policy 25. Given the absence of a five year housing land supply, in this instance the benefit of the housing on an otherwise sustainably located site on the edge of the built up area of Billingshurst and within easy walking distance of local services and amenities is also considered to outweigh the harm afforded by the conflict with Policy 25.
- 6.51 Regard has also been had to the Local Plan Review, with the draft Regulation 19 Plan provisionally published in July 2021 not including this site as a housing allocation. This Plan has not progressed to public consultation while the impacts on water abstraction in the Arun Valley on the Plan are further explored. The content of this draft Plan therefore carries no appreciable weight in decision making.

- 6.52 Accordingly, officers recommend that the Council should no longer defend either the first reason for refusal relating to the principle of development or the second reason for refusal relating to landscape harm. Instead, officers recommend that the Council defend the appeal in relation to the new material consideration concerning the impacts of the development on the Arun Valley habitat sites.
- 6.53 In respect of the third reason for refusal, which related to the absence of a s106 legal agreement to secure the affordable housing and contributions to infrastructure and off-site improvements, including sustainable transport commitments, Public Right of Way resurfacing and a link connection to the new development, and air quality mitigation measures, a draft legal agreement has been submitted as part of the current appeal and is being considered by the Council's legal department. At this stage until the draft agreement is agreed the third reason for refusal will remain as updated.

## **Conclusion**

- 6.54 Whilst the proposals would conflict with the spatial strategy for the District as set out in HDPF Policies 4, 26 and BNP Policy BILL 1, these policies are to be considered out of date given the Council can no longer demonstrate a five year housing land supply, and are now capable of only attracting reduced weighting in the planning balance. In this context, and applying Paragraph 11d of the NPPF, the benefit of the proposed market and policy compliant level of affordable housing outweighs the conflict with these policies, as well as the localised landscape character harm. This conclusion is reached notwithstanding the clear reason to refuse permission that remains by virtue of the impact of the proposals on the integrity of the Arun Valley SAC/SPA and Ramsar sites.
- 6.55 Your Officers therefore conclude that the benefits of the appeal proposal along with consideration all other material considerations outweigh the conflict with the spatial strategy of the development plan and the landscape harm identified. The advice of officers is therefore that this appeal be defended solely on the matter of water neutrality and the absence of a completed s106 agreement.

## **7. RECOMMENDATION**

7.1 That the Council advises the Planning Inspectorate that it will:

- (a) No longer be seeking to defend the reason for refusal nos. 1 and 2 regarding the principle of development and landscape harm given the Council's five year housing land supply position; and
- (b) Will be defending the refusal of planning permission instead on the following grounds:
1. Insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 179 and 180 and 182 of the National Planning Policy Framework (2021), its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).
  2. Policy 16 of the Horsham District Planning Framework requires 35% affordable housing provision on developments of this size. Policy 39 requires new development to meet additional infrastructure requirements arising from the new development. Both the provision of affordable housing and contributions to infrastructure and off-site improvements including sustainable transport commitments, Public Right of Way resurfacing and link connection to the new development, and air quality mitigation

measures must be secured by way of a Legal Agreement. No completed legal agreement is in place and therefore there is no means by which to secure these Policy requirements or a requirement for the provision of 4 custom / self build units. As such, the proposal is contrary to Policies 16 and 39 of the Horsham District Planning Framework (2015) and Policy BILL 6 of the Billingshurst Neighbourhood Plan (2021).