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The Planning Inspectorate,

Temple Quay House,

2 The Square, Bristol, BS1 6PN

March 2022

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Dear Sir/Madam

TOWN AND COUNTRY PLANNING ACT 1990 APPEAL UNDER S78

Site Address: Pett Level Road - Land South of, Fairlight Cove, Fairlight

Description of Development: Outline: Development of up to 43 residential units (including 40% affordable), including new vehicular access from Pett level Road.

Application Reference: RR/2020/151/P

Appellants Name: Welbeck Strategic Land III

Appeal Reference: APP/U1430/W/21/3283287 / 2778

I am an Economist and a retired Senior Economic Adviser at HM Treasury. For more than ten years I was a member of the Southern Regional Flood/Coastal Defence Committee appointed by DEFRA dealing with the flood and coastal protection issues of the southern region of England. I am also the Secretary of the Fairlight Preservation Trust.

I understand that an appeal has been made to the Secretary of State against the decision of Rother District Council to refuse planning permission for the above development of 43 new houses on this site in Fairlight, East Sussex. The decision of the Rother Planning Committee to reject this planning application was in my view fully justified and entirely correct for the reasons given in their

decision. The matter was the subject of lengthy and detailed discussion and analysis and was fully considered. The decision was unanimous.

I am strongly against the appeal proposals for the reasons set out below. Welbeck's appeal should be dismissed.

Introduction

I wish to bring to the attention of the Inspector a number of key issues and important facts which explain why this appeal should be rejected.

I was one of two representatives of Fairlight who appeared in person at the hearing of this Planning application before the Planning Committee of Rother District Council on 11 March 2021. I did so in my capacity as the Secretary of the Fairlight Preservation Trust and on behalf of about 100 residents of Fairlight who had lodged written objections to this proposed development. Objections were also lodged by The National Trust, the CPRE and the Ramblers Association.

For ease of reference, I attach a transcript of the short speech that I made to the Committee at the hearing on 11 March 2021. Following my address I was asked a few questions. You will have received the link to the recording of the hearing on YouTube in which I dealt with these matters in my oral submissions and answers. This is essential material for the Inspector to view to understand the issues that arise on this appeal.

Flooding

1. The Inspector should be aware that the East Field site for this proposed development is the subject of flooding whenever there is heavy rain. It is located at the very bottom of Battery Hill, one of the highest hills in the area, in a location that frequently floods and results in a massive run-off into the adjoining watercourse. It is therefore unsuitable for extensive development for housing. A large number of the submissions sent to Rother District Council by local residents drew attention to this major problem with the site.

Interestingly, the site used to be known locally as "Pond Field", a description that perhaps speaks for itself.

2. None of this should be a surprise to Welbeck which produces on this Appeal new evidence from Stantec in the form of a Technical Note. I shall refer to the important parts of the Technical Note in more detail below. But it should be observed at this stage that para 3.28 of the Technical Note states that the Lead

Local Flood Authority (LLFA), East Sussex County Council, confirms that the site is located within Flood Zone 1 and “*there are areas considered at risk from surface water flooding and groundwater flooding located within the site boundary*”. The Technical Note admits at para 3.33 that the LLFA has also provided evidence to suggest that areas of the site may be susceptible to groundwater flooding, especially those areas adjacent to the southern boundary and within the western area of the site.

3. Figure 3.3 attached to the Technical Note shows that approximately half the site has potential for groundwater flooding either below ground level or on the surface. In the light of such evidence, it would be reckless to permit the building of a new housing estate on this site, especially in the light of the increased risks of flooding caused by climate change.¹

Drainage and sewerage

4. One of the most important issues of which the Inspector needs to be aware is that the village of Fairlight, both historically and currently, suffers from severe problems with drainage and sewage disposal. There is a serious deficiency in the capacity of the existing sewerage system to cope with the number of houses that presently exist in the village. This problem can only be exacerbated if permission were to be given to construct 43 extra dwellings on the East Field.

5. These problems have led to frequent floods in the Fairlight Cove area after heavy rain, repeated sewage overflows and, most importantly, the discharge of raw sewage into the local stream and watercourses and along the narrow, un-adopted roads such as Lower Waites Lane (which leads into Stream Lane, a haven for walkers and young children). The wastewater problems are caused by the fact that the system in the village has sewer pipes of only 175mm which are much too small to take the existing quantity of wastewater discharges. The whole structure requires complete renewal.

6. In support of their appeal Welbeck have chosen to file not only the Stantec Technical Note but literally hundreds of pages of supporting documents in an attempt to reverse the decision of the Rother Planning Committee. The Inspector will be aware that much of this material, which is poorly indexed for online examination by objectors, should have been readily available to Welbeck by the time of the original hearing in March 2021 had they taken the

¹ The Inspector will note the error and incomplete source reference in para 4.5.

objections to the proposed development seriously. It does not properly constitute new material that could not have been obtained during the long process of preparing for the planning application and the Committee hearing. Yet Welbeck seeks the costs of the Appeal from Rother, which in effect means from local council taxpayers like myself. I will address that separate issue at the end of this submission.

7. The Technical Note cites the records of foul water flooding and surface water flooding within 500 metres proximity of the development sites in the last 10 years supplied to them by Southern Water ("SW") in May 2021 pursuant to a request under the Environmental Information Regulations 2004. Regrettably those records kept by SW are nowhere near comprehensive. Many incidents have been left off this list. It is well known in Fairlight that residents have telephoned SW on numerous occasions to report incidents but these calls do not appear in the company's records. This is a factor well appreciated by the Fairlight Parish Council which has tried to maintain its own record of such incidents. Prior to the Committee hearing more than 40 local residents among the hundred or more who objected to the proposed development raised objections to the application referring to the sewer and drainage problems of the area.

8. The problem with lack of capacity in the sewers has had to be addressed by local councillors on Rother District Council, by the Fairlight Parish Council and, more recently, by Southern Water itself (see below). It is beyond dispute that the current infrastructure is grossly inadequate and requires further major investment and renewal by Southern Water before there can be any question of expanding the size of Fairlight village by the addition of 43 new houses in the East Field.

9. The main sewer for Fairlight runs along the length of Lower Waites Lane, an un-adopted but heavily populated road. For over two years the Lower Waites Lane Road Maintenance Association (LWLRMA), the local volunteer group which repairs and maintains Lower Waites Lane and its spur roads, has been in contact with the senior management at Southern Water with a view to persuading them to increase the capacity of the existing system of sewers to avoid these unpleasant sewage discharges into the local environment. Since the hearing of this matter before the Rother Planning Committee in March 2021 there have been significant developments as the result of these communications.

10. I refer in this context to the Appeal submission of Chris Bunch, the Chairman of the LWLRMA, which you will have received at your office in relation to this Appeal. Mr Bunch has been in frequent email contact with Mr Ian McAulay, the Chief Executive of Southern Water, drawing his personal attention to the problem with the sewers. As you will see from Mr Bunch's letter Mr MacAulay has directed that these problems must be sorted out and has put the case into the hands of his senior executive team. I have been informed by Mr Bunch that there have been three meetings with members of that team (in October 2021, January 2022 and March 2022) to discuss the acute problems that exist and the need for changes to the system. Assurances have been given that plans for renewal and replacement of these completely inadequate sewers are being prepared by SW. However, the process of obtaining capital expenditures of this type is no doubt lengthy and complicated.

11. What is therefore now clear is that Southern Water, who are the body responsible for drainage and sewage disposal, have acknowledged at senior management level that the existing sewerage system in Fairlight is seriously defective and that it requires substantial improvement and expansion. Work is required both within Fairlight itself and in the connected waste water treatment plant along the Pett Level Road at Marsham, which is nearby. These improvements, which have yet to be costed but may cost several £ millions, will inevitably take some time to achieve as the system requires comprehensive renewal and upgrade to reach a satisfactory standard that avoids a continuation of these frequent sewage discharges. Without that investment the situation for the residents of Fairlight can only deteriorate still further.

12. Given the current state of the sewerage system it is inconceivable that any additional housing development can sensibly be undertaken on the East Field site. The only way these 43 houses can be serviced for drainage and sewage would be via this existing system, which already cannot cope with current volumes. There is no alternative sewage system that can be utilised. The Rother Planning Committee were therefore acting entirely appropriately in refusing permission to this developer to construct 43 more homes on a site that cannot be properly serviced. I well appreciate that the application was for permission for the access road and outline planning permission for the housing estate. But that distinction does not matter as the site is so unsuitable for

what is proposed in the light of the current situation regarding drainage and sewerage.

13. On any basis the discharge of raw sewage into the roads and footpaths represents a serious health hazard for the many residents, including the elderly and young children, and the countless walkers who use the lanes in this area of Fairlight which are part of the Southern Coastal Footpath. As can be seen from the maps of the area, the stream that runs the length of Lower Waites Lane, which is polluted by the raw sewage discharges from the CSO in Lower Waites Lane, runs into Stream Lane, which connects to the Pett Level Road. That is where much of the raw sewage is going, ending up in the fields and streams around Pett Level, which is an environmentally protected area.

14. It is to be noted that the Planning application documents filed with Rother Planning did not address the sewage problems in any detail and, regrettably, the report from Rother officers was equally superficial and inadequate – as I made clear in my remarks to the Planning Committee on 11 March 2021. It was claimed in the officers' report that *"SW have stated that the development could be accommodated within the network"*. In fact, what SW wrote in their letter dated 19 March 2020 was that *"initial investigations indicate that SW can provide foul sewage disposal to service the proposed development"*. (This letter was therefore misquoted by Rother officials in their report at para 8.7.) These initial investigations cannot now be relied upon in the light of subsequent admissions from Southern Water that the present system is inadequate and requires substantial investment to avoid flooding etc.

New evidence by Objectors

15. I repeat that since that letter from SW was written on 19 March 2020 and the hearing before the Planning Committee on 11 March 2021 Southern Water have themselves accepted that the existing sewage services in Fairlight are not sufficient. In an email sent on 27 September 2021 in response to concerns expressed by the LWLRMA about proposed development of the Market Garden site on Lower Waites Lane, Mr Ian Parsons of Southern Water acknowledged the existing problem with the sewers. He wrote:

"Following previous investigations, the system in Lower Waites Lane is hydraulically overloaded in heavy rain.... However, as advised above, flooding is caused by periods of heavy rain, even prior to the development of houses in the area. The last call to the site was 21 June 2021, where the attending crew

found the sewer running at full capacity due to hydraulic overload. It has been identified that we need to upsize the sewer to stop flooding, however, this would be a major investment. Unfortunately, when substantial investment is required, a fast resolution isn't possible."

16. The Inspector will note that an exactly similar point was made by The National Trust in their letter dated 25 March 2020 which stated:

"The Trust objects to the application as the proposed development fails to make adequate infrastructure provision to manage increased volumes of foul and surface water that will be passing into and through the local sewerage system as required by Policy FAC2 (viii) of the Rother DaSA."

16. It is therefore critical that adequate wastewater treatment infrastructure is in place to serve any proposed development of the East Field prior to any development being permitted. This is a vital problem that must be addressed by Southern Water, working with the local community. The fact that the developer has not seen fit to deal with this problem in any adequate manner in its appeal submissions is glaring.

Welbeck's new evidence

17. The appellant attempts to answer the points made by myself and others at the Committee hearing in March 2021 in relation to Drainage by referring to a Flood Risk Assessment and Drainage Strategy contained in the Technical Note prepared by Stantec and dated 21 July 2021. This Technical Note sets out at para 1.4 a number of bullet points on pages 1 and 2.

The 5th bullet point asserts that "*a small proportion of the proposed development appears to be susceptible to groundwater if buildings are set below the existing ground.*" It states that the proposed floor levels of the new buildings are to be set above the existing ground "*avoiding the risk of groundwater flooding*". This is a clear admission of the vulnerability of the site to flooding. It is to be noted that it is unclear how many houses are susceptible to flooding. That figure is not disclosed.

The 6th bullet point refers to the surface water run-off which will "*mimic the existing drainage regime*". As other witnesses have made clear and is shown on Stantec's maps of the area, currently the watercourse floods the back gardens of houses in Broadway backing on to the East Field.

The final bullet point refers to *“the low number of recorded foul water flood incidents mainly due to hydraulic overload”*. First, as stated above, it has been clear for several years to local residents and to Fairlight Parish Council that not all incidents of flooding and discharge from the sewer have been recorded by Southern Water. This has been a bone of contention in the village for a long period. Secondly, it is claimed that there is an *“insignificant foul water flow of 0.31l/s”*. This *“is not considered to increase the risk of foul water flooding of SW’s sewers”*.

Reference is then made to Section 8 of the Technical Note. This calculation is obviously a key part of Welbeck’s new case.

Stantec’s Technical Note Section 8 – Foul Drainage Strategy

18. This part of the document, which is crucial, is just 3 pages in length. It would appear to be the product of a desk study. The following points in particular should be noted:

- (1) It confirms at para 8.3 that the nearest foul water sewer to the site is a 175mm sewer, which runs alongside the southern watercourse. That is correct.
- (2) It is claimed that the foul water discharge from the proposed development of 43 additional residential units is estimated to be 0.31 l/s *“based on the Southern Water’s Foul Discharge Design Criteria as shown in Figure 8.1”*

This figure of 0.31 l/s must be examined with care as so much of Welbeck’s case is based upon its being a full and accurate estimate of the additional foul water flows into a sewerage system already acknowledged by the senior management of Southern Water to be under severe strain and requiring substantial improvement.

19. Figure 8.1 inserted in the Technical Note (at page 29) surprisingly contains none of the accompanying Notes set out in the SW Foul Discharge Design Criteria to explain the working of the calculation although the table itself does incorporate the words *“see note 4”*, *“see note 5”*, *“see notes 6 & 7”*. These Notes are crucial to the calculations. I have however been able to locate them online. That additional task should not have been necessary. As drafted the table at 8.1 does not assist the reader.

20. I wish to emphasise that in my view the calculated figures below the table in Figure 8.1 cannot be regarded as robust. In particular, the figure for occupancy of 2.4 that is used in the calculation is not applicable by reference to SW's Notes 6 and 7. Those Notes state:

"(6) That unless we are advised otherwise, we will assume the occupancy rate of 2.4 persons per property to be appropriate and in accordance with survey data that Southern Water has for development within its area.

(7) Should the makeup of development be known and advised to Southern Water, with regards to the number of 1-bedroom, 2-bedroom units etc then the modelling can be revised on the basis of:

- *Number of bedrooms +1, as the occupancy for each unit type.*
- *This level of information may not be available for initial Capacity Check assessments and in this case the default figure of 2.4 persons/dwelling is considered appropriate."*

22. It should also be observed that, as disclosed in para 8.6, in September 2018 SW were themselves commissioned (presumably by Welbeck itself but this is not stated) to undertake a Feasibility Study based on development proposals of the East Field site for 175 residential units. Para 8.6 records that SW advised at the time that the local sewerage network would require upgrading to convey foul water flows from the development based on a peak discharge rate of 7.89 l/s. It is in this context (7.89 l/s for 175 houses) that it is now argued that the discharge from current proposals for 43 houses (application scheme) is estimated to be only 0.31 l/s.

23. Considerable caution must be exercised before that extraordinarily low figure can be accepted. The number of houses now planned is approximately one quarter of the previous proposal, but the figure for foul water discharges drops from 7.89 l/s to 0.31 l/s. On a broad view, the figure should be about six times that amount on the basis of SW's previous calculations. 0.31 l/s is out of line with the figures produced by SW in the Feasibility Study. It is an impossible ratio which, in the absence of convincing evidence, simply cannot be relied upon.

24. There are the following technical flaws in Stantec's calculation:

- The figure is derived from the default figure of 2.4 for occupancy per household which SW expressly state in their Note 7 to the Foul Discharge Design Criteria is only used when the number of bedrooms in the properties for development are not known at the time the calculation is made.
- In the case of the development of the East Field the number of bedrooms in each property is known and is readily available. It is shown on Welbeck's breakdown of the houses to be constructed at Appendix B page 60. These comprise 26 dwellings of differing sizes for open market provision and 17 dwellings of differing sizes for affordable provision. Significantly, these actual figures have been used in the discussions with the Housing Officer referred to in paras 3.37 – 3.39 of the Appeal Statement of Case.
- The number of planned bedrooms in the 43 dwellings is a total of 108. To that figure must be added 43, being the number of dwellings. That gives a population figure (P) total of 151 in contrast to the figure of 103.2 used in Stantec's calculation in their Figure 8.1 at para 8.1.
- The actual population figure (P) should have been calculated, and the default figure should not have been used. Using the actual figure in the methodology would have increased considerably the Design Flow estimated by Stantec at 0.31 l/s which is so crucial to this Appeal.
- This further reinforces the point that if 175 houses produce a flow figure of 7.89 l/s, the figure of 0.31 l/s for 43 houses cannot be correct and is disproportionate. The figure is out of line and almost certainly unrealistic.

25. Stantec refers in para 8.4 to a pre-development enquiry submitted to SW (included in Appendix C). The particular letter is not identified by date in that paragraph but would appear from my research to be a letter dated 11 June 2021 from SW's "Growth Planning Team – Business Channels". That letter states that:

“There is currently capacity in the local sewerage network to accommodate a foul flow of 0.31l/s”.

It is to be noted that the letter contains no signature and does not identify the writer. (It is to be found in Appendix C to the Stantec Technical Note at pages 89-90 or 224 of 338.)

It is not stated what work has been carried out by that department of SW as the “capacity check” and no explanation is provided yet again for the figure of 0.31 l/s. Is the figure of 0.31 l/s a figure produced by Stantec or one supplied by this department of SW? So far as I can see from the documents supplied, there is also no letter or email from Stantec in Appendix C requesting this information from SW. That is rather strange and requires a full explanation.

26. Para 8.5 of the Technical Note refers to confirmation from SW of “improvement works” that are scheduled for the Fairlight Waste Water Treatment Works. The first of these two bullet points is merely the installation of better monitoring of sewerage discharges from the CSO in Lower Waites Lane. That work was in fact carried out last year but merely serves to provide better information on how many times raw sewage is discharged into the stream and into Stream Lane. As mentioned above, there have been numerous instances of discharges not recorded by SW over the years – hence the need for better monitoring. More importantly, this monitoring information does nothing to increase the capacity of the sewers. How it can be relied upon by Stantec as part of Welbeck’s case on appeal is baffling. This particular point advanced by Stantec should be dismissed by the Inspector as of no value whatsoever, save for showing Welbeck’s own recognition that the adequacy of the system along Lower Waites Lane is essential to this Appeal.

27. In paras 8.7, 8.8 and 8.9 the Technical Note then refers to Southern Water having a duty to provide “Network capacity” and the possibility of a s104 agreement and the need for approval of the connection to the existing network through the s 106 Connection application at detailed design stage. None of these points regarding steps which may be taken in the future addresses the real issues which currently exist.

28. In summary, the connection of this proposed new housing estate will be clearly detrimental to the public sewerage system.

Access to the village

29. A further major problem with the developer's plan for the East Field site is the failure to identify an easy means of access to the rest of the village, including the community centre at the Village Hall, for anyone not using a motor vehicle. It will be a long walk to reach the rest of the village as there is no access to and from the centre of the village to the proposed new development. This will therefore amount to an isolated housing estate, set apart from the rest of the community. Such a development has never previously been permitted and should not be allowed.

The loss of a site in the High Weald AONB

30. As I pointed out in my oral submissions at the hearing on 11 March 2021 the East Field site is located in the High Weald AONB. This will clearly be undermined and the scenic beauty of the area will be harmed if this development is allowed to take place. There are no exceptional circumstances to justify this departure from the normal rules that apply.

31. The National Planning Framework para 172 requires great weight to be given to conserving and enhancing the landscape and scenic beauty of the AONB, which has the highest status in relation to landscape and scenic beauty. The proposed development will be intrusive and will detract from the carefully preserved, special character of the area. It should be noted that this view is supported by The National Trust who wrote in their letter dated 25 March 2020 that the proposed development *"fails to conserve and enhance the natural and scenic beauty of the High Weald AONB which has the highest protection within NPPF."*

Welbeck's costs application

32. I have read para 6.7 of Welbeck's Appeal Statement of Case where Welbeck now threatens that a full detailed costs application will be made during the appeal. While this is of course strictly a matter for Rother District Council to deal with, I would point out, having been present at the hearing before the Planning Committee on 11 March 2021, what a poor presentation was made to the Committee on behalf of Welbeck. That has now required Welbeck to produce the Stantec Technical Note and hundreds of pages of additional new evidence to support this Appeal. Such an application for costs would be outrageous, would be a burden on Council taxpayers and should be

rejected by the Inspector. Welbeck have put the entire community to enormous trouble, great expense and severe strain.

Conclusion

33. It is clearly evident that the weight of the planning balance is not in favour of the development.

34. For the reasons set out above I respectfully ask that the Appeal lodged with the Planning Inspectorate be dismissed.

Yours sincerely,

Dr Ruth Kosmin