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BY POST AND EMAIL

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DRAFT

Dear Madam

Town and Country Planning Act 1990 - Section 78
Appeal by Woodcock Holdings Ltd in respect of Land at Kingsland Laines, Reeds Lane, Sayers Common

I write for and on behalf of Hurstpierpoint and Sayers Common Parish Council and in response to your letter of 16 June 2015 (addressed to Rodway Planning Consultancy) and copied to the Parish Council for comment. I note that the Secretary of State's decision to dismiss the planning appeal and refuse planning permission has been quashed. Therefore, and under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, you are required to invite further representations for further consideration of the appeal.

The Secretary of State has invited representations on a number of grounds and, for and on behalf of the Parish Council, we respond as follows:

3(a) Any implications of the judgment which led to the quashing of the Secretary of State's decision (Woodcock Holdings -v- SSCLG) on the evidence that was before the Inspector and before the Secretary of State

At the time of the Inspector and Secretary of State's consideration of the appeal proposal, the Hurstpierpoint and Sayers Common Neighbourhood Plan 2031 was still emerging.

The High Court judgement sets out consideration of the relationship of paragraphs 14 and 49 of the NPPF to their then emerging Neighbourhood Plan. This can be summarised as set out in paragraph 103 of the judgment, in which it states:

> *" … It follows that paragraph 49 [of the NPPF] can only be read as extending the ambit of paragraph 14 [of the NPPF]. It has the effect of extending the scope of the presumption in favour of development set out in paragraph 14 (a) so as to apply to draft as well as adopted Development Plan policies, but (b) only where a five-year supply of housing land does not exist and (c) solely in relation to 'housing supply policies'."*

In light of Mid Sussex District Council's absence of a five year supply of housing, it was concluded that the then emerging Neighbourhood Plan policies must be deemed out of date for the purposes of applying paragraphs 14 and 49 of the NPPF. This is set out at paragraph 114 of the judgment, which states that:

> *"I conclude that paragraphs 14 and 49 do apply to the housing supply policies in the Draft Development Plan, including Draft Neighbourhood Plan, and therefore should have been applied in the present case when assessing the weight to be attached to those policies in the Neighbourhood Plan and to any conflict with such policies…"*

The judgment indicates that the Secretary of State failed to apply this approach. Nonetheless, it is of fundamental importance that, having concluded that the emerging policies were out of date, the decision maker must then consider the weight to be attached to such policies. It is not a case that having concluded that a policy is 'out of date', that it carries no weight at all. This is acknowledged in paragraph 105 of the judgment, which states that:

> *"As Lindblom J pointed out in Crane (paragraph 71), where paragraph 49 and the presumption in paragraph 14 apply, the NPPF does not stipulate how much weight should be given to 'out of date' policies. That is a matter to be assessed by the decision maker, in light of the reasons for the shortfall and other relevant circumstances, including, for example, any interim measures being taken by the Local Planning Authority to release land for housing in order to address the shortfall…".*

The judgement continues in paragraph 107-112, including, as follows:

> *"… Paragraphs 14 and 49 of the NPPF do not prevent any regard being had to policies which are deemed to be out of date because of the lack of a five year supply of housing land. Nor does the NPPF specify how much weight should be given to such policies. [Paragraph 107].*
>
> *The NPPF does not lay down a monolithic approach to that issue, whether in relation to an adopted or a draft Plan. Instead, the issue is to be assessed according to the relevant circumstances of the case, including the reasons for the shortfall and steps being taken to address that issue, in addition to applying the presumption in favour of granting permission, and considering the matters specified at paragraph 14 of the NPPF (see Crane, paragraph 71-75). [Paragraph 108].*
>
> *Where a Neighbourhood Plan has been prepared so as to be in general conformity with the relevant parts of a Plan, but a 5 year supply of housing land does not exist, paragraph 49 applies to both the housing supply policies in both the adopted Local Plan and the Draft Neighbourhood Plan, so that when a planning application for housing comes to be determined, (a) the presumption in paragraph 14 will apply (subject to assessing the matters specified which may tell against the grant of planning permission) and (b) the weight to be attached to housing supply policies in each of the Plans will need to be assessed and taken into account, as explained in Crane. [Paragraph 110].*
>
> *… the outcome of applying paragraphs 14 and 49 of the NPPF, where either a draft or approved Neighbourhood Plan precedes the Local Plan, will depend upon the outcome of the assessment, described in paragraph 105 above, in the particular circumstances of each case. [Paragraph 112]"*

It is pertinent to note that paragraph 114 of the judgment indicates that the Secretary of State accepts that this approach was not followed. It is therefore submitted that, having failed to acknowledge the application of paragraphs 14 and 49 of the NPPF, it must consequently follow that consideration was not given as to the weight that should be attached to the then emerging policies.

In this regard, it is noted that paragraph 86 of the judgment states:

> *"It is common ground that policies C1 and H1 to H4 of the Neighbourhood Plan represent "housing supply policies" for the purposes of paragraph 49 of the NPPF (see paragraphs 32 and 43 above). Accordingly, there is no dispute that if at the date when that Plan formally became part of the Statutory Development Plan (19 March 2015) a 5 year supply of housing land could not be shown, (a) those policies would then be treated as out of date and (b) the presumption in paragraph 14 of the NPPF would apply to a decision at that stage whether to grant planning permission."*

This conclusion is disputed. As referred to in the linked call-in application in respect of residential development on land at College Lane, Hurstpierpoint (reference APP/D3830/V/14/2211499), it was accepted by the Planning Inspector and subsequently the Secretary of State that policies that cover purposes beyond simply the supply of land for housing need not necessarily be deemed wholly out of date and in conflict with paragraphs 14 and 49 of the NPPF (having regard to the judgments of William Davis Ltd and Jelson Ltd -v- SSCLG and Northwest Leicestershire, DC[2013], EWHC3058 (Admin) and Cotswold DCVSSCLG and Fay and Son Ltd [2013], EWHC3719 (Admin)). It is respectfully submitted that having regard, for example to the terms of Policy H1, as contained in the then Draft Neighbourhood Plan, these policies should not have been concluded to have been out of date in their entirety. Instead, it was incumbent upon the decision maker to consider the extent to which they related to housing supply policies, set against other planning purposes.

Having regard to these submissions, it is concluded that in light of the decision to quash the Appeal Decision, it is incumbent upon the decision maker to consider the extent to which the Neighbourhood Plan emerging policies may be considered out of date, having regard to the extent to which they are housing land supply policies set against other planning purposes; and then the extent to which policies which are deemed (in part or whole) to be out of date should nonetheless carry weight in the determination of the appeal. These are factors that need to be given further consideration in the determination of the appeal by the Secretary of State.

3(b) This current state of play with regard to the preparation of Local Plans in the Mid Sussex District Council's area and the relevance of policies for the purposes of this appeal

The submissions of Mid Sussex District Council, in their letter of 18 June 2015, are noted. This sets out the District Council's decision on the progress of their District Plan, relevant policies therein, and the weight that should be attached to them at this time.

3(c) Any relevant policies in the Hurstpierpoint and Sayers Common Neighbourhood Plan

Subsequent to the issue of the Secretary of State's decision in respect of this appeal proposal, the then emerging Neighbourhood Plan has been the subject of an Examiner's report (dated September 2014), which culminated in modest changes to the Neighbourhood Plan ahead of a referendum,

which took place on 12 February 2015. A total of 2,139 electors voted (a 42% turnout), of which 1,972 electors (92.4%) voted in favour of the plan.

On Wednesday 18 March 2015, Mid Sussex District Council resolved to 'make' Hurstpierpoint and Sayers Common Neighbourhood Development Plan and this formally occurred on 19 March 2015. A copy of the Neighbourhood Plan Adoption Statement is attached at Appendix 1, whilst a copy of the Referendum Neighbourhood Plan is attached at Appendix 2.

Having regard to this adopted plan, it is considered the following policies are of relevance to the determination of this appeal proposal:

- Policy Hurst C1 - Conserving and Enhancing Character;
- Chapter 5: Housing including:
    - Policy Hurst H1 - Hurstpierpoint and Sayers Common New Housing Development
    - Policy Hurst H3 - Sayers Common Housing Sites;
    - Policy Hurst H5 - Development Principles;
    - Policy Hurst H6 - Housing Sites Infrastructure and Environmental Impact Assessment;
    - Policy Hurst H7 - Affordable Homes;
    - Policy Hurst H8 - Small Dwellings.

Further consideration of the relevance of these policies is detailed in the section below.

3(d) Whether there is a demonstrable 5-year supply of deliverable housing sites

The submissions made by Mid Sussex District Council in their letter of 18 June 2015 in respect of a demonstrable 5-year supply of deliverable housing sites are noted.

3(e) Any other material change in circumstances, fact or policy that may have arisen since this decision of 4 September 2014, and which the parties considered to be material to the Secretary of State's further consideration of this appeal

As detailed above, following the Secretary of State's decision on 4 September 2014, the Hurstpierpoint and Sayers Common Neighbourhood Plan was made in March 2015.

Section 38(3) of the Planning and Compulsory Purchase Act 2004 makes clear that for areas outside of Greater London and within England, the Development Plan is "*the Development Plan documents (taken as a whole) which have been adopted or approved in relation to that area*". On this basis, the Hurstpierpoint and Sayers Common Parish 2031 Neighbourhood Plan is a Development Plan Document for the purposes of a determination of an application on appeal in respect of this proposed development.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that, "*If regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise."*

On this basis, it is submitted that a determination of this appeal should be made in accordance with the Development Plan unless there are material considerations that indicate otherwise.

In this respect, it is noted that material considerations will focus on whether the proposal is in conflict with the now adopted Neighbourhood Plan and the extent to which conflict with these policies is affected by other material considerations; in particular the District Council's absence of a 5-year housing land supply.

The Parish Vision Statement that comprises the overarching vision for subsequent Neighbourhood Plan policies is:

> *"We want to keep the village feel of our community, and keep it a thriving and attractive Parish, a desirable place to live, work and visit. Our aim is to maintain, and where possible, improve the social, economic and environmental well being of our area and the quality of life for all, now and in the future."*

Having regard to this vision, the following strategic objectives for the Neighbourhood Plan are set out:

- Keeping the village feel and sense of place;
- Protecting and enhancing the environment;
- Promoting economic vitality;
- Ensuring cohesive and safe communities;
- Supporting healthy lifestyles.

In support of this approach, Policy Hurst C1 seeks to conserve and enhance the character of the countryside areas of the Parish. This is defined as all land that falls outside of the defined built up areas and land allocated for development, as shown on the Proposals Map. It is pertinent to note that the appeal site is defined within the area of "countryside" for the purposes of the application of Policy C1.

Chapter 5 of the Neighbourhood Plan relates to housing. This details the Parish Council's methodology for consideration of housing need within its parish. In this regard, it is pertinent to note that the parish sought to prepare a Plan to facilitate the delivery of housing need within its parish boundaries, having regard to wider, emerging district requirements for growth. This is a key material consideration. The Parish Council proactively sought to facilitate the delivery of housing that complied with the aims of sustainable development, balancing the three limbs of environment, social and economic.

In this regard, and in consideration of the weight to be applied to policies in this chapter, it is submitted that the Neighbourhood Plan directly and proactively contributes to the shortfall in the District Council's five-year housing land supply.

It seeks to deliver positive housing growth in accordance with the overarching aspirations of the NPPF, notwithstanding the District Council's then, and now, absence of a five-year housing land supply. This can been seen in the significant level of housing growth planned for within the parish, underlined by subsequent grants of planning permission. Furthermore, the parish proactively supported further significant housing growth a short way beyond the boundary of the parish,

namely at the strategic growth point of Burgess Hill. This included the allocation of supporting land uses within the parish, in its northern periphery, to assist in the delivery of the necessary supporting infrastructure to facilitate that development.

For both these reasons, it can therefore be seen that the parish Neighbourhood Plan has strongly supported growth, and in particular housing growth within the district, despite the absence of a five-year housing land supply at a district level. As a result, significant weight should be attached to the Neighbourhood Plan policies, in accordance with paragraph 105 of the judgement.

A failure to do so would significantly undermine the objectives of Neighbourhood Planning policy. It would discourage parishes from proactively bringing forward land for housing ahead of a District Council's establishment of a five-year housing land supply; on the basis that any such allocation in a Neighbourhood Plan could be exceeded by the approval of further significant housing development in areas not supported in a Neighbourhood Plan, argued on the basis of a wider District Council's absence of a five-year housing land supply.

As detailed above, it is also submitted that the policies within the Housing chapter of the Neighbourhood Plan are not housing supply policies alone, but seek to serve wider planning purposes. For example, Policy H1 seeks to ensure new housing development enhances the existing settlement pattern of the village; for development in Hurstpierpoint, provides a significant area of parkland adjacent to the built up areas; and in Sayers Common, enhances flood and drainage management in the village. It is submitted that this cannot, by definition, be deemed to be a housing supply policy alone.

Policy Hurst H3 sets out the approach to the delivery of housing development within Sayers Common. It seeks for development to be conditional upon resolution of water drainage issues. This is a legitimate planning aspiration of development, and cannot be deemed out of date simply as a result of the absence of a five-year housing land supply. It does not seek to prohibit development against arbitrary timelines or reasons, but rather seeks to make delivery conditional on necessary infrastructure.

Policy Hurst H3 seeks to secure the delivery of "around 30-40 dwellings during the Plan period". It is submitted this is not as a cap when viewed within the context of the spatial approach to development in the parish. This seeks to focus housing growth in Hurstpierpoint, where existing services and facilities are considered best placed to absorb growth, and foster the aims of sustainable development, including access to services and infrastructure by non-car modes of transport. This is a legitimate planning aim and is not in conflict with the NPPF aspiration of planning proactively.

Policy Hurst H3 also contains a commitment to undertake "a review and appraisal of deliverable housing sites… at an early stage in the Plan period." This review and appraisal has commenced. It is therefore anticipated that suitable site(s) for housing within Sayers Common will be identified and brought forward by the Parish Council in the near future, in compliance with this policy commitment.

It is submitted that the progress made with the preparation of the Neighbourhood Plan since the Secretary of State's decision in September 2014 is a significant material consideration. The Development Plan has now successfully passed Referendum and has been "made". Whilst noting the High Court judgement on whether policies should be considered out of date having regard to the district's absence of a five-year housing land supply, are nonetheless a significant material consideration. These weigh in favour of a determination of the appeal in accordance with the Neighbourhood Plan, and in this regard the site is not allocated for development.

Summary

For and on behalf of Hurstpierpoint and Sayers Common Parish Council, we ask that these submissions be given due consideration by the Secretary of State in his further consideration of this appeal.

I trust that the above is of assistance, but if you require any further information or clarification, please do not hesitate to let me know.

Yours faithfully

Dale Mayhew BA (Hons) BTP MRTPI
Director

Encs: Appendix 1 - Neighbourhood Plan Adoption Statement
Appendix 2 - Referendum Neighbourhood Plan

cc: Clerk to Hurstpierpoint and Sayers Common Parish Council