

INTRODUCTION

Lewes District Council submits these planning representations in response to the letter dated 20 November 2006 from the Department for Communities and Local Government.

1. INTERPRETATION AND APPLICATION OF PPS 7

1.1 Lewes District Council responds first to Matter (b) contained in the DCLG letter of 20 November 2006, as the proper interpretation and application of Government policy in respect of AONBs in general, and the guidance in PPS7 in particular, are major issues of principle, and of fundamental concern to Lewes District Council.

1.2 **Policy Background:** The most recent, over-arching guidance is to be found in PPS1: "Delivering Sustainable Development", which sets out the national policy approach to sustainable development, in particular the 4 aims of:

- social progress which recognises the needs of everyone
- effective protection of the environment
- the prudent use of natural resources, and
- the maintenance of high and stable levels of economic growth and employment

1.3 PPS1 explicitly states that these aims should be pursued "*in ways that protect and enhance the physical environment.*" (para.4).

1.4 Furthermore, PPS1 goes on to state, at para. 17, that "*the Government is committed to protecting and enhancing the quality of the natural and historic environment...*" and that "*a high level of protection should be given to the most valued ..landscapes.... Those with national and international designations should receive the highest level of protection.*"The guidance further states that "*Adverse environmentalimpacts should be avoided, mitigated or compensated for.*"

- 1.5 Thus, in order to be sustainable, development must avoid, or at the very least mitigate, adverse environmental impacts. This is particularly true in the AONB which is given the “highest level of protection.”
- 1.6 PPS 7 confirms that it is **Government policy** that “nationally designated areas” including AONBs have *“the highest status of protection in relation to landscape and scenic beauty.”*
- 1.7 On 21 November 2006, the Minister for Biodiversity, Landscape and Rural Affairs re-emphasised the importance that the Government attaches to AONBs and their protection. In a DEFRA Press release he announced that the UK had ratified the European Landscape Convention, the first international agreement of its kind. (See Annex 1 attached).
- 1.8 Signatories to this Convention agree to recognise landscapes in law as an essential part of people’s heritage, identity and surroundings.
- 1.9 The Minister went on to say that: *“these living landscapes are a source of our most cherished resources....Britain is already a world leader in protecting its landscapes, and the Convention is a major step forward. It will ensure that any change and development is sympathetic and appropriate to the environment, and is designed to help create new landscapes where people want to live and work as well as protecting our most cherished scenery.”*
- 1.10 By virtue of ratifying the Convention, the need to ensure the protection of AONB landscapes, including the South Downs, is now enshrined in law.
- 1.11 It is national policy that major developments should not take place in such sensitive areas, except in exceptional circumstances. They should be demonstrated to be *“in the public interest”*. Given their high level of protection, this must necessarily be a stringent test, which by definition only few developments can meet.

The PPS7 Public Interest Test

1.12 Development in the AONB can only be in the public interest if the following criteria are met:

- (i) Protection and enhancement of the physical environment must be achieved as a result of the development. That is because AONBs enjoy the highest policy and legal protection;
- (ii) By definition for development to be in the public interest it must be sustainable. A sustainable development is one that, inter alia, avoids an adverse environmental impact, particularly in the AONB;
- (iii) The interests of the whole community must be protected if development is to be demonstrated to be in the public interest: in the context of a football stadium in the Sussex Downs AONB, that includes not just football supporters but also the 39 million and more visitors each year to the South Downs.
- (iv) It is axiomatic that where there exists an available and suitable alternative location outside the AONB which can meet the need, development in the AONB cannot be in the public interest.

1.13 PPS 7 identifies that the consideration of major applications should include an assessment of:

- (i) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- (ii) the cost of, and scope for, developing outside the AONB, or meeting the need for it in some other way; and
- (iii) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

- 1.14 Lewes District Council is profoundly concerned at the First Secretary of State's conclusion (at para.62 of his Decision Letter) that *"there is a considerable local need for the proposed development and that it would bring significant regeneration and economic benefits to one of the most deprived areas in the country, which he finds to be in the national interest"*, and the way in which he used this conclusion to justify his finding that the development is in the "public interest" [DL 49].
- 1.15 Plainly, the determination as to whether a development is in the public interest cannot rest solely upon a consideration of need and regeneration benefits. For the reasons given above, it must necessarily include an assessment of the environmental damage caused by the development to the AONB. Lewes District Council considers that the previous Secretary of State failed to balance adequately the severe environmental damage that will be caused to the AONB by a stadium at Falmer in reaching his determination on the public interest test.
- 1.16 In any event the First Secretary of State overstated the community and regeneration benefits brought about by the development as follows:
- 1.17 There are 4 planning applications currently before the Secretary of State, 2 within the Brighton and Hove City Council area, and 2 within the area of Lewes District Council, but as agreed at both Inquiries, the proposals represent one, major development straddling the administrative boundaries, and thus stand or fall as one entity.
- 1.18 The main part of the development comprises the football stadium, capacity 22,374, and the transport interchange. It is intended that the stadium would be used for 30 first-team football matches per annum (each with an estimated average attendance of 12,500, rising to 17,000 in the third year); in addition, annually it would be used on 6 occasions by other sports clubs and a further 6 for other stadium sports events.

- 1.19 Non - Football Community Use: There would be one pop concert and one classical concert per annum (with an attendance limit of 22,500). Also proposed are other outdoor shows (with an estimated attendance of 5,000 per event), rising in number from one to 3 over the first 3 years; further, there would be participation events of the same size and number (see First Inspector's report, para. 3.7).
- 1.20 In terms of wider, community-based facilities, the west stand of the stadium would include a nursery school/crèche, a play and skills training area for children, a homework club/learning hub for young students and adults, and teaching space for use by the University of Brighton (see First Inspector's report para. 3.4).
- 1.21 The east stand would provide some 1200 sq m of office space suitable for an "innovation centre" or business starter units (see First Inspector's report, para. 3.4).
- 1.22 The First Inspector's conclusions on the above were that, although the community and educational initiatives would be highly beneficial, "*...many of those benefits would arise wherever (in Brighton and Hove) the stadium were built. As stated, certain of BHFC's community services already operate successfully; according to the ES, some are not stadium-based.*" (para. 18.39)
- 1.23 Lewes District Council asks the Secretary of State to conclude that there is little scope, in terms of the restricted numbers of other football/sports usage and non-football events per year, restricted numbers of days per year for such activities, and the very small range of activities themselves, for any meaningful use of the main stadium for community purposes.

Regeneration Benefits:

- 1.24 The Football Club, in their planning application (First Inspector's report, paras. 6.42 – 6.45), outlined the regeneration benefits which they believed the Stadium proposal would bring to the area.

In summary, these comprised the following:

- 600 new full-time equivalent jobs (including 300 construction jobs)]
- estimated 217 jobs indirectly
- generation of between £13m and, by year 5, £24.4m towards Brighton`s GDP
- community and educational initiatives

1.25 Brighton and Hove City Council (para. 7.22) estimated the benefits as follows:

- 250 FTE jobs, comprising 76 for BHFC, 100 for the stadium company, and 75 commercial posts
- 300 construction jobs

1.26 However, the First Inspector disputed the scale of these estimates for the reasons outlined below:

“I have no doubt that this scheme would bring important and very welcome economic and social benefits to this deprived area, and top the city as a whole, but not on quite the scale the Applicants claim....the breakdown of those jobs as presented by the Applicants...specifies that (of the increase in staff of 76 FTE`s), 34 are part-time posts. This would appear to give some credence to FPC`s contention...that the Applicant`s figures are an over-estimate.” (para. 18.31)

“There is also cause for some uncertainty about the Applicant`s estimate of 190 FTE jobs created in the stadium company. While I acknowledge that in their jobs breakdown 479 posts are identified (and the FTE figure represents a reduction of some 60%), 429 are part-time only, and of those, 349 are stewards or steward supervisors who...would be employed only on match days...FPC again maintains that the Appliocants have over-estimated their figures and...I find it hard to disagree. BHCC also judges the specified FTE figure to be too high and..suggests a total of 100 FTE jobs would be more

realistic. By contrast there is no information as to the basis of the Applicant's figures nor, indeed, any evidence offered on fluctuations in stadium employment should average match attendances be lower than the e Club anticipates." (para. 18.32)

- 1.27 As to the overall GDP benefits, he took the view (para. 18.35) that the lower figure of £13m was more likely, a figure also estimated by the City Council.
- 1.28 He thus assessed (paras. 18.39 – 18.40) that the Club had over-estimated the likely benefits of their proposals, and that, although there would be important and valuable regenerative benefits flowing from the development, many of those benefits would arise wherever, in Brighton and Hove, the stadium were built.
- 1.29 Moreover, the broader, city-wide benefits were expressly not dependent on the Falmer location, as Sussex Enterprise agreed. There are, in any event, more deprived wards than Moulsecoomb within the City, such as East Brighton (Sheepcote Valley) which would benefit from any regeneration effects.
- 1.30 As Annex 2 attached illustrates, based on the latest (2004) data, East Brighton is ranked the most deprived ward overall within the City, and for 4 out of the 7 domains of deprivation. In contrast, Moulsecoomb and Bevendean (incl. Falmer) ranks only 3rd. overall, and 1st. in only one domain.
- 1.31 The First Inspector's conclusions as to the likely regeneration benefits at his para 18.39 - 18.41 thus need re-iterating:

"In all the circumstances, on balance the evidence demonstrates that the application proposals would have an appreciable beneficial effect on the economic and social well-being of the immediate Moulsecoomb/East Brighton area and, to a lesser extent, on the city as a whole. However, the Applicants' assessment of the importance of those "benefits" is very much overstated. As described above, both the jobs provision and the boost to

Brighton's GDP would not be so great as they say and while a close relationship with the Universities would have many advantages, it is clear that most of their claimed benefits could be secured to a greater or lesser degree wherever in the city the stadium were located; development at Falmer is not an absolute requirement."

- 1.32 These conclusions above were not disputed by the First Secretary of State in his Decision Letter.
- 1.33 Plainly, the primary purpose of the application proposals is for a football stadium, with very minor, ancillary uses for non-football activities. Any "benefits" in this context would thus be overwhelmingly to the football club and its regular supporters only, with very few, and even then limited, benefits accruing to the wider community.
- 1.34 Lewes District Council therefore invites the Secretary of State to conclude that the economic and regeneration benefits to the local area have been over-stated by Brighton and Hove Albion Football Club and that the community use of the stadium will be limited.
- 1.35 In any event, a football stadium at Sheepcote Valley would bring greater economic and regeneration benefits to that eastern part of the City where there are higher indices of deprivation.
- 1.36 Not only would a stadium bring greater economic benefits if sited at Sheepcote Valley, in addition it would have none of the many, negative effects upon the AONB which accompany development at Falmer; nor would it have the adverse social impact on the rural village of Falmer which was identified by the First Inspector in his Report:
"the present proposal would have a serious effect on the social well-being of this particular community." (para. 18.40).
- 1.37 It should be pointed out that no benefits accrue to the rural community (the only beneficiaries being the populace of urban Brighton) and the nearest

such community, Falmer Village – a community in a rural area - would, as stated above, suffer a detrimental impact upon its social and environmental well-being.

1.38 The First Secretary of State also concluded that: *“...the significant local need for a stadium, the national interest to regenerate some of the most deprived wards in the country, the significant contribution the proposal would make towards achieving regeneration, and the impact of refusing permission upon the local economy amount to national considerations that weigh in favour of the proposed development.”* (para. 29 of DL).

1.39 It is Lewes District Council’s case that the First Secretary of State misapplied the “national considerations” test, for the reasons outlined below.

The primary purpose of the proposed development at Falmer is the construction of a **football stadium**; it is **not** an application for a major regeneration scheme. Indeed, in their ES, the Club were attempting to justify their proposals in terms of need for a football stadium only. Neither the Club nor any other party has ever made the case that local or national weight should be accorded to the secondary and incidental regeneration benefits consequent upon the building of a football stadium. The latter is solely a construct of the First Secretary of State in his decision letter of October 2005, not a case advanced by the applicants or backed by any evidence heard at the Public Inquiry.

1.40 It is very far removed from the interpretation of (then) PPG 7 set out in para. 18.48 of the First Inspector’s report: *“On the basis of my conclusions...I take the view that at best there is a local need for the community facilities which the proposed stadium would provide; it certainly does not amount to a matter of national interest. But, significantly, it is plain that the primary purpose of this proposal is to provide a football stadium for BHFC, as the Applicants freely admit. And on that score, this scheme fundamentally fails the “need” test based on national considerations which PPG7 now establishes.”*

(Note: At the Inquiry, all parties agreed that PPS7 did not materially differ from the (then) PPG7 in terms of the national need test).

- 1.41 The First Secretary of State's accepted, as he had to, that the applicant has not established a national need for the stadium, merely a local need. On that basis the application must fail. Nevertheless the First Secretary of State granted consent, because it is in the "national interest to achieve regeneration."
- 1.42 The implications of the First Secretary of State's decision, and his interpretation of this part of PPS7, are serious and wide ranging; in essence, what he is saying that a major development can be permitted within an AONB, if the need for the development is only local but that development happens to bring with it other incidental or consequential benefits which arise from the secondary, rather than the primary, purpose of the application.
- 1.43 This sets a dangerous precedent, namely that proposed developments within an AONB -which on the "need" test are only local - may, simply because they bring incidental benefits which support a national aspiration, justify a grant of planning permission. An example of such a development might be the proposed major expansion or relocation of a locally-based factory into an AONB/National Park, or a new housing scheme (the initial construction jobs generated, and those arising from locally-generated Key Worker accommodation and/or live/work units, no doubt benefiting the locally deprived area), or even a new food superstore which provides jobs during and after construction. This cannot rationally amount to the "exceptional circumstances" identified in PPS 7 (Para 22).
- 1.44 The starting point for a proper assessment of the issues is the national policy to protect and enhance areas such as AONBs, and to only allow development in the exceptional circumstances defined in PPS 7.

1.45 The First Secretary of State's Decision Letter is based upon an incorrect interpretation of PPS7. In this case, the First Secretary of State has opined that the local, but limited, regeneration and economic benefits of the proposals, to a recognised deprived area, represent national considerations of such importance as to outweigh the national policy considerations of permitting major development in an AONB. Moreover, those benefits derive from a secondary purpose of the proposed development, not its primary purpose, which is the provision of a new football stadium.

1.46 This flies in the face of the thrust of PPS7: if a major development is only of local need, as conceded by the First Secretary of State, then, notwithstanding its secondary benefits, it cannot amount to the necessary exceptional circumstances to permit development in the AONB. It would be too easy to make the case for almost any development in the AONB.

1.47 OVERALL CONCLUSIONS ON THE PUBLIC INTEREST TEST

In determining whether development is in the public interest at Falmer, it is necessary to weigh in the balance:

- (i) the very serious harm to the AONB;
- (ii) the limited economic regeneration and community use of the proposed stadium;
- (iii) the existence of an alternative site, also to the east of the City but in a more deprived ward (thereby bringing the same or better regeneration benefits), which lies outside the AONB with none of the rural harm issues identified at Falmer
- (iv) the impact of the stadium on the many millions of people who visit and enjoy the South Downs AONB for its landscape qualities and beauty.

1.48 The harm that would be caused to the physical environment and landscape quality of the AONB at Falmer was identified by the First Inspector as very significant (Lewes District Council does not seek to repeat his conclusions

on this issue but for convenience sets them out at Annex 3 of these representations).

- 1.49 These conclusions were not disputed by the First Secretary of State in the quashed Decision Letter, but he attached less weight to them because of his erroneous belief that the whole of the application site lay within the built-up area boundary of Brighton and Hove.
- 1.50 Because of its very significant harm caused to the AONB, the proposed stadium at Falmer will result in a profoundly unsustainable development.

There is an alternative location outside the AONB which meets the need and delivers greater regeneration and economic benefits. The evidence of Lewes District Council, produced here and by RPS, demonstrates that there are no reasons why planning permission ought not to be forthcoming for a community stadium of a similar size at this alternative location, Sheepcote Valley.

The development is in conflict with PPS 1 & PPS 7. The Secretary of State should conclude that the proposed development in this location is not in the public interest.

- 1.51 Furthermore, any decision to approve the application would be contrary to the European Landscape Convention.

2 APPROACH TO ASSESSMENT OF ALTERNATIVE SITES

2.1 This section addresses the matter raised under item (c) in the DCLG letter.

2.2 In summary, the First Secretary of State's approach is considered wrong under the following 3 headings:

(i) the First Secretary of State applied the wrong test to alternative sites;

(ii) the First Secretary of State treated the Sheepcote Valley site differently and inconsistently to Falmer;

(iii) even if the First Secretary of State's test was correct, (which Lewes District Council disputes), there is evidence that there IS a reasonable prospect of planning permission being granted for the Sheepcote Valley site.

2.3 **(i) The Appropriate Test** - In his conclusions on alternative sites, the First Secretary of State dismissed Sheepcote Valley and Toads Hole Valley on the grounds, inter alia, that *"there is no reasonable prospect of planning permission being granted for a community stadium at any of the alternative sites."* (para. 49 of Decision Letter).

2.4 It is Lewes District Council's contention that this is the wrong test to apply to the existence of alternative sites. The First Secretary of State's test is inconsistent with case law. It is the District Council's contention that the correct test is still that set out in *GLC-v-SSE and LDDC and Cablecross Projects Ltd. (1986) JPL 193*, as per Oliver LJ, - namely that, in determining the Falmer applications, regard must be had to the existence of alternative sites and the consideration should be whether, in each case, that site is one *"which would not have the same adverse effects, or would not have them to the same extent."*

- 2.5 Secondly, through the planning application process, the role of objectors is merely to draw attention to the existence of more suitable alternative sites; they are not required to support their views with the amount of detailed material which would accompany a formal planning application. If they were required to provide the same level of detail, this would represent an unduly onerous task, beyond their resources and with the possibility of objectors becoming reluctant to exercise their statutory right to object.
- 2.6 Thirdly, in this context, the Secretary of State has only 1 formal planning application in front of her for determination.
- 2.7 Finally on this point, the First Secretary of State's test fetters the right of future decision-makers – whether it is the local planning authority or the Secretary of State – to determine a formal, fully-detailed planning application for a new stadium on an alternative site.
- 2.8 A comprehensive Environmental Impact Assessment (EIA) has been produced to accompany the Falmer applications. The alternative sites are not the subject of formal planning applications and thus nowhere near the same level of information is available in relation to them, nor could the Second Inspector and/or the First Secretary of State expect such information to be made available.
- 2.9 It is simply not possible to make a fair and balanced planning judgement between the impact of a stadium at Falmer and at alternative sites by considering both in the context of whether there is a reasonable prospect of planning permission being granted.
- 2.10 When one considers the practical implications of the test advanced by Brighton and Hove Albion Football Club, and adopted by the Second Inspector and First Secretary of State, it immediately becomes apparent that it is plainly the wrong test. The threshold it sets for the identification of

alternative sites is too high. It places an intolerable burden on objectors to any application.

- 2.11 It makes it almost impossible for objectors to development to defeat it by reference to the existence of alternative sites without submitting a planning application for those sites and establishing through the requisite processes that there are reasonable prospects of those applications succeeding.
- 2.12 (ii) Inconsistency in Approach** - Applying the test put forward by the District Council above, the extent of harm that has been found in relation to the proposals at Falmer is sufficiently great that the harm caused by locating the stadium on another site would have to be at least “overwhelming” (the level concluded by the First Inspector in his consideration of the Falmer proposals) before those sites can be rejected as suitable alternatives.
- 2.13 Firstly, therefore, it is necessary to identify the harm identified by the First Inspector in relation to the Falmer site. For ease of reference, the harm identified by the First Inspector is summarised in Annex 4.
- 2.14 Given the daunting array of adverse impacts as set out in Annex 4, it is not surprising that the First Inspector’s overall conclusions in respect of compliance with approved and emerging development plan policies was as follows: “**...while there are several policies, or policy provisions, which lend support for this proposal, the evidence clearly demonstrates that there is a much more significant scale of conflict with a wide range of provisions.**” (para. 18.172)
- 2.15 Moreover, he went on to conclude, at para. 18.242, that the above-mentioned considerations “*are overwhelming*”, hence his recommendation that all four applications should be refused. (para. 18.244)
- 2.16 In his Decision Letter of October 2005, the First Secretary of State failed to comment or address all of the above adverse impacts arising from the Falmer site – e.g. he comments upon the First Inspector’s conclusions in

respect of need, character and appearance of the landscape, regeneration benefits but makes no reference whatsoever to erosion of the gap between settlements, harm caused by the Stanmer Link Road, or to the loss of the best and most versatile agricultural land.

- 2.17 Nevertheless, the First Secretary of State himself identified many adverse impacts arising from the Falmer site. These are listed in Annex 5.
- 2.18 Having set out all these issues of harm relating to Falmer, then a comparison should be made with the harm arising, on the information available, from development at the alternative sites.
- 2.19 In relation to Sheepcote Valley, the “harm” is, by comparison, minimal in the extreme. As to the single local adverse impact identified by the Second Inspector – ie accessibility – Lewes District Council has instructed RPS, consultants, to produce a Transport Assessment, from which it appears clear on their evidence that there is now no case for rejecting Sheepcote Valley on accessibility grounds..
- 2.21 At Sheepcote, the Second Inspector concluded that there was only **one** adverse impact – the adequacy of the site’s accessibility by public transport – something he described in his para. 10.158 as its “Achilles heel”. This conclusion, heavily relied upon by the First Secretary of State to justify the rejection of Sheepcote Valley, has been comprehensively undermined by the transport assessment of the accessibility of Sheepcote Valley carried out by RPS Transport Consultants.
- 2.22 But, in any event, this impact was not of such a fundamental strategic, policy or development plan nature as the array of adverse impacts at Falmer, and was more of a local – and not insurmountable - issue, compared with the national policy issues arising at Falmer.
- 2.23 This is evidenced in the Second Inspector’s para. 10.43: *“the possibility of enhancing the services from the Marina is being investigated and proposals*

are in hand for a rapid transit system extending to the Marina. It is not inevitable therefore that the position could well change, thereby increasing the site's degree of accessibility by bus...

- 2.24 He therefore only rejected Sheepcote Valley as an alternative site at that time on the basis of insufficiently precise information to overcome the deficiencies he had identified. This lack of detailed information is not surprising, given that the Sheepcote Valley site has not been the subject of a formal planning application, with all the technical assessment and supporting information that would go with it.
- 2.25 Moreover, in his concluding para. 10.168 he indicated that although **at present** (i.e. July 2005) there was no reasonable prospect of planning permission being granted on the alternative sites, nevertheless: *“some of the other locations examined have certain particular attributes that, when considered in isolation, appear more attractive than at Falmer. And I would not rule out the possibility that further investigations could provide practical and workable solutions to some, at least, of the problems I have identified, for example traffic congestion.”*
- 2.26 As can be seen from elsewhere in these representations and in the Transport Assessment made by RPS, matters have moved on significantly regarding the development of public transport improvements from the City centre to the Marina, clearly indicating that any earlier deficiencies have now been addressed.
- 2.27 (iii) **Prospect of planning permission being granted at Sheepcote Valley**
Although the Second Inspector only identified one adverse impact at Sheepcote Valley, the First Secretary of State, in his Decision Letter at para. 35, introduced a second adverse impact, namely the fact that, as the site was not within the boundary of the built-up area, then he was not satisfied that planning permission would be forthcoming if a stadium at Falmer was refused.

2.28 However, there is no evidence to support this conclusion, which in any event is at odds with the Second Inspector's views on the same point at his paras. 10.36 – 10.38:

“The criteria in Policy NC6 do not encompass the possibility of a stadium development, but the policy does allow exceptions to be made, albeit subject to there also being “no significant adverse effect on the countryside/downland”. Moreover, Policy SR19(a), the policy that would apply to a stadium scheme in a location other than Falmer, expressly provides for the possibility of a site outside the built-up area and refers to the circumstances that would “warrant a departure from other policies”. There is no doubting the importance that BHCC attach to the community stadium proposal and this, together with the contention that there are no alternative sites within the built-up area, would provide a compelling basis for overriding Policy NC6, provided that no adverse impacts on the site and its setting ensued. The same view applies insofar as Policies QD4 and NC4 are concerned. In particular, the latter policy also allows exceptions to be made where development is of city-wide importance and cannot be located anywhere else”.

“I see no reason to question the general restriction on development outside the confines of the City's built-up area, but the site is not in the AONB and so in terms of its landscape, it does not enjoy the highest status of protection in the national policy context. I am not satisfied that there are overriding site specific planning issues. Much depends upon the likely impact of a stadium here. I address this below.”

“As regards the question of the fall back position referred to by BHAFC, Sheepcote Valley differs from Falmer in that the BHLPP makes no provision for built development here. If the stadium development did not proceed at Falmer for whatever reason, this would not preclude the possibility of the part of the site within the City from being developed, as the BHLPP expressly provides for this. The provisions of BHLPP Policy SR25, as set out in the Proposed Modifications to the plan, coupled with the partial use of

previously developed land, are points in Falmer's favour. And, in the light of the guidance in PPS7, I do not regard the loss of good quality agricultural land as a weighty objection. But these factors are not sufficient to outweigh the AONB considerations that apply to the application sites as a whole. The fact that Sheepcote Valley does not enjoy AONB status is sufficient to give it an advantage over Falmer in planning policy terms."

- 2.29 In the light of the above, the First Secretary of State's statement in para. 35 regarding the prospect of obtaining planning permission at Sheepcote Valley was plainly wrong.
- 2.30 All in all, therefore, the alternative sites (in particular Sheepcote Valley) do not present the fundamental, insurmountable obstacles to obtaining planning permission which the First Secretary of State so relied on in coming to his decision in October 2005.
- 2.31 The First Inspector concluded that development at Falmer would have more adverse effects than would development at alternative sites. Moreover, the adverse effects at Falmer would be at a strategic/national policy level and in particular would be contrary to national AONB policy and to policies in the Brighton and Hove Local Plan.
- 2.32 Having identified the relative adverse impacts of Falmer and Sheepcote Valley, it is necessary to turn to the merits of alternative sites. It is necessary to highlight in particular those which relate to Sheepcote Valley, as the DCLG letter specifically requests more information on this site. (The following comments relate to the relevant planning issues; RPS deal with the accessibility issues in their Transport Assessment).
- 2.33 The primary advantage of Sheepcote Valley is that it does not lie in the AONB, or within the proposed National Park. Thus the development of a stadium at this location would suffer none of the landscape impacts or harm to the AONB and policy conflicts associated with similar development at Falmer. Secondly, in respect of the availability of Sheepcote Valley, it

should be noted that the Applicants - the Football Club – agree that the site is available. Brighton and Hove City Council stated the contrary (Second Inspector’s report para. 10.29) but the Second Inspector did not accept the City Council’s view, which he put down to *“scepticism regarding the practicalities of relocating some of the existing uses and the timescale involved, rather than an outright refusal to contemplate the disposal of any land.”*

2.34 He went on to conclude, in his para. 10.30, that: *“given BHCC’s positive stance in assisting and supporting the Club’s quest, I am loath to conclude that the prospect of acquisition is unreasonably unrealistic.”* This would particularly be the case if the Falmer site were refused planning permission by the Secretary of State and attention then shifted to Sheepcote Valley as the Football Club’s preferred location for a football stadium.

2.35 Thirdly, in terms of the relative socio-economic effects of a new stadium at Sheepcote Valley, it should be stressed that Brighton and Hove City Council’s comments confirm the case put forward by Lewes District Council, namely: *“Taken as a single package, the community and regeneration benefits would be equivalent to those at Falmer.”* (para. 5.75 of Second Inspector’s report).

2.36 Finally, as stated above, another advantage of Sheepcote Valley is that because it does not lie within the AONB, and because it is located close to the major growth node of the Marina/East Brighton, should the stadium project subsequently require further funding (e.g. via enabling development), it has significant advantages over Falmer.

2.37 This fact appears to have been recognised in a consultant’s report, commissioned by the Football Club in 2004, on the best position *“for the new stadium and its hotel.”*

2.38 A letter dated 8 November 2004 from the consultants, CDB Project Services, is attached at Annex 6, from which the following conclusions

should be noted: *“Our preliminary research indicates clearly that Sheepcote offers the most attractive alternative, but that it may represent unacceptable challenges to the Council in light of improved infrastructure that would need to occur to make it a resounding success.”*

2.39 Of course, this conclusion was reached before the more recent planned and partly-funded infrastructure improvements referred to below and in RPS’s evidence.

2.40 Notwithstanding the above, the report went on to state that: *“If, however, the Council sees the benefits to this location as outlined herein and through its own information, then Sheepcote would indeed be our Number One choice for the new stadium, since it affords:*

- *Tremendous job and training opportunities for east Brighton*
- *The creation of a true leisure precinct which would be a magnet to the region*
- *The broadest opportunity in terms of future amenities*
- *The best returns to the investors and the club”*

2.41 It is evident from all of the above and from the detailed transport assessment carried out by RPS that a stadium at Sheepcote Valley would be readily accessible by a 22,000 capacity crowd using sustainable modes of transport, would bring benefits to the most deprived wards in Brighton, would lie outside the AONB, and would not lead to anything like the same scale of environmental damage that would occur if a stadium were to be located at Falmer.

3 LOCATION OF SITE IN RELATION TO DEVELOPMENT PLAN POLICIES

- 3.1 This section relates to matter (a) in the DCLG's letter, namely the location of the Falmer site in relation to the built-up area of Brighton, as identified in the Local Plan, and the significance of that location, having regard to current development plan policies.
- 3.2 (Note: it is assumed that the Secretary of State is already in possession of the relevant development plan policies,; if not, Lewes District Council will supply copy extracts if requested).
- 3.3 Reference will also be made, for the purposes of the Secretary of State's further consideration of the applications, to emerging and material planning policies at both the regional and local levels.
- 3.4 Throughout his Decision Letter of October 2005, the First Secretary of State placed significant reliance on his "finding of fact" that the application site for the stadium is located within the boundary of the built-up area of Brighton City as identified by the Brighton and Hove Local Plan.
- 3.5 However, this was a fundamental error of fact. Very nearly the whole of the development site, including the site of the stadium, lies outside the built-up area boundary as defined by the adopted Local Plan. I attach at Annex 7 an extract from the Brighton and Hove Local Plan Proposals Map which shows, dotted black, the extent of the defined built-up area.
- 3.6 The Secretary of State must assess the applications against relevant Development Plan policies, as follows:
- 3.7 **Brighton & Hove Local Plan 2005 (BHLP)** – the definition of built-up area (BUA) in this document is: *"extent of land identified in the LP Proposals Map within which the development of the City has occurred. The outer limits are the BUA...beyond which is the countryside and/or the sea."*

One must thus turn to the relevant policies of the Brighton and Hove Local Plan which apply to such countryside areas as the application sites. These are as follows:

3.8 Policy NC6: Development in the Countryside/Downland –the over-arching principle here is that no development will be permitted outside the BUA boundary, exceptions only being made where:

- (i) there will be no significant adverse impact on the countryside/downland and
- (ii) where at least one of the 4 stated criteria apply.

3.9 Regarding criterion (i), it is interesting to note that in para. 43 his original decision letter, the First Secretary of State acknowledged that there WOULD be a significant adverse impact upon the countryside/downland:

“...the Secretary of State agrees that the proposed development would cause damage to the character and appearance of this attractive stretch of open landscape and would be seen from a wide range of short, medium and long-distance vantage points, most of which are located within the AONB. The Secretary of State has attached considerable weight to the harm to the AONB in his consideration of this application.”

3.10 However, he then goes on to attach less weight to the existing quality of that landscape, allied to his mistaken belief that *“the site is within the defined built-up area of the City.”* (para. 44).

3.11 This is an erroneous analysis of the facts: as now conceded, the site is NOT within the built-up area, and is subject to countryside/AONB policies. Also, it is not appropriate to “cherry pick” parts or sections of AONBs for individual and dissected description in order to dilute the quality of that part of the landscape. The fact remains that the whole site lies within the designated AONB, and development proposals therein must be assessed in PPS7 terms as outlined above.

- 3.12 This should be allied to the fact that the Countryside Agency, in evidence, confirmed that the application site meets the designation criteria for the proposed National Park, including its natural beauty and recreational opportunity criteria. (it should be note here that, although one of the reasons for the First Secretary of State deciding to re-open the Inquiry was to *consider “the implications for the application site and for any other alternative sites located within the AONB of the proposed designation of the South Downs National Park”*, he made no such reference to this key point in his Decision Letter.)
- 3.13 As to criterion (ii), *in* Policy NC6, the only relevant one of the four listed therein is (a) *“the proposal is specifically identified as a site allocation elsewhere in this Plan, the siting of which is shown and complies with the Proposals Map.”*
In terms of the proposed football stadium, this means a cross-reference to Policy SR23. However, this policy, and the associated site allocation on the Proposals Map, applies only to the Brighton side of the administrative boundary. It is thus too small to accommodate the total extent of the proposals in the planning application – ie not just the stadium itself, but also the adjoining transport interchange, new road/junction proposals, car parking, etc. (see site edged red on the “master-plan” which accompanied the planning application).
- 3.14 Compliance with Policy SR23 is also dependent upon the submission of a business plan. At no time was a business plan presented to the Inquiry; nor was one submitted to the First Secretary of State.
- 3.15 For all these reasons, the application proposals fail to comply with Policy NC6.
- 3.16 Policy NC5 – Urban Fringe – this is defined in the Local Plan as usually within 2km of the built-up area. A pre-requisite for compliance with this policy is that proposals within the urban fringe must comply with Policy NC6

(above); as stated above, the proposals do not meet the requirements of Policy NC6, and thus fail against NC 5 accordingly.

3.17 Notwithstanding the above, the NC5 criteria, (a) – (e), refer to positive contributions to the overall enjoyment of the countryside, to integration and enhancement of nature conservation features, the securing of environmental improvements, and so on.

3.18 In other words, they are aimed at securing appropriate improvements to the area and surrounding countryside, with only small-scale leisure and recreational uses facilitated; a major proposal such as a football stadium with its associated urban-like paraphernalia would run wholly counter to this policy.

3.19 Policies NC7/NC8 – Sussex Downs AONB/Setting: these contain a presumption against new development in the AONB and within its setting; exceptions will only be made where the following 2 criteria are met:

(a) conservation and enhancement of the visual and landscape quality and compliance with Policy NC6, etc.

(b) it can be demonstrated that the development is in the “national” interest and with no alternative sites available elsewhere.

3.20 Regarding (a), it has already been pointed out above that the First Secretary of State agrees that these proposals will not conserve or enhance the visual and landscape quality. He confirms this in para. 46 of his Decision Letter: *“The SoS agrees with the Inspector that the proposal would cause considerable harm to the AONB.”*

3.21 It has also been pointed out above that the proposals do not comply with Policy NC6.

3.22 In terms of the setting of the AONB, the First Secretary of State also agrees (see above) that the development would be unduly prominent when viewed from adjoining or even more distant viewpoints, being visible from roads and rights of way, and thus a threat to the public enjoyment of the AONB.

- 3.23 As to (b), Section 1 above highlights the clear lack of a national interest case for a football stadium, the First Secretary of State himself agreeing that there was only a LOCAL need for the proposals as contained in the planning applications, namely a football stadium and associated infrastructure.
- 3.24 It is also Lewes District Council's case that alternative sites ARE available elsewhere, particularly Sheepcote Valley
- 3.25 Having regard to these factors, the proposals fail to comply with Policies NC7/8.
- 3.26 Policy QD4 – Design; Strategic Impact – at his para. 15, the First Secretary of State accepts that: *“given the scale and nature of the proposals in this location, within the AONB and the proximity to listed buildings, it may not accord with Policy QD4, which seeks to preserve or enhance strategic views, important vistas, the skyline and the setting of landmark buildings.”*
- 3.27 Policy SR16 – Major Sporting and Recreation Facilities: this states that such facilities should be located within the defined BUA, and supported by, inter alia, a business plan. (Never put in evidence).
- 3.28 However, any proposals outside the BUA must be supported by convincing evidence that the proposal was of significant cultural and recreational importance to Brighton and Hove, and that no alternative sites were available.
- 3.29 Although no doubt the fan base of the Football Club would subscribe to the former, there is no evidence that the proposals would be of any significance to the other cultural and recreational interests elsewhere within the conurbation.
- 3.30 Indeed, I have outlined above the very minimal, and time-limited, number of occasions when the football stadium would be available for non-football events, and that other sites are available (and which would be more consistent with the aims and objectives of Policy SR16).
- 3.31 The proposals at Falmer would thus fail against Policy SR16.

- 3.32 Policy EM20 – Village Way North : this is the “fall back” policy to SR23 above, and supports general B1 or specific D1 University use, subject to criteria.
- 3.33 However, the introduction of non-university, general D1 uses is a significant dilution of the original Local Plan allocation, which was specific to University use ONLY, and where any campus extension would comprise the low level/highly landscaped form of development which is a characteristic of the existing campus. Unfettered B1 uses would result in denser development, higher buildings and a generally lower level of landscaping, less sympathetic to the character and appearance of the AONB at this point.

East Sussex and Brighton and Hove Structure Plan 1991 – 2011(CSP)

- 3.34 Policy EN1; General and Policies EN2 – EN4: emphasise the conservation/enhancement of landscape generally, and the AONB in particular, with a presumption against major and/or damaging development.
- 3.35 The First Secretary of State attempts to override these very restrictive policies via the exceptions provided under Policies EN5 and S10 , viz. where justified by proven national interest and a lack of alternative sites.
- 3.36 But as stated above, the proposals the subject of the planning applications, viz. football stadium, etc., are not of proven “national interest”, and alternative sites exist.
- 3.37 Moreover, Policy S10 makes no reference to alternative sites as such, but merely indicates that *“proposals for new development in the countryside will be required to demonstrate that a countryside location is necessary...”*.
- 3.38 This is not the same as saying that an AONB location is necessary: even if a town or village location would not be suitable, there are other, non-AONB, countryside sites which are suitable, e.g Sheepcote Valley.
- 3.39 The proposals do not therefore meet the strict pre-requisites necessary to secure compliance with policy EN5, and the proposals must thus fail against Policies EN1 – EN4.

- 3.40 The First Secretary of State also concluded that the applications gained support from Policies LT1 and LT2, in that they would bring “*economic benefits to a very deprived area.*”
- 3.41 But this pre-supposed that the football stadium would “*strengthen and develop leisure and tourism activities and facilities to meet the needs of residents and visitors..*”. whereas the stadium provides no such benefits to the wider populace, and in any event is not compatible “*with the conservation of the environment and distinctive local character.*”
- 3.42 It has also been acknowledged that such benefits as there might be would also accrue at other sites within the City, in particular the most deprived Ward, East Brighton, within which is located Sheepcote Valley.
- 3.43 In terms of the other policies quoted by the First Secretary of State, it should be noted that the First Secretary of State only gives the proposals for a new stadium justification on local need grounds in relation to Policies LT11 and LT14 – a long way short of the national pre-requisite for major developments in AONBs under PPS7.

Lewes District Local Plan 2003

- 3.44 At his para. 18, the First Secretary of State accepts that the proposed development “*fails to accord with the relevant policies in the Lewes District Local Plan,*” these being:
- 3.45 CT1 - Planning Boundary and Key Countryside Policy: which contains a strong presumption against development outside defined planning boundaries, and against the erosion of gaps between settlements, so as not to detract from their separate identities.
- 3.46 In this respect, Chapter 20/Inset Map 10 shows quite clearly the defined planning boundary for the village of Falmer, and emphasises the key issue of the maintenance of its identity.
- 3.47 CT2 – Landscape Conservation and Enhancement : is aimed at ensuring the continued protection of the landscape and character of the AONB, within which major development would be incompatible, exceptions only being

considered on the basis of “demonstrable national need and lack of alternative sites” (same comments apply here as above).

3.48 Conclusions: in direct response to matter (a), the First Secretary of State’s own conclusion at his para.62 of his Decision Letter is worthy of note: *“..although the application site is allocated in the recently adopted local plan for a stadium, the proposed development cannot be said to be in accordance with the development plan.”*

3.49 Here, he is in agreement with the conclusions of the First Inspector regarding compliance or otherwise with the development plan. The First Inspector states as follows:

“...I conclude that the application proposals would not be consistent with the primary objective of national guidance to conserve the natural beauty of the landscape.” (para. 18.28)

“On the basis of the Applicants` argument, it would seem that a considerable number of clubs could justifiably feel entitled to claim the same “national need” for a new stadium in a nationally protected landscape; at the inquiry, the Chief Executive of the Football Association said as much. That is hardly consistent with the policy concept of exceptional circumstances.” (para. 18.45)

“Thus the loss of this site to development of the scale and in the manner now proposed would completely erode this open gap and amount to the encroachment of the built-up area into these essentially rural surroundings causing serious harm to their character and appearance and, in particular, to Falmer’s distinctive identity.” (para. 18.99)

“Given all the foregoing considerations, in terms of the effects on Falmer Conservation Area and its listed buildings, and on the south-eastern corner of Stanmer Conservation Area, Stanmer Park and the listed lodge cottages, the proposed development (including the link road) would be in conflict with national guidance in PPG15.” (para. 18.149)

“In forming my overall conclusions on the Development Plan issue I recognise, as the Applicants point out, that in relation to a scheme of this scale and nature there is inevitably a tension between different policies of the Plan. Yet while there are several policies, or policy provisions, which lend support for this proposal, the evidence clearly demonstrates that there is a much more significant scale of conflict with a wide range of provisions. On balance therefore I conclude that the present scheme, as a whole, is generally inconsistent with the adopted Development Plan.....” (para. 18.172)

- 3.50 The significant difference between the First Secretary of State’s decision and the conclusions of the First Inspector is that the latter did not consider the other material planning considerations to be of sufficient weight to overrule the development plan objections – *“Certainly those plus factors are far outweighed by the compelling objections which there are to this proposal.”*(para. 18.187), whereas the former concluded: *“On balance, the Secretary of State has concluded that the overall weight of material considerations in this case is in favour of the proposed development...”* (para. 62)
- 3.51 But as highlighted above, the First Secretary of State’s conclusions were flawed, being based on an exaggerated view of the economic and regeneration benefits which accrued only from the secondary purpose of the application, not the football stadium itself; failing to acknowledge that those benefits would apply to any other site or that the benefits would be of more impact in the most deprived ward of the city; failing to acknowledge that other (non-AONB) sites were available; and relying on a “test” of the reasonable prospect of planning permission being granted for those alternative sites which was the wrong test.
- 3.52 The First Secretary of State thus gave undue and unjustified weight to the other material planning considerations, and too little weight to the overwhelming development plan considerations.
- 3.53 The First Secretary of State’s decision on the development plan issues is contrary to the evidence presented to the Inquiry.

- 3.54 NEW AND EMERGING POLICY CONSIDERATIONS:** since the First Secretary of State's decision, there has been a raft of new and emerging policy documents which the Secretary of State should now take into account as relevant and material planning considerations in arriving at her decision on the applications. These are as follows :
- 3.55(i) Draft South East Plan** – the Core Document for this Plan was formally submitted by the South East England Regional Assembly (SEERA) in March 2006. It has been the subject of extensive public consultation, and is now at the Public Examination stage (commenced November 2006). The policies which follow are considered relevant to the Secretary of State's considerations. (extracts attached at Annex 8)
- 3.56 Section D7: Countryside and Landscape Management – this confirms that, for the south-east, the national advice in PPS7 relating to specially designated landscapes and the need for their special policy protection applies, particularly to the South Downs (see below).
- 3.57 Policy C1b; The South Downs – confirms that the Government is considering the designation of the South Downs National Park and that, until a formal decision is made on this, Policy C2 dealing with AONBs should be applied to the areas of the South Downs currently designated AONB i.e. including the application site.
- 3.58 C2: AONBs: as with national policy guidance, this gives priority to the conservation/enhancement of natural beauty; an emphasis on small-scale proposals; with proposals which support the area's economy and social well-being encouraged, providing they do not conflict with the aim of conserving/enhancing natural beauty – a new football stadium (a major, urban scale, proposal), fundamentally conflicts with such an aim.
- 3.59 RE5: Addressing Intra-Regional Economic Disparities – this aims to address structural economic weakness; in the coastal belt (incl. The Sussex Coast), Local Development Documents (LDD`s) should give priority to delivering economic development in allocating land, etc. However, Brighton and Hove

City Council have not yet undertaken this exercise, thus it would be premature to consider the Falmer AONB site in isolation for any identified, and then only secondary, regeneration benefits (as did the First Secretary of State).

3.60 Even if it were considered relevant at his juncture then, as stated above, there is a non-AONB site available at Sheepcote Valley, which is situated within the most deprived ward in the City.

3.61 SCT 1: Core Sub-Regional Strategy: this applies specifically to the Sussex Coast Sub-Region and, while exhorting local authorities and others to pro-actively pursue and promote the sustainable economic growth and regeneration of the area, it nevertheless requires that promotion of this aim will, inter alia, *“protect the sub-region’s high environmental quality (in both town and country)...”*

3.62 A major urban project such as a football stadium in an AONB will not, achieve this aim.

On the contrary, when comparing the relative merits of Falmer and Sheepcote Valley, it is clear that the AONB would remain unharmed if the stadium were built at the latter site.

3.63 TSR3: Regionally Significant Sports Facilities – Sport England has identified facilities of regional or national importance, but interestingly there is no reference to a new stadium for Brighton and Hove Albion Football Club in general, nor Falmer in particular, in this context; Southampton FC stadium, on the other hand, is given as an example of a facility with sub-regional implications, including catering for a wide range of community and educational benefits.

3.64 Moreover, the policy applies only to “regionally significant” sporting venues, particularly in defined areas of the region, but again these do not include the football club or the Sussex Coast.

There is therefore no policy support for a new stadium in Brighton in this document let alone in the AONB; this suggests a lack of need for such a facility or, at best, only a local need.

3.65 It is of note that neither Brighton and Hove Albion Football Club nor Brighton and Hove City Council have made objections to this particular section of the policy.

3.66 Cultural and Sporting Activity – this encourages increased and sustainable participation in sport, recreation and cultural activity, and recommends local authorities to include relevant policies accordingly in Local Development Documents. These policies should be relevant to local needs, designed, amongst others, to “*give special attention to cultural provision in areas of urban regeneration...*”.

As can be seen from Section 4 below, the Brighton Marina area is the subject of active and proposed urban regeneration, and, as stated above, the East Brighton ward (within which lies the Sheepcote valley site) is the most deprived in the City, thus Policy S7 would be best met by building a new stadium in this area rather than at Falmer

3.67 Additionally, SEERA’s “Examination in Public Submission”, dated 30 October 2006, Annex 3.2, Sussex Coast, refers to 2 sub-regional themes which are relevant to the consideration of the applications;

(a) Brighton and Hove City Council Rapid Transit : Improved public transport to encourage modal shift, improve accessibility – Committed status, and

(b) Brighton and Hove City Council Rapid Transit Strategic Interchange facilities: creation of interchange for the Brighton and Hove City Council Rapid Transit – Under investigation.

3.68 These directly relate to the proposed improvements in public transport accessibility to major developments to the east of Brighton, which would benefit the Sheepcote Valley site. (I refer to these new developments in more detail below, and RPS also refer to the importance of the Rapid Transit proposals for Sheepcote Valley in their evidence).

3.69 (ii) Brighton and Hove Draft Local Development Framework (LDF) – (copy extracts at Annex 9) In the Core Strategy for the LDF, the “Spatial Vision in 2026” includes reference, on page 18, to the following:

“Brighton and Hove will also be well established as a gateway to the new South Downs National Park, with the creation of high quality access to the countryside. We intend to be a sporting city where a wide range of leisure opportunities are provided where they are most needed, including at Black Rock and King Alfred, and a community stadium will form a focal point for the city’s sporting aspirations.”

3.70 Equally, Spatial Objective SO4 (page 20) goes on to: *“recognise the physical constraints of the sea and the South Downs to the city’s development and to so maximise the use of previously developed land, and make full and efficient use of such land, including higher density residential development in appropriate locations.”*

3.71 Thus SO20 states that the Council will: *“Conserve and enhance the AONB/proposed South Downs National Park, including their wider countryside setting, and support the establishment of the city as a “gateway” to the Downs.”*

3.72 These 2 objectives reflected the findings of the community involvement exercise that *“generally there was support for including greater reference within the Core Strategy to the need to protect the countryside and the proposed South Downs National Park and encourage access to them”* and *“there is a need to conserve and enhance the future National Park area and give regard to the types of activities that are to be permitted there, prior to a National Park authority being set up.”*

3.73 Additionally, another Key Issue which emerged from the community involvement was the need for a separate and clear approach to those areas of land on the urban fringes of the city that are not covered by any statutory protection and/or which will no longer be covered by statutory protection once the South Downs National Park designation has been confirmed.

- 3.74 This resulted in the Preferred Option *“to include a policy in the Core Strategy that supports a holistic and pro-active approach to change within, and management of, the urban fringe of Brighton and Hove. Such a policy will be guided by the principle that any significant change within the urban fringe should be considered in the context of the urban fringe as a whole.*
- 3.75 Among the factors to which particular regard will be had are: *“The potential to create “gateway” facilities and interpretive facilities in connection with the proposed South Downs National Park, to support sustainable tourism” and “the acknowledged need for a community stadium.”*
- 3.76 It is clear that, in general terms, a major new stadium at Falmer would be in conflict with the spatial objectives; moreover, it is noted that the spatial objectives make no specific reference to a community stadium having to be at Falmer.
- 3.77 The only reference to Falmer is to be found in Section 4, where the “Preferred Option” for the proposed Community Stadium is now as follows:
- “If the Secretary of State resolves to grant planning permission for the community stadium on land at Village Way North, Falmer, the council will work with the applicant (Brighton and Hove Albion FC) to ensure that the permission can be implemented. **If a final decision is to refuse planning permission, the council will include a policy in the Core strategy that supports the development of a community stadium within Brighton and Hove.**”*
- 3.78 This conflicts with the views expressed by the Applicants that *“there is no potential alternative site...”* and that *“Falmer is the only practical and feasible site, and the best available.”*(paras. 6.102 – 6.104, First Inspector’s report).
- 3.79 It also conflicts with the City Council’s own case at the Inquiry, where it rejected all other alternative sites, concluding that: *“there is no way of replicating the elements of this proposal elsewhere because the particular*

and special need is to provide a home for BHFC, to regenerate East Brighton and to achieve a fertile relationship between sport and education for the benefit of the City.”

3.80 The site for the Community Stadium, in fact, is now to be identified as a possible “Area Action Plan” through the proposed city-wide urban design framework, proposed by Preferred Option UDC2.

If, therefore, planning permission is refused for the Falmer site, the Secretary of State should not take the view that another site for the new stadium could not be provided – it is clear from the LDF that Brighton and Hove City Council will support such a site.

3.81 **(iii) Lewes DC Core Strategy: Draft Preferred Options (Development Plan Document September 2006)** Using as its evidence base national planning policy guidance such as PPS1 and PPS7, and the above-mentioned South East Regional Plan, this document contains 2 Preferred Options which are relevant to the consideration of the planning application (extracts attached at Annex 10)

3.82(i) General Environment: the relevant Preferred Option, (POGE 1), evolved in response to the question: *“How can we achieve the balance of protecting the natural environment whilst at the same time taking account of pressures for development?”*

3.83 The Preferred Option which emerged from the Council’s public consultation exercises and Sustainability Appraisal was as follows:

“To designate Development Boundaries around the most sustainable settlements”

the list of which excludes Falmer village, which therefore falls to be designated as “countryside” for planning policy purposes.

3.84 POGE 1 goes on to state: *“It is important to protect the Countryside areas outside the Development Boundaries, including the Sussex Downs*

AONB...therefore, outside the Development Boundaries planning permission for new development will generally not be acceptable. However, suitably designed and located small-scale development, which is necessary to meet the well-being of these areas, may be acceptable...major developments, however, should not take place, especially in specifically protected areas such as the AONB, except in exceptional circumstances.”

3.85 In the Lewes District part of the application site, a major development such as now proposed, and with no exceptional circumstances to support it, would be totally contrary to the above.

3.86(ii) Geographical Areas of the District: the relevant Preferred Option in this section, POG 5, was in response to the question: *“What role should the rural area have in the future?”*

3.87 The background to this option was the fact that most of the rural area of Lewes District is made up of high quality landscape which is diverse in character.

3.88 For the rural area, the Preferred Option was thus: *“to strengthen local services and facilities which will help the rural area become more sustainable. Also, due to the attractive nature of the countryside, there is the potential to encourage the rural tourism and leisure employment sectors to become stronger (providing that they are appropriate in scale and design).”*

3.89 A major new stadium in a countryside location such as that proposed would not be appropriate.

3.90 **Conclusions** – it can be seen that these new draft documents reflect the above-mentioned national and development plan policies in stating that AONBs should be protected; the policy situation thus remains as it was at

the previous Inquiry, i.e. that the Falmer site is contrary to those policies, whereas Sheepcote Valley is in accordance with them.

4 **ANY NEW MATTERS/CHANGES IN CIRCUMSTANCES/NATIONAL PARK**

4.1 In response to matter (d) of the DCLG's letter, I have already outlined above several new matters/changes in circumstances which are considered material to the Secretary of State's further consideration of the applications, namely:

- Emerging Planning Policies in the South East Plan, and Brighton and Hove City Council's and Lewes District Council's Core Strategies/Preferred options
- The recent ratification by the UK of the European Landscape Convention
- Regeneration plans for East Brighton

4.2 Attached at Annex 11 is. a map showing the "Preferred Routes Strategic Map" part of Brighton and Hove City Council's major scheme business case for the new Rapid Transit routes, with the sites referred to below marked thereon.

4.3 In respect of the latter, there is now considerably more information available than at the time of the First Secretary of State's decision, and which is relevant to the potential traffic impacts arising from a stadium development at Falmer or Sheepcote Valley. The details are as follows.

4.4 BRIGHTON MARINA (general background) - In January 2003, Brighton and Hove City Council adopted "Supplementary Planning Guidance Note" , ref. **SPGBH 20; Brighton Marina**. This is in 2 parts: Volume 1 – "An Urban Design Analysis", and Volume 2 – "Development Brief".(extracts at Annex 12)

4.5 The SPG relates to the western half of the Marina, including the existing shopping, entertainment and leisure complexes, and also the Black Rock site (see below for further details on the latter).

4.6 The main aim of the SPG is:

“to enhance the marina environmentally, visually, functionally and commercially and to transform it into an exhilarating sustainable location of international quality and renown.”

4.7 Volume 1 of the SPG sets out the need for substantial investment, development and improvement if the Marina is to become a successful place in which to live, work, shop and relax, with one of the primary objectives being “ease of movement” – to be achieved, inter alia, by “enhancing public transport services, accessibility and interchange*.” (*see also below).

4.8 Volume 2 identifies the majority of the area covered by the brief as functioning as an extended District Shopping Centre; states that the Marina should (generally) be developed at a high density; and that its development should reach such a scale that public transport, pedestrian, community and service improvements can be made. (thereby ensuring a highly sustainable location, enabling the number and length of car journeys to be minimised).

4.9 As part of the development, a Transport Interchange (TI) is to be provided, to provide all public transport information, and the intention is also to explore the immediate and more long-term prospects for public transport improvement at the Marina.

4.10 These could include: a new shuttle bus service to the City Centre and Station, bus lay-bys and stops linked to the TI; the safeguarding of a route to facilitate a potential light rapid transit link and terminus; and the encouragement of a modal shift away from the private car and onto public transport, to enable at least 25% of all movements to the site to be via other modes.

4.11 In this context, Brighton and Hove City Council formally submitted, in July 2006, a “**Major Scheme Bid for a Rapid Transport System**”. This is a bus-based system, focused on establishing 3 key radial corridors, with high levels of segregated route, operated with environmentally-friendly vehicles on high frequencies. By combining the corridors, 2 new routes can be operated, as follows:

- Park & Ride – London Road – Brighton Station – North Street – Eastern Road – Royal Sussex Hospital – Brighton Marina
- Park & Ride – London Road – Brighton Station – West Street – Kings Road – King Alfred Centre

(now see RPS`s evidence for further details on this matter)

4.12 Brighton and Hove City Council has also adopted **SPGBH 15** – “**Tall Buildings**”, which identifies the Marina as a node for tall structures.

4.13 BRIGHTON MARINA (planning applications) Following refusal of an earlier scheme in November 2005 (ref. BH2004/03673/FP – now at Appeal stage, public inquiry likely in 2007), a revised scheme for the redevelopment of the Marina site was submitted by Brunswick Developments Group Plc. in April 2006 (ref. **BH2006/01124**).

4.14 This was for a mixed-use development, comprising, inter alia, 853 flats, in 11 buildings ranging from 6 – 40 storeys high; Class A, D1, D2 and B1 uses; life-boat station; three-storey covered car parking; and a range of sustainable measures.

4.15 The Officer’s report on this application refers to the above-mentioned SPG, and the revisions made to address the refusal reasons on the first application.

- 4.16 In the “Planning Policies” section, reference is made to RPG9 and the relevant paras. 4.15 – 4.19 which apply to the Priority Areas for Economic Regeneration (PAER – cross refer to my Preliminary Notes on PPS7 in this respect), which include Brighton and Hove.
- 4.17 Also, RPG9 Policy RE7, which supports regeneration within such PAER`s.
- 4.18 In the “Considerations” Section (Section 8), the Officer concludes that the scheme complies with the key objectives of the development plan, central government advice and SPG`s, with a specific section on the support received from those promoting the economic prosperity of the City, namely the Brighton and Hove Partnership, Sussex Enterprise and SEEDA.
- 4.19 This is because of the new jobs which the scheme would generate, both during construction and permanently thereafter, in a deprived area of the City namely the East Brighton ward which is the most deprived in the whole City (and which includes the Sheepcote Valley site).
- 4.20 Planning permission was granted for this major regeneration proposal on 4 July 2006, subject to a string of conditions and, most importantly for the SSCLG`s consideration, a Section 106 Agreement through which the Developers will provide a whole range of benefits, including the following:
- £775,700 towards enhancement of public transport (e.g. the Rapid Transit System, a possible breakthrough to connect to Madeira Drive, or bus priority facilities linking the site with the Royal Sussex Hospital or Brighton Station).
 - £30,000 for bus information systems and accessible bus stop works
 - £120,000 for encouraging sustainable modes of transport, focused in the vicinity of junctions at most capacity
 - £60,000 for a new toucan crossing on the A259

This major development project will benefit the Sheepcote Valley site, in that it contributes to improving accessibility thereto, and its range of uses will add a further visitor attraction, thereby enabling football fans to combine their trip to the new stadium with trips to other facilities in the area.

These benefits – not available at a relatively isolated site such as Falmer – will assist in spreading the time-frame for accessing the stadium itself, with beneficial effects upon the demands for public transport accordingly.

The not insubstantial new residential development will also result in more people being within walking distance of a new stadium at Sheepcote Valley.

- 4.21 BRIGHTON MARINA (other proposals) – there has been much recent publicity regarding proposals for new tower blocks at the Marina, the latest being scaled down from an original 40 storeys to 29 storeys high and providing 1,300 new homes (40% affordable), with parking and shops on the ground floor. However, these are only at the pre-application stage of discussions with Council Officers and, although any such scheme will be within, and complementary to, the SPG for the area, a formal planning application has not been submitted at the time of writing but is expected this year. Such a development would benefit the Sheepcote Valley site in bringing additional leisure and retail facilities to the locality, which would prove attractive to football fans. It would enable them to undertake multi-trip visits, thereby spreading the load upon the various modes of travel.

Again, the not insubstantial new residential development will also result in more people being within walking distance of a new stadium at Sheepcote Valley.

- 4.22 BLACK ROCK – this site lies within the Marina SPG site, but has separate policies. For example, it is the subject of a specific Local Plan policy, SR21,

indicating that planning permission will be granted for its development centred around a recreation and leisure scheme.

- 4.23 This may include wet and dry sports, multi-purpose/special events space and hotel accommodation. In this context, these representations have already referred to the Football Club's appointment of a consultant to advise on a new stadium linked to an hotel, and that consultant's preference for the Sheepcote Valley site for such a combination of uses.
- 4.24 There is also a separate Development Brief for the site – SPGBH 5 - to which reference was made at the second Public Inquiry. This is dated 2001 and follows an earlier, 1993, report which identified Black Rock as one of the "landmark sites" which provide a wide range of opportunities for private investors and entrepreneurs "to underpin the rejuvenation of the seafront".
- 4.25 Like the Marina SPG, this SPG also majors on the transport planning aspects, including the requirement for any scheme to be accompanied by a package of measures to encourage access by means other than the car, with *"excellent opportunities to actively encourage the use of alternative means of public transport and promote awareness and use of public transport between the town centre, the site, and the Marina"*.
- 4.26 Again, there has been much publicity recently regarding the actual proposals for Black Rock, including a City Council Press Release on a scheme by Brighton International Arena (BIA) for a multi-purpose indoor events area. (BIA having been officially awarded preferred bidder status by Brighton and Hove City Council). This scheme will include 2 Olympic ice pads (1 for public skating), with a seating capacity in the arena itself for 7,500, which can be increased to 11,000 when the ice pad is covered over.
- 4.27 The arena will be able to host a variety of events, particularly ice hockey, basketball, concerts and shows. In addition, there will be 109 residential apartments, 40% affordable.

- 4.28 It is expected that this complex would attract around 2m visits by 1.4m people, and inject £7.7m into the economy each year, thus making the project *“compatible with local and regional economic strategies”*.
- 4.29 As with the above-mentioned “towers” scheme, however, no formal planning application has been submitted at the time of writing, but is expected this year. Such an international-type facility in east Brighton would benefit a new stadium at Sheepcote Valley, in particular the possibility of combined trips, ie to attend football matches and also visit these other attractions as part of the same trip.
- 4.30 “i360” WEST PIER OBSERVATION TOWER AND HERITAGE CENTRE a – a major development on land at and adjoining Brighton’s West Pier, and now granted planning permission, for an 183m high observation spire and heritage centre, with ancillary retail uses.
Again, such a major tourist attraction, easily linked to a stadium at Sheepcote Valley via the Rapid Transit route shown on Annex 9, would add to the benefits of building the new football complex there, because visitors would be able to easily combine their visit to a football match at Sheepcote Valley with a linked visit to the Observation Tower and Heritage Centre.
- 4.31 KING ALFRED SITE – although this site is to the western side of the City, it is nevertheless another key seafront site which, together with the i360 scheme referred to above, will assist the regeneration of the coastal strip and could well benefit from/share with the east-west public transport and accessibility improvements linked to the eastern areas above – especially in relation to Brighton and Hove City Council’s Major Scheme Bid for a rapid transport system.
- 4.32 Karis, Brighton and Hove City Council’s preferred developer, submitted, on 13 October 2006, a revised planning application for the site, ref. BH2006/03429, following the withdrawal of their first application. The latest proposals are for a mix of new sports and leisure facilities, small scale retail,

2 tower blocks of residential flats, totalling 751 units (276 affordable), and a range of community benefits.

- 4.33 This application is currently the subject of extensive public consultation and it is not yet known when it will be formally considered by the City Council.

When developed, however, such a scheme would in itself be likely to become a tourist attraction, which football fans could take advantage of in coming to a stadium at Sheepcote Valley, again assisting in spreading the load upon the transport systems involved.

- 4.34 Conclusions:** It is clear from all the above that BHCC are actively promoting the redevelopment/regeneration of key sites along Brighton's seafront, - with easy links to Sheepcote Valley - via their development plan policies, SPGs, and support for formal planning applications.

- 4.35 The driving force behind this approach is to make the Marina an area of world-class, international importance, and to generate much-needed jobs in the most deprived ward of the City.

- 4.36 Allied to the overall strategic approach is a recognition, now supported by Brighton and Hove City Council policy, that there is a need to improve public transport and accessibility links between this part of the City and the centre, including Brighton Station and the other major schemes in the western part of the City. Indeed, via the S106 Agreement referred to above, they have already been successful in obtaining significant private-sector funds for such improvements.

- 4.37 A positive response to their "Major Schemes Bid" would significantly assist the City Council in delivering the improved public transport facilities between the City Centre and the Marina area, including Sheepcote Valley.

- 4.38 All the above would, for the reasons described, bring added benefits to a new stadium in this part of the City, benefits which would not accrue at Falmer.
- 4.39 South Downs National Park** - It is understood that the Court of Appeal has upheld the High Court's decision in the Meyrick case.
- 4.40 There will now need to be an assessment by DEFRA as to whether to re-open the Public Inquiry into the South Downs National Park, in the light of the Court's ruling and/or the amendments made by Government to the 1949 Act, via the Natural Environment and Rural Communities Act 2006, in part response to the Meyrick case (vide modification of the definition of the term "natural beauty", para.99 of the Act refers).
- 4.41 The time-table for designation of the South Downs National Park has thus presumably slipped as a result of the Court of Appeal decision. In the interim, the application sites remain within the designated AONB and any development proposals therein must continue to be assessed against national and development plan policies relating to the AONB.

5 OVERALL CONCLUSIONS

- 5.1 In respect of the matters upon which the Secretary of State invited representations in her letter of 20 November 2006, the response from Lewes District Council may be summarised as follows.
- 5.2 Almost the whole of the site lies outside the built-up area of Brighton as identified in the adopted Brighton and Hove Local Plan.**(Matter (a))**.
- 5.3 The relevant development plan policies for such a location are those relating to the countryside and the AONB, where major new development will only be permitted in exceptional circumstances and where the applicant can demonstrate that there will be no adverse impact on the landscape and the environment.
- 5.4 The proposed development manifestly fails these tests.
- 5.5 The one specific development plan policy – SR23 of the BHLP – applies to only part of the application site, and relates to an area too small to accommodate the totality of building proposed in the application itself.
- 5.6 As the majority of the application site lies within a designated AONB, then material weight must thus be given, in assessing planning applications for major development in such areas, to national policy advice in PPS7, now strengthened by the UK having become a signatory to the European Landscape Convention. **(Matter (b))**.
- 5.7 Regard must also be had to the relevant development plan policies relating to AONB locations, all of which militate against major developments unless an exceptional and overriding case can be made out .
- 5.8 The First Secretary of State himself concluded that the proposed development at Falmer would not be consistent with such policies.

- 5.9 The overall benefits arising from the Falmer site have been over-stated by the Football Club, and would apply in any event to any site within the City where a new stadium were to be located.
- 5.10 Equally, the regeneration benefits – which are secondary to the main purpose of the application before the Secretary of State – would bring greater benefit to the Sheepcote Valley area.
- 5.11 There is no national or regional need for the development in the planning application, i.e. a football stadium.
- 5.12 The community benefits are extremely limited, and again would arise wherever a new stadium were built.
- 5.13 The benefits arising are so local and non-Falmer dependent as to not constitute sufficiently strong or exceptional reasons for allowing major development in an AONB.
- 5.14 The First Secretary of State's test as to whether, in relation to the alternative sites, there was a reasonable prospect of planning permission being granted, was flawed. **(Matter (c))**.
- 5.15 It is clear from the evidence that, not only did the First Secretary of State apply the incorrect test in law, but that – even if his test was the right one – there ARE now reasonable prospects of permission being granted for the Sheepcote Valley site.
- 5.16 The First Secretary of State was inconsistent in applying his test: the Falmer site is identified as having a wide range of fundamental, national policy, disadvantages, whereas the Sheepcote Valley site had only one local adverse impact (accessibility) which the new evidence now indicates is capable of resolution.

- 5.17 There have been major new changes in circumstance since the First Secretary of State's decision, particularly the identification by Brighton and Hove City Council and others of the coastal belt of the City as a hub for major, international level, developments and proposals for a Rapid Transit system to facilitate access between Brighton Station and the various sites involved.**(Matter (d))**.
- 5.18 The Sheepcote Valley site is in very close proximity to the eastern end of the hub, and thus would benefit from the ability of football fans to undertake multi-purpose visits to Brighton, thereby spreading the load in terms of transport accessibility.
- 5.19 In conclusion, Lewes District Council formally requests the Secretary of State to agree with both the First Inspector's recommendations and these representations (together with all of the other evidence submitted by Lewes District Council), and refuse the planning applications accordingly.