

The Planning Policy Team
Rother District Council
Town Hall
Bexhill-on-Sea
TN39 3JX

19th July 2024

Dear Sirs

Representations on the Draft Local Plan 2020-2040 Regulation 18 Consultation

Land to the North of Cherry Tree Nursery, Hawkhurst Road, The Mount, Flimwell, TN5 7QL

1. Introduction

- 1.1. On behalf of our client, Mr David John Harvey, I am pleased to submit representations on the Rother District Council Draft Local Plan 2020-2040 Regulation 18 version, in relation to the site at Land to the North of Cherry Tree Nursery, Flimwell (the site).
- 1.2. The site comprises a parcel of land that is part of a wider 9.55 hectare broad location (ref: TIC0008) that has been identified by the Council in the Draft Housing Land and Availability Assessment (HELAA) as a 'potential additional' growth site, that may be suitable for development, subject to further assessment.
- 1.3. The address of the broad location (ref: TIC0008) is Flimwell East Broad Location, Hawkhurst Road, Flimwell and is referred to in these representations as the 'broad location'.
- 1.4. Please see Figure 1.0 below which shows the extent of the broad location and Figure 1.1 which

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shows the location of the site within the broad location.

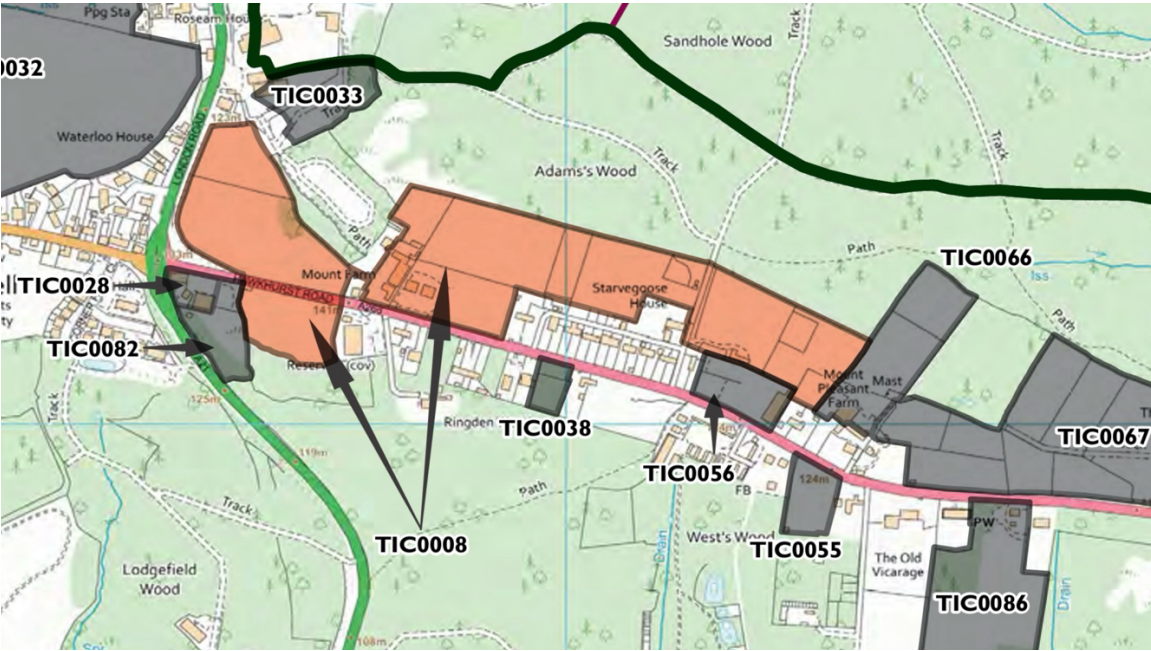


Figure 1.0 Broad Location Site TIC0008

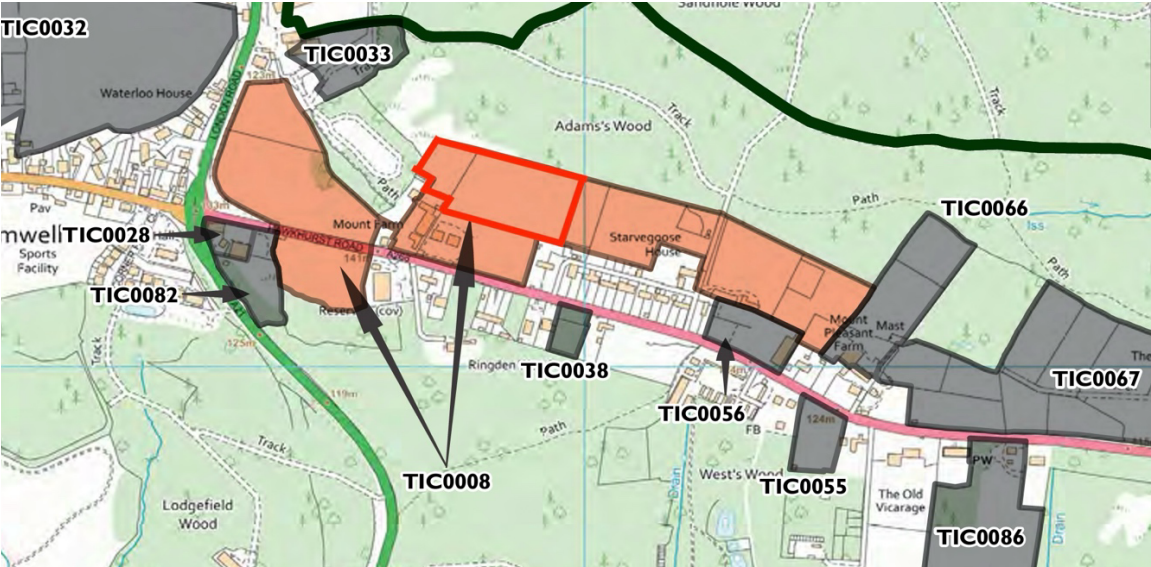


Figure 1.1 Extent of the site at Land to the North of Cherry Tree Nursery (outlined in red) within the broad location site TIC0008

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1.5. As set out above, the broad location has been identified by the Council as a 'potential additional' growth site, that is subject to further assessment. Paragraph 5.32 of the Regulation 18 version of the draft Local Plan sets out that potential additional growth sites include:

1.5.1. *...those sites which may be suitable, available and achievable for development over the plan period (as listed in the draft HELAA), subject to further assessment work and the result of the Regulation 18 consultation.*

1.6. These representations provide information that confirms the suitability, availability and achievability of the site for development, within the wider broad location site TIC0008, to inform the Council's further assessment work for its inclusion as an allocation site for development in version Regulation 19 of the draft Local Plan and through to adoption.

2. The Site and Surroundings

2.1. The site is located just to the east of Flimwell, to the north of the A268 Hawkhurst Road. The site sits to the north of Cherry Tree Nursery and extends to the rear of The Weald Smokery to the west and to the rear of residential properties called The Old Police House and East Cottage to the east. Please see the aerial photograph in Figure 2.0 which shows the location and extent of the site, outlined in red.

2.2. The site is approximately 1.6ha in size and of a roughly rectangular shape, albeit the western boundary of the site is staggered. The site comprises agricultural land with a hedgerow and trees separating the westernmost part of the site from the rest of the site. The site falls within the Parish of Ticehurst.

2.3. The area around the site comprises a mix of pasture, woodland, commercial and residential uses. The site adjoins ancient woodland to the north and west that forms part of Bedgebury Forest. To the south, the site adjoins the northern boundaries of Mount Farm, The Weald Smokery, Cherry Tree Nursery, The Old Police House and East Cottage which all front the A268 Hawkhurst Road. To the east, the site adjoins agricultural land to the rear of residential properties that front the A268 Hawkhurst Road.

2.4. To the west, access into the site is taken from the A268, Hawkhurst Road through Mount Farm, which is in the same land ownership as the site. To the east, access into the site is taken from 'Sunnybank' which is a private drive off the A268, Hawkhurst Road, that also provides vehicular access to the rear of residential properties that front Hawkhurst Road. These are shown in Figure 2.0.

2.5. The A268, Hawkhurst Road, links the site to Hawkhurst to the east and the A21 to the west. The A21 provides connections between Hastings, Tunbridge Wells and London.



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- 2.6. The nearest bus stops are located on the A268, Hawkhurst Road, approximately 0.2 miles (3-minute walk) to the west of the site, and provide services between Hawkhurst, Hurst Green, Rye and Tunbridge Wells. The accessibility of the site is discussed further in paragraphs 6.1 – 6.8.
- 2.7. The site lies in Flood Zone 1, at low risk of flooding and is located wholly within the High Weald National Landscape (formerly called Area of Outstanding Natural Beauty (AONB)).



Figure 2.0 Aerial Photograph of site outlined in red

3. Planning History

- 3.1. A search of the Council's planning applications register has returned no results for the site.
- 3.2. Planning application (ref: RR/2020/174/P) for The Cherry Tree Nursery site which adjoins the site to the south is relevant. This application was for the demolition of existing buildings and erection of 8no. dwellings with access, parking and landscaping and was refused on 30th June 2020 and dismissed at appeal on 6th September 2021 (ref: APP/U1430/W/20/3265770).
- 3.3. While the application was refused, a number of material considerations in this application are relevant to the site.



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4. Current Site-specific Planning Policy

- 4.1. As set out above, the site lies wholly within the High Weald National Landscape, outside of a settlement boundary, near the settlement boundary of Flimwell. Ancient woodland abuts the north and east boundaries of the site.
- 4.2. As set out above, the site is agricultural land that is not previously developed.
- 4.3. The broad location is adjacent to the settlement confines of Flimwell, wholly within the High Weald National Landscape. It comprises a mix of pasture, woodland, commercial and residential uses.
- 4.4. Paragraph 182 of the National Planning Policy Framework (NPPF) states that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty (National Landscapes) which have the highest status of protection in relation to these issues. It sets out that the conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas and the scale and extent of development should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
- 4.5. Paragraphs 82-84 of the NPPF state that planning policies and decisions should support housing developments that reflect local needs and should be located where it will enhance or maintain the vitality of rural communities. Paragraph 83 sets out that planning policies should identify opportunities for villages to grow and thrive. Paragraph 84 states that planning policies should avoid the development of isolated homes in the countryside unless exceptional circumstances apply.
- 4.6. Paragraph 88 of the NPPF sets out that planning policies should enable the sustainable growth and expansion of all types of business in rural areas and paragraph 89 of the NPPF states that planning policies should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. It sets out that in these circumstances, it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). Lastly, it states that sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
- 4.7. The draft local plan identifies a need for between 5,158 and 7,287 dwellings and a minimum of



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74,189 sqm of employment floorspace over the plan period. It also sets out that over 83% of the district falls within the High Weald National Landscape and the remaining part of the district is largely covered by national or international environmental designations or within Flood Zones 2 or 3 or already developed.

4.8. While the NPPF requires for development to be limited in designated National Landscapes, it is reasonable that some sensitive development will be necessary in the High Weald National Landscape within the district, for the identified housing and employment need to be met over the plan period.

4.9. It is demonstrated below that the site is sufficiently contained and well located to deliver sensitive development to meet the identified need.

5. Regulation 18 Local Plan & HELAA Site Assessment – Site TIC0008 Flimwell East Broad Location, Hawkhurst Road, Flimwell.

Availability & Anticipated Timescales for Development

5.1. The Council's assessment of the broad location sets out that *most sections are potentially available* but that the timescales for development are *unknown*.

5.2. On behalf of Mr David John Harvey, it is confirmed that the site to the north of Cherry Tree Nursery within the broad location, as identified in Figure 1.1, is available for development over the plan period to 2040 and within the first half of the plan period.

5.3. Mr David John Harvey owns the freehold of the site and there are no leasehold agreements associated with the land. It is on these grounds that the site is available for development.

Estimated Development Potential

5.4. The estimated development potential of the broad location is for *mixed use to include residential (100 dwellings), commercial and community uses (e.g. 2,850 sqm employment floorspace and 500 sqm employment floorspace)*.

5.5. The site assessment information for the broad location sets out that the eastern part of the broad location, within which the site falls would be suitable for residential-led mixed-use development.

5.6. The Council's Density Study 2024 which forms part of the evidence base to the draft Local Plan, sets out the density of sites such as this, within a countryside location, should be developed at a density that reflects the character of the surrounding area which is typically between 15-30 dwellings per hectare. Based on this, the site at 1.6 hectares could accommodate between 24-48 dwellings.



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Site Assessment

5.7. Page 67-68 of the HELAA sets out the following assessment of the broad location site:

5.7.1. *This is a broad location containing a number of individual land parcels and adjoining fields on the northern and southern sides of Hawkhurst Road, east of the A21 Trunk Road. It offers the potential for growth on the eastern side of Flimwell, although there are some significant issues which would need to be overcome before its suitability for development can be determined, particularly in relation to its sustainability and safe access. Fields within the eastern part of the broad location are relatively well contained within the landscape and could potentially accommodate a sensitive, residential-led, mixed-use development without significant impacts on landscape character and views, subject to the retention of roadside boundary hedgerows (where present) and an appropriate buffer to the ancient woodland to the north. Fields in the north-western part of the broad location, adjacent to the road junction, are more constrained due to their sloping topography, mature trees and historic field boundaries, however, some sensitive development could potentially be accommodated here in order to link to a larger development in the eastern part of the broad location, and provide improved pedestrian and cycle links towards the crossroads. The field on the southern side of Hawkhurst Road is also relatively well enclosed within the landscape and could potentially accommodate a sensitive commercial development in keeping with the adjacent use, subject to the retention of mature boundary trees and the protection of the adjoining woodland.*

5.7.2. *However, due to its scale, development at this broad location may constitute “major development” within the High Weald National Landscape (an AONB), which the NPPF resists other than in exceptional circumstances and where the development is in the public interest, and further consideration of this issue is necessary. Furthermore, the position of this broad location on the eastern side of the A21 means it is not well-located in relation to existing services and facilities within Flimwell, which lie on the western side. While there are bus stops and limited facilities within walking distance, the fast stretches of Hawkhurst Road and the A21 do not provide a pleasant walking environment or safe cycling environment, and significant measures to improve this would be necessary as part of any development, together with improvements to crossing facilities on the A21. Achieving safe vehicular accesses to the individual parcels could also be problematic, particularly for those in the western part of the broad location, and the impact on the capacity of the road junction requires further assessment. The advice of National Highways will be required. If development were to be accepted here it would need to include a mixture of residential, employment and community uses in order to create a sustainable community with much*



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improved links to existing services on the western side of the A21

- 5.8. It is agreed that the eastern part of the broad location, within which the site falls, is well contained in the landscape and could therefore accommodate a sensitive, residential-led mixed-use development without significant impacts on the character of the High Weald National Landscape and views.
- 5.9. As set out above, the site is particularly contained, located between ancient woodland to the north and east and existing development to the south that fronts the A268, Hawkhurst Road (Mount Farm, The Weald Smokery, Cherry Tree Nursery and residential properties).
- 5.10. The ancient woodland to the north and east would act as a visual buffer to any development from the open countryside.
- 5.11. Based on the above assessment, it is understood that the Council intends to undertake further assessment of the broad location to confirm whether it is suitable, available and achievable with particular regard to its suitability in relation to:
- the sustainability of the location of the site
 - whether safe access can be achieved
 - the scale of development in relation to the High Weald National Landscape
 - the impact of development on the road junction
- 5.12. The suitability of the site in this regard is set out in Section 6 below.

6. Suitability

Sustainability of the site

- 6.1. Paragraphs 78-79 of the NPPF states rural housing should be located where it would enhance or maintain the vitality of rural communities and should avoid isolated homes in the countryside unless there are special circumstances. It further states that where there are groups of smaller settlements, development in one village may help to support services in a village nearby.
- 6.2. While the site and the wider, broad location identified by the Council currently fall within the 'open countryside' for planning purposes, it is within walking distance to the built confines of Flimwell and many local services and facilities, including Flimwell Park and the Woodland Enterprise Centre. Further, the neighbouring village of Ticehurst is only a relatively short distance



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away (2.1 miles) and this provides access to several facilities including a primary school, doctor's surgery, public house and post office.

- 6.3. For this reason, it is argued that the site is not an 'isolated' site, in line with the High Court judgement of *Braintree District Council v SCLG & Others*. Local services and facilities are set out in Table 1 below.

Local Facilities & Services	Walking Distance
Bus stops	3 minutes/6 minutes
The Weald Smokery (shop and café)	1 minute
Country Furniture Barns	4 minutes
Flimwell Park: Birchwood Restaurant, Wild Iris Spa, The Potters Studio, Quench Cycles, Hive workspace including hot desking, small office space and meeting rooms, Wealden Osteopaths & Spine Centre, Weald at Heart Forest School	4 minutes
Flimwell Village Hall	7 minutes
Woodland Enterprise Centre: Tate Fencing, High Weald National Landscape, Exhibition Hall, office space & meeting rooms (used for Covid vaccinations)	18 minutes

Table 1: Distance to Local Services & Facilities

- 6.4. Further, 4 bus stops are located within 6 minutes walking distance from the site where services to Hawkhurst, Tunbridge Wells, Ticehurst, Uplands College and Hastings can be obtained. It is 13 minutes by bus from the site into the centre of Hawkhurst which has two supermarkets, dentists, doctors' surgery, hairdressers, cafe and cinema. Please see Table 2 below which provides further information regarding the frequency of these services.

Bus Service	Frequency
1066: Hastings – Hawkhurst – Tunbridge Wells	Hourly outside of peak times. Approx. every 30 minutes at peak times.



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U1: John's Cross – Ticehurst – Uplands College	AM out & PM return weekdays only (term time)
U2: Hawkhurst – Flimwell – Ticehurst – Uplands College	AM out & PM return weekdays only (term time)
U3: Burwash – Etchingham – Uplands College	AM out & PM return weekdays only (term time)
U4: Flimwell – Ticehurst – Uplands College	AM out & PM return (term time)

Table 2: Bus Services

6.5. It has been identified by the Highways Authority as part of a planning application (ref: RR/2020/174/P) for The Cherry Tree Nursery site (adjoins the site to the south) that both the eastbound and westbound bus stops would benefit from being upgraded with raised kerbs, new poles and possible bus stop clearways provided. Further, the Highways Authority recommended that a pedestrian crossing point in the vicinity of the existing bus stops would significantly improve pedestrian safety. It is reasonable that these improvements could come forward as part of development proposals for the site and the wider broad location and would represent a significant public benefit.

6.6. As set out above, the site and the broader location are not 'isolated' for planning purposes.

6.7. Given the range of local services and facilities within walking distance of the site, including employment opportunities and co-working space, together with the proximity of bus stops providing services to Hawkhurst and Tunbridge Wells, it is considered the site and the wider broad location identified by the Council are in a relatively sustainable location. Further, the opportunities for significant enhancements to the existing pedestrian environment and existing bus stops would be of public benefit and likely lead to the increased use of public transport. When taking these into consideration, it is reasonable that residents of any new development on this site would use the local facilities, services and workspaces that are within walking distance of the site.

Immediate Pedestrian & Cycle Environment

6.8. It is acknowledged that the existing pedestrian and cycle environment surrounding the site and the wider broad location is not high quality. However, it is reasonable that improvements for walking and cycling could come forward as part of any development proposals for the site and the wider broad location, including improved crossing facilities at Flimwell Crossroads junction, crossing facilities to the bus stops and improved cycle facilities along the A268, Hawkhurst Road.



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Safe Access into the Site

- 6.9. As set out above, vehicular access into the site is taken from the A268, Hawkhurst Road through Mount Farm to the west which is in the same ownership and from 'Sunnybank' to the east, that also provides vehicular access to the rear of residential properties that front Hawkhurst Road.
- 6.10. The existing vehicular access points into the site could be used to serve development proposals for the site. Further, Cherry Tree Investments Ltd, owner of Cherry Tree Nursery, has confirmed that it would be willing to provide access through the Cherry Tree Nursery site to the site. Cherry Tree Investments Ltd has agreed to adopt a masterplan approach to development of the broad location and achieving safe access onto the A268, Hawkhurst Road would form a key part of this approach.
- 6.11. It was agreed by the Highway Authority in relation to planning application RR/2020/174/P that safe pedestrian and vehicular access could be achieved into The Cherry Tree Nursery site. The Highway Authority confirmed that the appropriate visibility splays could be achieved over highway land or land that is in the control of the applicant but that some cutting back of foliage overhanging the highway verge would be needed. Such works could be secured as part of a future planning application. It is therefore considered reasonable that a safe and adequate vehicular access could be achieved to the site.
- 6.12. The Highway Authority identified as part of planning application (ref: RR/2020/174/P) that the footway on the north side of the A268 between the site and the bus stops is overgrown and narrow in places. While it was not considered reasonable to require for the improvement of this footway for a development of 8 dwellings, it is reasonable that the development of the broad location could bring about significant benefits to this pedestrian route.

The scale of development in relation to the High Weald National Landscape (formerly Area of Outstanding Natural Beauty)

- 6.13. The council's assessment of the broad location identifies that due to the scale of the broad location, development may constitute "major development" within the High Weald National Landscape which is resisted by the NPPF, other than in exceptional circumstances and where the development is in the public interest.
- 6.14. Paragraph 183 of the NPPF sets out that:

6.14.1. *"When considering applications for development within national parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should*



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include an assessment of:

6.14.1.1. *the need for development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;*

6.14.1.2. *the cost of, and scope for, developing outside of the designated area, or meeting the need for it in some other way; and*

6.14.1.3. *any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.*

6.15. Footnote 64 of the NPPF sets out that for the purposes of paragraph 183, whether a proposal is ‘major development’ is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designed or defined.

6.16. The Town and Country Planning (Development Management Procedure) Order 2010 Article 2 includes in its definition of major development, the provision of *dwelling-houses where the number of dwelling-houses to be provided is 10 or more or the development is to be carried out on a site having an area of 0.5 hectares or more, and the development carried out on a site having an area of 1 hectare or more.*

6.17. The question of what constitutes a major development in the AONB / National Landscape has been tested in the courts.

6.18. In *Aston v Secretary of State for Communities and Local Government* [2013] EWCH 1936 (Admin), the judge concluded that:

6.18.1. *the word ‘major’ has a natural meaning in the English language albeit not one that is precise’; and*

6.18.2. *‘to provide a precise definition would mean that the phrase has an artificiality which would not be appropriate in the context of planning policy’.*

6.19. In another judgement, in *R. (Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895 (Admin), the judge affirmed the approach taken in the *Aston* case in defining ‘major development’ according to “the normal meaning to be given to the phrase” and confirmed that the decision as to whether or not a development was ‘major development’ was a matter of planning judgement.

6.20. These judgements would appear to confirm that the determination of whether an application is ‘major development’ is fact specific and a matter of judgement for the decision maker. In so doing, and as the judgement in the *Aston* case refers to the natural meaning of the word major

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in the English language, then the Oxford English Dictionary definition which is “important, serious or significant” is relevant. The context must also be taken into consideration. Factors such as the location and size of the settlement affect the decision.

6.21. It is not just the DMPO definition that defines “major development” in the AONB/National Landscapes.

6.22. For example, in Appeal decision APP/Y2736/A/13/2197184, Land to the rear of Station Road, Ampleforth (decision dated 13 nOVEMBER 2013), a development of 30 housing units was found not to constitute major development in the context of the existing village development and in APP/C3621/A/11/2159362. Land to the rear of Springfield Road, Dorking (decision 30 April 2012) the Inspector concluded that “major development” may include both published and “common sense” criteria. He found that a development of 14 dwellings was not “major development” on any criteria.

6.23. As set out in paragraph 5.6, in line with the Council’s Density Study 2024, the site at 1.6 hectares could accommodate between 24-48 dwellings at a density of between 15-30 dwellings per hectare.

6.24. In accordance with the decisions set out above it is important to consider the location and context of the site when determining whether development proposals would constitute major development. As set out in paragraph 5.9 the site is contained in nature, located between ancient woodland to the north and east and existing development to the south. On this basis, the impact on the National Landscape would be minimal subject to a sensitive design and layout. In line with other appeal decisions, it is reasonable therefore that a development on this site at a low density would not constitute “major development” for the purposes of paragraph 183 of the NPPF.

6.25. In relation to the broad location, given the scale of the broad location and the estimated development potential of 100 dwellings and 2,850 sqm employment floorspace, when taking into consideration of the above court and appeal decisions, it is reasonable to determine that development of this nature would constitute “major development” for the purposes of paragraph 183 of the NPPF.

6.26. The Council’s identified need in the draft local plan is for between 5,158 and 7,287 dwellings and a minimum of 74,189 sqm of employment floorspace over the plan period.

6.27. Over 83% of the district is within the High Weald National Landscape and part of the remaining land is covered by national or international environmental designations, within Flood Zones 2 or 3, and therefore at risk of flooding, or already developed.

6.28. When taking this into consideration, it is reasonable that exceptional circumstances could apply



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and that an assessment of the development of the broad location in line with paragraph 183 of the NPPF would demonstrate:

6.28.1. a need for the development and a negative impact of refusing it on the local economy

6.28.2. that there is little scope to develop outside of the High Weald National Landscape or meet the need in an alternative way

6.28.3. that the effect on the environment, landscape and recreational opportunities is limited given the context of the site and can be further moderated through sensitive design.

6.29. Further, given the scale of the broad location and the associated development potential, it is reasonable that development of the broad location could secure a series of public benefits including affordable housing, significant improvements to the pedestrian and cycling environment surrounding the site and the existing Flimwell junction.

The impact of development on the road junction

6.30. The Highways Authority confirmed in relation to planning application ref: RR/2020/174/P for The Cherry Tree Nursery site, that the nearby A268/A21/B2087 (Flimwell Crossroads) junction suffers from issues with congestion during the AM and PM peak hours. In relation to the application for 8 dwellings, the Highways Authority concluded that given the low level of traffic likely to be generated by the development proposals, the Highways Authority was satisfied that the impact on the junction would be imperceptible.

6.31. It is acknowledged that the estimated development potential of the site within the broad location could exacerbate congestion at the junction in the peak hours and consultation with Highways England is necessary to establish what works could be undertaken to improve the junction. Large scale development at the broad location could support significant improvements to the pedestrian and cycling environment and to local bus stops, which would in turn reduce the reliance on the private car, together with improvements to the road junction.

7. Conclusion

7.1. It has been demonstrated that the site within the wider broad location is available for development within the early part of the new plan period.

7.2. Information has been provided on the accessibility of the site and the extensive range of local services and facilities that are within walking distance of the site, including workspace.

7.3. It has been demonstrated that while the site is located within the countryside for planning



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purposes, the site is well contained, surrounded by ancient woodland to the north and east and existing development to the south that fronts the A268 Hawkhurst Road and on this basis it is reasonable that development of the site could come forward that does not significantly impact the High Weald National Landscape.

- 7.4. There are two vehicular access points from the A268, Hawkhurst Road into the site and the neighbouring landowner, Cherry Tree Investments Ltd, has confirmed it would undertake a masterplan approach to development of the Cherry Tree Nursery site to enable a third access if needed. As set out above, the Highways Authority has agreed as part of a previous planning application for the Cherry Tree Nursery site that safe access could be achieved.
- 7.5. It is for the above reasons that the site should be included as part of the broad location, as an allocation site for development in version Regulation 19 of the draft Local Plan and beyond.

Yours faithfully,

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