

**TOWN AND COUNTRY PLANNING ACT 1990**  
**APPLICATIONS BY BRIGHTON AND HOVE ALBION FOOTBALL CLUB LTD**  
**LAND NORTH OF VILLAGE WAY FALMER**  
**APPLICATION NOS BH 2001/02418/FP, LW/02/1595, BH 2003/02449/FP, LW/03/1618**

**Further Representations from the South Downs Society**

1. These representations are made by the South Downs Society in response to the invitation set out in the letter dated 20 November 2006 from the Department for Communities and Local Government. This followed the quashing of the decision made by the then First Secretary of State to grant planning permission for the construction of a stadium at Falmer, on the outskirts of Brighton. The Society appeared at both of the Inquiries held into this proposal under its former name, “The Society of Sussex Downsmen”. It was also one of the parties that applied to the High Court for the original decision to be quashed.
  
2. The Society was founded over 80 years ago, and has around 2300 members. It is both a Registered Charity and a Company Limited by Guarantee. The Society’s primary object is “the conservation and enhancement for the public benefit of the beauty and amenities of the South Downs”. The stadium site is within the Sussex Downs Area of Outstanding Natural Beauty (AONB), and Society has no doubt that the project would cause significant harm to the beauty and amenities of the Downs.
  
3. The letter of invitation refers to “the evidence available to the Secretary of State at present”. The Society will refer to the report submitted by Inspector J R Collyer, who held an Inquiry into the called in planning applications (four in all) made by Brighton and Hove

Albion Football Club Ltd. The Society will also refer to the report submitted by Inspector D H Brier, who re-opened this Inquiry to examine the issue of alternative sites. As in the decision letter, references marked IR(a) are to paragraphs in Inspector Collyer's report, and references marked IR(b) are to paragraphs in Inspector Brier's report.

4. Inspector Collyer's report refers to policy SR25 in what was then the Deposit Draft Brighton and Hove Local Plan. This policy related to the allocation of land at Falmer for the purposes of a stadium. A procedural decision was taken by the Planning Inspectorate that a Concurrent Inquiry should be held into the called in planning applications and into objections to draft policy SR25. Inspector C H Hoile, the Inspector appointed to hold the Local Plan Inquiry, was also appointed as an assistant to Inspector Collyer for the purpose of the Inquiry into the stadium planning applications (see letter from Miss Tori Brunt, Case Officer, Planning Inspectorate, to Alan McCarthy, Brighton and Hove City Council Corporate Services Department, dated 3 October 2002). Part 7 of Inspector Hoile's report on the Local Plan includes his report into objections to policy SR25, and there is a reference to his role in relation to the consideration of the stadium planning applications in paragraph 7.68. In turn, Inspector Collyer records that Inspector Hoile sat with him on all but a very few days of the stadium Inquiry (IR(a)1.42). In these circumstances, the section of Inspector Hoile's report that relates to policy SR25 is clearly material to the consideration of the stadium planning applications, even though it was submitted to Brighton and Hove City Council and not to the Secretary of State. The Society will refer to it accordingly.

5. The Society will now address the matters set out in paragraph 3 of the Department's letter in the light of what is said in the various Inspectors' reports, and in the decision letter issued on behalf of the then First Secretary of State and dated 27 October 2005 (references marked DL are to paragraphs in this letter). The Society will also refer to the terms of the Order of the High Court quashing this decision, which was made following an application for Judicial Review made by Lewes District Council, Falmer Parish Council and the Society. The Society is not asking for the previous Inquiries to be re-opened.

## Matter A

**The location of the site of the proposed development in relation to the built up area of Brighton, as identified in the adopted Brighton and Hove Local Plan 2005, and the significance of that location for the purposes of the Secretary of State's further consideration of the applications.**

6. The decision letter states that “the [Brighton and Hove] Local Plan shows the site to be within the built up area [of Brighton]” (DL14). Paragraph 3 of the Consent Order shows that the basis on which the decision was quashed was that

(1) Part of the application site is within the area of Lewes District Council, where the Brighton and Hove Local Plan is not the relevant development plan.

(2) Much of that part of the site that does lie within the City boundary is outside the built up area as defined in the Brighton and Hove Local Plan, as adopted in 2005.

It has been claimed that this was merely a technical error. However, the Society will seek to demonstrate from the terms of the decision letter that this error wrongly led the then First Secretary of State to reject important conclusions reached by his Inspectors.

***“The Secretary of State is not convinced that this area can be categorised as open downland as he applies more weight to the recently adopted Local Plan which places the site within the boundary of the built up area of the City”*** (DL17)

7. The conclusions reached by the Inspectors about the downland nature of the site are unequivocal:

Inspector Collyer:

“This site lies within an area which the Countryside Agency categorised as open downland. While the Applicants and Brighton and Hove City Council challenge this categorisation, to my mind it is entirely appropriate.” (IR(a) 18.5)

Inspector Collyer goes on to describe the characteristics of the site in some detail. He says that, for the most part the application land is, due to its openness, appearance and ground form, typical of the (surrounding) open countryside. He calls it “an integral part of a much wider open area which has a genuinely rural character”. Later, he refers to the site as part of “the unbroken stretch of extensive countryside beyond Brighton’s eastern urban limits” and of “an uninterrupted sweep of open downland stretching southwards from the A27/railway corridor” (IR(a) 18.8). Inspector Collyer inspected the site meticulously from a variety of viewpoints. So far as the Society is aware, the Secretary of State and his officials did not.

Inspector Hoile:

“The SR 25 land (i.e. the part of the application site that is within the Brighton and Hove City boundary) is undoubtedly open countryside. It is indubitably a greenfield site beyond the recognisable physical boundary of the City. The fact that it butts against the railway/A27 to the north and the relatively urban University of Brighton to the west does not diminish its downland qualities” (paragraph 7.87). He goes on “I see the SR25 land as part of a continuum of open downland flowing south from the line of the A27 hereabouts”(paragraph 7.88)

### **Conclusion on DL 17**

8. The Inspectors have seen the site, and specifically describe it as open downland. Moreover, elsewhere in his report, Inspector Collyer records the assessment made by the Countryside Agency that the site forms “part of a continuous sweep of high quality downland to the A27/railway” (IR(a) 12.29). The reason that the then First Secretary of State gave for not treating the site as open downland has been shown to be erroneous, and the Secretary of State has no other basis for rejecting the professional judgement of the Inspectors and the Countryside Agency on this point.

*“In assessing the impact of the proposed development, the Secretary of State has taken into account the quality of the existing landscape, and the degree to which the impact could be mitigated. In considering this, the Secretary of State is mindful of*

***the fact that the application site is within the defined built up area of the City and occupies a parcel of land which is already partly urbanised by existing University buildings.***” (DL 44)

9. The Society now turns to what the then First Secretary of State said about the quality of the landscape. It may be helpful to start by setting out how Inspector Collyer identifies the site at the outset of his report:

“The stadium site partly encroaches onto the built up area of the University of Brighton campus, but the larger part is open farmland. The [transport] interchange site occupies roughly half of the remaining stretch of farmland to the east....The administrative boundary between [the City of Brighton and Hove and Lewes District] divides this parcel of land .....[although] there is no demarcation of this boundary on the ground.” (IR(a) 2.1)

Other parts of his report show that the stadium and interchange would together occupy an area of some 9 ha (IR(a) 3.2) and that the amount of the site already built on is about 0.5ha (IR(a) 14.1)

10. This is what Inspector Collyer says about the quality of the landscape:

“I do not accept the Applicants’ argument that the quality of this piece of the AONB (the undeveloped area of the application site) is somehow degraded by reason of neighbouring built development and roads, to such an extent as to make it suitable for the present proposals. Obviously a site like this, adjacent to an urban area, does not possess quite the same character and sense of remoteness as, say, a field in the middle of an extensive stretch of open countryside. But to my mind this does not make it any less a valuable and worthy part of the AONB. Indeed, the opportunity which this juxtaposition between the built-up area and the open downland provides, in terms of being able readily to appreciate the stark contrast in their respective characters, highlights the outstanding quality of this particular fringe of the AONB downland (IR (a) 18.9)

11. While Inspector Hoile says nothing further that relates specifically to this particularly aspect, both he and Inspector Collyer clearly have no doubt that policies relating to the importance of Areas of Outstanding Natural Beauty, and the priority to be given in them to the conservation of the natural beauty of the countryside, ought to be applied to the application site. In addition, the views of the Countryside Agency are again relevant. Their assessment is that the site is not significantly impacted by the A27/railway line, which is well screened, and is not significantly impacted by development at Brighton University, which is localised and does not detract from the wider sweep of landscape (IR(a) 12.29). Because of its source, this assessment ought to be given particular weight.

#### **Conclusion on DL 44**

12. Just as with DL17, the fact that the statement about the built up area of the City has been acknowledged to be incorrect removes the main basis on which the then First Secretary of State concluded that Inspector Collyer had overstated the quality of the application site. Again, the Inspector has seen the site. The Secretary of State has no justification for rejecting his professional judgement, particularly when this judgement is shared by the Countryside Agency. It should also be noted that only a small proportion of the site is “already partly urbanised by existing University buildings”.

*“The Secretary of State agrees with the Inspector that the proposal would cause considerable harm to the AONB. However, having regard to the Inspector’s assessment of the site and surroundings, the Secretary of State attaches greater significance than the Inspector does to the existing quality of the landscape and the fact that the site is within the built up area of the City, and has been urbanised to some extent by the existing University buildings....He agrees with [Inspector Collyer] that the effect of [proposed landscaping measures] would reduce the visual impact of the proposed development to varying degrees. However, he does not agree with the Inspector that the measures proposed do not mitigate, to an acceptable degree, the harmful effects of the development on the AONB, given that the Secretary of State has accorded more weight to the fact that the site has been urbanised to some extent and the fact that it lies within the built up area.....”*

(DL 46)

13. The Society has already commented on a number of the conclusions set out in this paragraph. In it, the then First Secretary of State specifically conceded that “the proposal would cause considerable harm to the AONB”. The Society wishes to draw attention to some of the implications of this conclusion in terms of national policy guidance:

“The Government’s objectives (include) continued protection of the open countryside for all, with the highest level of protection for our most valued landscapes”  
(introduction to PPS 7)

“(Planning Authorities) should have particular regard to any areas that have been statutorily designated for their landscape...qualities, where greater priority should be given to restraint of potentially damaging development” (PPS 7 paragraph 15)

“Nationally Designated Areas (including AONBs) have been confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty. The conservation of the natural beauty of the landscape should therefore be given great weight in...development control decisions in these areas (PPS 7 para 21)

14. Inspector Collyer has set out in detail in his report his reasons for concluding that the application proposals would not be consistent with the conservation of the natural beauty of the landscape (IR (a) 18.4 – 18.28). The reasons given by the then First Secretary of State for concluding that the proposed development would nevertheless be acceptable are

(a) “(the Inspector has overstated) the existing quality of the landscape”.

There is no independent evidence to support this conclusion (see paragraph 12 of these representations)

(b) “the site is within the built up area of the City”.

Wrong (see paragraph 6 of these representations). The evidence shows that nearly all of the site is open downland (see paragraph 8 of these representations)

(c) “(the site) has been urbanised to some extent”

The amount of the site already built on is little more than 5% of the total (see paragraph 9 of these representations). If the reference is to the character of nearby development, see paragraphs 10 and 11 of these representations.

(d) “(the landscaping measures proposed would) mitigate to an acceptable degree the harmful effects of the development on the AONB”

15. The height of the proposed stadium has been put at 28 metres above ground level (IR (a) 11.20), and it would break the skyline from a number of viewpoints (IR(a) 18. 13). Inspector Collyer concluded that, because of its scale, mass, height, design, nature and finished appearance, it would stand out and draw attention to itself, so achieving the aim of the Applicants that it should be an “iconic” structure (IR(a) 18.11). While the landscaping proposals would reduce the visual impact of parts of the proposed development from some locations, they would “not come remotely close to mitigating to an acceptable degree the harmful effects of this development on the natural beauty of the AONB landscape” (IR(a) 18.22). The Inspector indicated that he had taken into account the photomontages prepared by the Applicants but had treated them with caution. “At my accompanied site inspection I had the benefit of being able to assess the height of the proposed stadium by reference to the crane which had been specially stationed for that purpose.” The Inspector found that he could not rely on the photomontages alone, even after they had been revised by the Applicants. He indicated that, although he had given them due weight, he preferred his own judgement, made on the day of the site visit in the light of the submitted application plans, as to the height and overall profile (and, therefore, the visual impact) of the stadium roof (IR (a) 18.16). In view of the size of the proposed stadium, the materials to be used in its construction and the Inspector’s conclusions, the then First Secretary of State had no reasonable grounds for concluding that landscaping would mitigate the visual impact to an acceptable degree.

## **Matter B**

**The Interpretation and Application to these planning applications of the Government’s policy in relation to development in Areas of Outstanding Natural Beauty (AONBs) as stated in Planning Policy Statement 7 (PPS 7); including in particular consideration of the need for the proposed development , having regard to**

- **Any national considerations**
- **The need for regeneration**
- **The impact of permitting the proposed development or refusing it upon the local economy**

16. The relevant test as set out in paragraph 22 of PPS 7 reads as follows:

“ Major development proposals [in nationally designated areas, including Areas of Outstanding Natural Beauty] should include an assessment of 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 .....

This paragraph does not mention “the need for regeneration”.

### **(a) National Considerations**

#### **The needs of the Football Club**

17. After a detailed examination of the arguments, including arguments put forward on behalf of the Society, (see IR(a) 18.42 –47) Inspector Collyer concluded:

“ .....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 Brighton and Hove Albion Football Club,

as the Applicants freely admit. And on that score this scheme fundamentally fails the “need” test based on national considerations which (PPS 7) establishes” (IR(a) 18.48).

Inspector Hoile reached a very similar conclusion. He said

“The development elements are a provincial City’s professional football club, which operates within a national league framework, community facilities serving that area , and an off-shoot of sports medicine/science, which may be of significance to the operation of the University of Brighton, an institution with a national reputation. These development elements do not appear to me to add up to material need in terms of national considerations” (paragraph 7.82).

18. The then First Secretary of State accepted the broad thrust of these assessments in paragraph 24 of the decision letter. After expressing doubts about whether the existence of Brighton and Hove Albion Football Club really did depend on the development of a new stadium, he went on to conclude that, even if this were the case, the needs of the Football Club are not a national consideration. There is no evidence before the Secretary of State that would enable her to reach any other conclusion on this point.

**(b) The impact of permitting the proposed development, or refusing it, upon the local economy**

19. It may be helpful to begin by examining just where the economic benefits to which the then First Secretary of State referred in the decision letter would arise. Inspector Collyer mentions four areas:

- The ward of Moulsecoomb
- The area of East Brighton, of which Moulsecoomb is part
- The City of Brighton and Hove
- The ward of Marine, also part of East Brighton

However, since then the ward of Moulsecoomb has been subsumed into the larger ward of Moulsecoomb and Bevendean, and a new ward of East Brighton has been created that is

distinct from Moulsecoomb. The East Brighton ward corresponds largely to the former Marine ward and includes Sheepcote Valley.

20. In paragraphs 18.29 to 18.41 of his report, Inspector Collyer deals with the impact of the proposed development on the social and economic well-being of East Brighton, an area which he describes as suffering from serious levels of economic and social deprivation (IR(a)18.29). While he specifically refers to Moulsecoomb, he points out elsewhere that Marine Ward, another part of East Brighton which includes Sheepcote Valley, suffers a level of deprivation even worse than Moulsecoomb (IR(a) 18.71). He concludes that on balance, the evidence demonstrates that the 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, although he adds that, in his view, the Applicants' assessment of the importance of these benefits in terms both of jobs and the boost to the City's GDP is very much overstated (IR (a) 18.41). He also argues that many of these benefits would arise wherever in Brighton and Hove the stadium were to be built and goes on to express the view that a location further away from Moulsecoomb would not necessarily mean that this ward and its residents would be unable to enjoy some of the economic and social benefits which the stadium development would offer IR(a) 18.39).

21. Elsewhere, Inspector Collyer deals with the impact on the economy of Brighton and Hove of the refusal of permission for the development (IR(a)18.50 and 18.51). He expresses the view that this impact would not be all that great. In part, he bases this upon his conclusions about the likelihood of the Club remaining in existence without a new stadium, and his conclusions about alternative sites, issues that are dealt with under Matter C below. In addition, he assesses that there has been no significant economic impact on the City flowing from the period when the Club had to play their matches at Gillingham, nor indeed from the Club playing at their present stadium.

22. The Society is deeply concerned by the way in which the Inspector's conclusions on economic benefits have been interpreted and applied in the decision letter:

*DL 28 "The Secretary of State has had regard to the arguments raised by the Applicant and the (City) Council centred on national need which arises from*

*community related issues. He agrees with the Inspector that these particular arguments are concerned with the needs of the local community in economic and social terms. He concludes that they represent a strong local need for the community facilities which the proposed stadium would provide. However, he concludes that the level of local need, coupled with the significant economic and regenerative benefits of the proposed development, would amount to a matter of national interest”*

*DL 29 “Overall, the Secretary of State concludes 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”.*

23. These paragraphs go beyond Inspector Collyer’s conclusions in certain respects. For example, he considered that the Applicants had overstated the economic and social benefits that the scheme would bring to the area, and in particular questioned their estimate of the number of local jobs that would be created (IR(a) 18.31-3). They also raise locational issues to which we will return later in these representations. At this stage, we wish to address a fundamental issue of principle.

24. A national consideration cannot be created simply by adding together a number of local considerations. Any attempt to do so is the equivalent of adding together a number of apples, and say that they have turned into a pineapple because there are so many of them. The Society considers that the various elements dealt with in these paragraphs have to be examined individually to determine whether “national considerations” have been established.

(i) “There is a strong local need for the community facilities which the proposed stadium would provide”. This is a local and not a national consideration. The Football Club’s “need” for a new stadium is not a national consideration either (see DL 24 and paragraph 18 of the Society’s representations above).

(ii) There would be “significant economic benefits to Brighton”. This is a local, or at most a regional consideration. It is not a national consideration.

(iii) The impact of refusing planning permission on the local economy. The Society considers that this impact has been overstated, for the reasons given above. But in any event, it is not national consideration.

### **(c) The need for regeneration**

25. While the then First Secretary of State indicated that he particularly wished to be informed about the impact of the proposed development on the economic and social well-being of the area, the Inquiry Terms of Reference did not mention regeneration. Regeneration is not one of the criteria included in paragraph 22 of PPS 7, and the references to regeneration elsewhere in that document relate to rural areas and rural communities.

26. There is scant reference to regeneration in Inspector Collyer’s report. He refers to the important and very welcome economic and social benefits to the deprived area within which the scheme is situated and to the city as a whole, but then simply adds “there would be regenerative benefits too.” (IR(a) 18.184) In the context of this Inquiry, regeneration was simply not treated as a separate issue for investigation and the then First Secretary of State did not receive specific advice on the subject. Despite this he added regeneration to the other local benefits to create a national consideration. That consideration has then been used to outweigh policies which give the highest national priority to the conservation of the natural beauty of an area which has been nationally designated for its landscape value.

27. This approach represents a significant threat to such areas. Many designated areas have urban areas immediately adjacent to their boundary. Parts of these areas may well be regarded as “deprived”. If major development is to be permitted within a National Park or AONB on the basis that it will provide economic benefits for a deprived area nearby, this will put at risk a significant number of urban fringe sites within these nationally designated areas. These are just the kind of sites that are most likely to need “the highest status of protection in relation to landscape and scenic beauty” because of development pressures.

28. The Society's concern can also be put another way. There are other forms of development which help to achieve one Government policy or another. If all of these are to be regarded as creating "national considerations" that are capable of providing the justification for major development in any designated area, the balanced policy so carefully set out in paragraph 22 of PPS 7 will soon become meaningless.

## **Matter C**

**The approach to assessment of the alternative sites put forward for consideration by the Secretary of State, and the merits of these sites, including in particular the accessibility of the Sheepcote Valley site.**

### **Sheepcote Valley**

29. In inviting further representations about alternative sites, the Secretary of State has referred in particular to Sheepcote Valley. While the main evidence relating to this site is to be found in Inspector Brier's report, both of the other Inspectors visited this area, and their conclusions amplify the conclusions reached by Inspector Brier, although there are differences on the question of accessibility.

30. In para 18.69 of his report, Inspector Collyer describes this location as an extensive stretch of mainly open land on the eastern side of the urban area of Brighton which falls broadly into two parts. The southern section is a relatively low-lying area which is mostly already in leisure/recreational uses, consisting of playing fields, caravan park, a leisure centre and college buildings. The northern half is on rising ground and is mainly grassed and overgrown, but with a central shallow bowl including areas of tarmac hardcore and spoil arising from a history of landfill use. Inspector Brier considers that, because of the extent of the re-vegetation that has occurred, this part of the area ought to be regarded as a greenfield site (IR (b) 10.34).

31. All three Inspectors have drawn attention to the fact that Sheepcote Valley is not within the AONB, and that it does not therefore enjoy the highest status of protection in terms

of landscape (see e.g. IR(b) 10.37). The Society regards this as an extremely important consideration. Inspector Brier concludes that, while a stadium in the northern part of the Valley would be visually intrusive, the topography of the southern part of the Valley would provide a higher degree of containment and reduce the prominence of any stadium. He adds that this southern area already has a partially urban feel, and that in his opinion a stadium would not look unduly out of place here. (IR (b) 10.53). Inspector Brier's overall conclusion on this point is that the scale of the Valley is such that a stadium could be accommodated within it without overwhelming the landscape (IR (b) 10.157). Inspector Collyer does not regard the area as genuinely open countryside, or as having any particular landscape quality. He refers to the extensive built up area to the west and south that heavily influences the character of the area, and to the sense of containment created by the higher land to the north and a ridge of land along most of the long eastern boundary, which at this point forms the western boundary of the proposed South Downs National Park as delineated in the published Designation Order (see paragraph 50 below). His conclusion is that the development of a stadium here, especially if confined to the valley floor, would have no serious harmful effect on the landscape (IR (a) 18.70 –1). Inspector Hoile reached a very similar conclusion (Hoile paragraph 7.85 (iv)). Both Inspectors regard Sheepcote Valley as a better option than Falmer (IR(a) 18.78 Hoile 7.85), although the evidence before them related primarily to environmental factors.

32. Because of the past use of the northern part of the area for landfill purposes, decontamination measures might be required if this land were to be used to create a transport interchange, or for parking purposes. However, it appears that the Football Club do not regard this as an insuperable problem, as they advised Inspector Brier that Sheepcote Valley was the only one of the alternative sites under consideration that they regarded as affordable (IR(b) 10.32). The Club also expressed the view that site acquisition would be a realistic proposition, and that the relocation of the various sports facilities and the caravan park would be feasible. While Brighton and Hove City Council, which is the freeholder of the land as well as the planning authority, has said that the site is not available, Inspector Brier concluded that this appeared to be largely down to scepticism regarding the practicalities of relocation rather than an outright refusal to contemplate the disposal of any land (IR(b) 10.29).

33. Inspector Brier acknowledges that the development of a stadium in this area would have some impact on the richness and variety of its fauna and flora, and the sanctuary that it provides for migratory birds, but he was not satisfied that the impact of any stadium would be unacceptably damaging. (IR(b) 10.50) A specific issue was raised about the impact of one possible site on badger setts protected under an SSSI, but Inspector Brier found that the evidence on this point was inconclusive, and that it did not lead him to the view that there would be unacceptable environmental impacts. (IR(b) 10.49)

34. Inspector Brier concluded that there were persuasive reasons for preferring Sheepcote Valley to Falmer, not least that the area is not in the AONB. However, he regarded accessibility as the “Achilles heel” of this location (IR(b) 10.158) and the Secretary of State has specifically invited further representations on this aspect. The Society understands that Lewes District Council has instructed consultants to undertake a general transportation assessment of the Sheepcote Valley area, and the Society sees no value in attempting to duplicate this work. Nevertheless, there are some points that the Society wishes to make. Inspector Brier has acknowledged that, because of its location on the eastern edge of a sizeable residential area, a stadium in Sheepcote Valley would be more accessible on foot or by cycle than one at Falmer ((IR (b) 39-40). While he refers to a lack of capacity in bus services (IR(b) 10.158), it should be noted that the Football Club’s forecast share for bus travel to and from a stadium at Falmer would also require improvements in bus capacity (IR(a) 18.117). In addition, the traffic projections that have been made are based on a full stadium with 22,000 spectators. For the reasons given in paragraph 46 of these representations, such attendance levels now seem unlikely in the foreseeable future. Lower attendance levels would reduce the level of accessibility problems.

35. On the question of the cost of necessary infrastructure improvements, it should be remembered that the Transport Management Strategy for the proposed Falmer stadium requires major improvements to the A27/A270 junction, together with improvements to Falmer Railway Station and a footbridge over the railway (IR (a) 18.77). Moreover, that project also involves the provision of a new access road into the University of Sussex, and major improvements to the access road into the University of Brighton. There are potential park and ride sites available to serve a stadium at Sheepcote Valley (IR (b) 10.44), and there

would be ample land for the creation of a transportation interchange and for any other ancillary commercial development.

36. In addition, the Society has already drawn attention to Inspector Collyer's comment that Sheepcote Valley lies in the City's Marine Ward, which suffers a level of deprivation even worse than Moulsecoomb (IR (a) 18.71). The conclusion that the Society draws from this is that the regenerative impact of a stadium within Sheepcote Valley would be at least as great as the benefits claimed for the proposed Falmer stadium.

### **Shoreham Harbour**

37. This was the alternative site that was put forward by the Society at both Inquiries. While we recognise that Inspector Brier's re-opened Inquiry provides the main information before the Secretary of State on alternative sites, the Society put forward substantial arguments concerning Shoreham Harbour at the first Inquiry. Half a day was devoted to the presentation of these arguments, on the basis of a previously circulated written proof, and the Society's witness was cross-examined at length by Counsel for the Applicants. The Society therefore feels entitled to expect that the Secretary of State will give due weight to what Inspectors Collyer and Hoile have to say about this site, particularly as the Society's witness was unable to attend Inspector Brier's Inquiry.

38. Nevertheless, Inspector Brier did hear other evidence about Shoreham Harbour, not least from the Regency Society of Brighton and Hove, and he does make some positive comments about the possibilities of this area in his report:

“There is an appreciable body of support for Shoreham Harbour. I can well understand this, and I have a great deal of sympathy with it. Regardless of whether or not the Harbour should be regarded as a brownfield site, on the face of it, the prospect of a development opportunity with the potential to make a significant contribution to the regeneration of an urban area characterised in the main by activities of a commercial nature is more attractive and potentially far less damaging to its surrounds than a scheme on a partially (largely) greenfield site within the AONB, as is the case at Falmer.” (IR(b) 10.156)

39. Some of these points are acknowledged in the decision letter:

*“The Secretary of State recognises that (the Shoreham Harbour site) offers the prospect of a development opportunity which has the potential to make a significant contribution to the regeneration of an urban area, and is more attractive and potentially far less damaging than a scheme at Falmer.” (DL 32)*

40. The reason that this site (and some other sites) were rejected as potential alternatives to Falmer is fundamentally related to the way in which both Inspector Brier and the then First Secretary of State approached this issue. At the outset of his conclusions, Inspector Brier said:

“The advice in [PPS 7] refers to an assessment of the cost and scope of developing elsewhere outside the designated area, but is silent as to how such an assessment should be benchmarked. ....It seems to me that the (cases cited to me) essentially point in the same direction, in that in terms of their impact, alternatives should represent an improvement over what is being proposed”

Stopping at this point, the only comment that the Society needs to make is that the then First Secretary of State explicitly accepted that Shoreham Harbour would meet this test. However, Inspector Brier goes on as follows :

**“In order to provide (the assessments that I have been asked to make), I am inclined to agree that carrying this one stage further by applying the “reasonable prospect of planning permission being granted” test is a valid and appropriate approach, as this calls for a balanced planning judgement of the various considerations involved to be made. I accept that to do this fully would require the production of the same or similar levels of information to that which accompanied the planning application in contention. But with that caveat I am satisfied that I am able to offer a reasoned view on these lines” (IR(b) 10.2)**

41. This is a remarkable statement. Inspector Brier acknowledges that the test that he is putting forward is his own, rather than one based on planning policy or case-law. He gives a very compelling reason to show why his test does not work. He then says, in effect, “but I am still going to apply it”. The gravity of the implications of this personal interpretation of the applicable test cannot be overstated.

Nevertheless, the then First Secretary of State adopted the same test:

*“The Secretary of State concludes that there is no viable alternative site for the proposed development which is acceptable in planning terms. **There is no reasonable prospect of planning permission being granted for a community stadium at any of the alternative sites which he has considered**” (DL 62)*

This conclusion is specifically applied to Shoreham Harbour in the following terms:

*“There is no development site at the moment, nor can it be said with any degree of certainty that one will materialise in the foreseeable future.” (DL 32)*

42. That conclusion demonstrates the impossibility of the test that Inspector Brier and the then First Secretary of State adopted. The arguments put forward by the Society were based on a strategy for the regeneration of the eastern end of the harbour area that was incorporated into the draft Local Plan. The emerging Local Development Framework documents continue to recognise this area as an important brownfield redevelopment area, with potential for significant mixed-use development. The draft South East Plan refers to the need to find ways of developing sites with economic development potential, and mentions port sites at Shoreham in this context. The Society has consistently argued that a stadium could be integrated into such a development, and indeed could be used to kick start the whole regeneration process.

43. Putting together the degree of information that would demonstrate “a reasonable prospect of planning permission being granted” for a stadium in this location is beyond the competence of the Society, and indeed of most voluntary bodies. Quite apart from cost, too many other people would need to be willing to become involved. In particular, a strategy for

the incorporation of a stadium into redevelopment at Shoreham Harbour could not be devised without the active co-operation of, among others, the Applicants and the City Council. The Applicants are simply not interested in this site, nor indeed in any site apart from Falmer. Falmer would provide them with a cheap site that is relatively simple to develop, and that is all that they are concerned about. As for the City Council, they are the owners of the Falmer site, and the Football Club's potential partners in the whole stadium enterprise (see IR(a) 7.94). A stadium at Falmer would not only bring them potential financial benefits, it would also export many of the related environmental problems out of the City and into the area of another local authority. Neither of these parties can be expected to think seriously about how a stadium might fit into an overall redevelopment scheme at Shoreham Harbour, and how problems might be tackled, until they are forced to do so. They are content to say that it cannot be done, knowing that, without their co-operation, no one is going to be able to demonstrate otherwise. All that PPS 7 ought to require is the establishment of a prima facie case that there is a possible alternative site that merits consideration. Because of the potential redevelopment scheme, Shoreham Harbour meets that test.

## **General Issues relating to Alternative sites**

### **The cost of development**

44. There are two other issues that are relevant to alternative sites. The first arises from Inspector Brier's conclusion that "the evidence strongly suggests that it is highly likely that the cost of building a stadium (at Shoreham Harbour) would be appreciably greater than the Falmer project, to the extent that its affordability must be highly questionable." (IR(b)10.18)

45. There are two points that the Society would wish to make in response:

(a) Much of the additional cost of the Shoreham Harbour site would be related to the purchase and reclamation of land and the development of infrastructure. If the Stadium were to be part of a comprehensive redevelopment scheme, as the Society envisages, the Football Club and City Council would have every opportunity to ensure that the maximum amount of public finance was obtained, and that costs were shared with others who would benefit from the scheme. More than this, the stadium would be at the heart of an area of commercial

redevelopment, and the Club would have the opportunity to share in and benefit from this development. Equally, at Sheepcote Valley, ample land would be available for commercial development that would be capable of benefiting the Club financially. Compare this with Falmer, where there is no room for development of this kind because of the very strong environmental constraints (Hoile paragraph 7.92).

(b) Secondly, there is a fundamental issue of principle to be considered. As Inspector Collyer says

“It is not too surprising that it might be more costly to develop an urban, previously developed site which perhaps requires the relocation of existing users ....and which very probably has a development value (actual or potential) for another purpose. The comparison here is being made with a largely greenfield site in the AONB which is subject to severe policy constraints. ....Thus, in comparative terms, this is almost bound to be the cheaper option. In my view, broadly borrowing the words of (a former Secretary of State in another case) there must be a cost of going elsewhere which, in order to avoid the harm to the natural beauty of the Sussex Downs AONB ...would be a price worth paying” (IR(a)18.97).

All that the Society would add is that, unless this principle is accepted, the policy of requiring the developing of brownfield sites in preference to greenfield sites has no teeth.

### **Timescale**

46. Underlying all the arguments relating to alternative sites is the Football Club’s claim that they need a new stadium now, and that the development of an alternative brownfield site, with the potential complexities involved, would simply take too long. The Society considers that this argument ought not to be accepted without question. While it represents an entirely reasonable aspiration, the Football Club is at present occupying a stadium at Withdean which seats about 8000 spectators and is not always full. There is some scope for increasing the capacity of this stadium. When the new stadium was planned, the Club had reasonable hopes of being promoted to the Premier League. Currently, it is playing in Football League Division 1, two leagues below the Premier League, and average attendances in this league are

well below the figure of 22,000 spectators that the proposed new stadium would accommodate.

47. There are also doubts over the realism of the Club's aspirations. At the first Inquiry, the Club asserted that the necessary funds were available to meet the cost of constructing the proposed stadium. However, as Inspector Collyer has pointed out, they failed to put forward a business case which demonstrated viability and fundability (IR(a)18.167-169). Since the Inquiry, building costs have gone up while, if press reports are to be believed, the financial position of the Club has deteriorated. The fact that the Club is increasingly complaining that objectors are trying to destroy it suggests a feeling of some insecurity about the future. All this raises doubts about whether the Club would be in a position to build a new stadium immediately if the Falmer proposals were again to receive planning permission. For both of these reasons, the Society believes that the Club has time to find a better solution.

48. In the light of these doubts about whether the stadium is really needed immediately, and about whether the Club is at present capable of financing the development, the Secretary of State is asked to give careful consideration to a suggestion made by Inspector Collyer but ignored by the then First Secretary of State. After discussing the scope for further improvements to the Withdean Stadium to increase its capacity, the Inspector goes on to say:

“And if the Club were to continue to aspire to an even larger stadium, of the capacity currently proposed for Falmer, then in my judgement there is potentially a longer-term option in the form of the Shoreham Harbour site.....Any such development in this location would necessarily have to be part of a comprehensive, long term programme. But the continued occupation of a somewhat enlarged and improved Withdean Stadium for the time being would allow the opportunity to plan for the incorporation of a community stadium into the Harbour strategy. Nothing in the evidence available suggests that this could not, in principle, be achieved and to my mind it represents a realistic, albeit a rather hybrid, alternative.” (IR(a) 18.93)

49. While Inspector Hoile does not go as far as this, he makes two comments that provide some support for Inspector Collyer's suggestion:

“.....the facts are that the Club is able to exist and function (at the Withdean Stadium) at present, although in a less than ideal fashion. Also, it has been possible to make incremental improvements to address the most outstanding difficulties, principally spectator numbers .....” (Hoile paragraph 7.85 (ii))

“If planning permission (for a stadium at Falmer) is refused, the amount of rethinking and re-appraisal of Club finances after a long and expensive Inquiry would almost certainly delay the inception of a further search for premises other than the Withdean Stadium for some time..... Such a delay may be sufficient to enable the (City) Council to consider whether progress with the Shoreham Harbour Regeneration Strategy, especially its huge funding requirements, clarify the realities of a possible stadium location within that part of the urban area.” (Hoile paragraphs 7.98 and 7.99)

## **Matter D**

**“Any new matters or changes of circumstance (including in relation to the proposed designation of the South Downs National Park) which the parties consider to be material to the Secretary of State’s further consideration of these applications”**

### **The proposed designation of the South Downs National Park**

50. The Society is not aware of any change of circumstance in relation to the proposed National Park since the decision letter was issued. The reason that the Society considers it appropriate to make representations on this subject is that the published Designation Order is a material consideration that was wholly disregarded by the then First Secretary of State in his decision letter. The Secretary of State will be aware that this was one of the grounds that the Society and other parties put forward for seeking judicial review of that decision.

51. The Society recognises that, when PPS 7 refers to “nationally designated areas...that have been confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty” no distinction is made between National Parks and Areas of

Outstanding Natural Beauty. But the pressure that led to the proposed designation of the South Downs as a National Park was based on a public perception that this would provide the landscape of the Downs with greater protection than it currently enjoys. This perception was encouraged by Ministers, and it is one that remains, certainly among the Society's members.

52. Like most planning decisions, the determination of the stadium planning applications will involve the need to balance arguments favouring the proposed development against policies that lead to the conclusion that it ought not to be allowed to proceed. The landscape policies set out in PPS 7 fall into the latter category. The Society considers that the published National Park Designation Order ought to be recognised as adding to the weight to be attached to these landscape policies.

53. It may be argued that the site is not within the boundary of the proposed National Park as put forward by the Countryside Agency, although this applies only to that part of the site lying within the Brighton and Hove City boundary. At the National Park Inquiry, the Society argued vigorously that the proposed boundary ought to be extended to include the whole of the site. The Countryside Agency has acknowledged that the whole of the site meets the landscape criteria for inclusion. The Agency's reason for excluding the part of the site within the City boundary relates to its interpretation of a policy in the Brighton Local Plan 1995, an interpretation that the Society has challenged.

54. There is one other point that the Society wishes to make on this issue. In real terms, whether or not the site lies just inside or just outside the eventual National Park boundary is irrelevant to the impact that the stadium would have on the National Park. Even if the site was just outside the National Park, this would not make the proposed stadium invisible from within the Park, nor change the other impacts that it would have.

### **Impact on Stanmer Park**

55. The Society also wishes to make representations concerning the impact of the proposed development on Stanmer Park. This is designated as a Historic Park (Grade 2), and much of it is also a conservation area; the mansion and several other buildings within the park are listed buildings (IR(a) 2.3).. The then First Secretary of State clearly misdirected himself on this issue.

56. Paragraph 54 of the decision letter reads as follows:

*“The Secretary of State agrees with the Inspector that the development would not have any significant impact on the setting of the Stanmer Conservation Area, nor would it cause significant harm to the historic Stanmer Park.”*

This finding totally misrepresents the conclusions reached by Inspector Collyer on this issue. The paragraph cited in the decision letter refers only to the impact on Stanmer Park of the stadium development itself. It is followed by three paragraphs about the effect of a proposed link road through Stanmer Park which would provide an additional access to the University of Sussex campus. This is one of the proposed parking areas for the stadium, and the road is an integral part of the whole scheme.

57. Inspector Collyer’s conclusions in relation to this link road are set out in paragraph 18.146 of his report:

*“To my mind, the formation of this new road, and the scale of its use as a result of stadium related traffic, would have an unacceptable impact; it would neither preserve nor enhance the character or appearance of this corner of the Conservation Area, and nor would it have the effect of protecting the historic park. A number of trees would be lost, and although I recognise that a significant amount of new planting would take place this would be unlikely, certainly in the short term, to reflect the mature character of the existing woodland. Furthermore, the integrity of the existing continuous boundary wall would be destroyed. And, significantly, a relatively busy road would run through this part of the 2 designated areas. Overall, these works and this level of activity would also noticeably alter for the worse the character and appearance of the immediate setting of the listed lodge cottages”.*

58. Inspector Collyer goes on to refer to the views of English Heritage about “the major adverse impact [of the link road] on the south edge of the park, close to its main entrance”. While he accepted that English Heritage misunderstood the details of the scheme in two respects, he concluded that “the rest of their specified concerns are justified”. He notes in

particular that the road would have a 5.5m wide carriageway, and that, as well as serving stadium related traffic, it would provide a permanent access to the University, which English Heritage feared “would have much greater impact on the registered park” (IR(a) 18.147).

59. Contrary to what is said in paragraph 54 of the decision letter, Inspector Collyer concluded that the proposed link road would have a serious impact on the setting of the Stanmer Conservation Area and would cause significant harm to the historic Stanmer Park. Indeed, in paragraph 18.187 of his report, he includes “the effect on...the Stanmer Conservation Areas, their listed buildings and the historic Stanmer Park” in a list of “compelling objections to the (stadium) proposal” and states unequivocally that this impact would be “inconsistent with national guidance”. The then First Secretary of State’s total misunderstanding of this part of his Inspector’s report was another of the grounds on which the Society sought judicial review of his decision.

## **Indices of Deprivation**

60. Since the Inquiry was concluded, there is evidence that Moulsecoomb has become less deprived. The Indices of Multiple Deprivation for 2004, the most recent available, show that Moulsecoomb no longer ranks amongst the most deprived 5% of wards in the country as reported to the Inquiry. The data show that there has been a marked improvement in its performance. such that it can no longer be distinguished from many other wards in the City. This suggests the regeneration programmes in the east of the City are already having a beneficial effect in the Moulsecoomb area, without the stadium project. The performance of the East Brighton ward, which includes Sheepcote Valley, has not improved in a similar fashion.

## **Policy SR25 - Brighton and Hove Local Plan.**

61. Finally, the Brighton and Hove Local Plan has now been adopted by the City Council, and the equivalent of Policy SR25 still appears in it. At first sight, this is a strong argument in support of the stadium proposal. But Inspector Hoile recommended unequivocally that this policy should be omitted from the adopted Plan (Hoile paragraph 7.101 and see also IR(a) 18.189). This is a recommendation that would be binding on the City Council if it were made

now. As the Society has pointed out in paragraph 43 of these representations, the City Council has a financial interest in the stadium project, both as owners of the Falmer site, and as the Football Club's potential partner in the whole enterprise. These are material considerations, and they lead inexorably to the conclusion that these applications do not have to be determined in accordance with those provisions of the Brighton and Hove Local Plan 2005 that are specific to the proposed stadium at Falmer.

## **OVERALL CONCLUSIONS**

62. The then First Secretary of State rejected some of the key conclusions reached by Inspector Collyer, and supported by Inspector Hoile. While he was not bound to accept their advice, he was under a legal obligation to give proper consideration to their reports, and, where he was disagreeing with them, to put forward credible reasons for doing so. He was also under a legal obligation to consider all of the material issues. The then First Secretary of State failed to meet these obligations.

63. The only reason that he gave for rejecting the conclusions reached by the Inspectors on the nature of the application site and its surroundings, and on the impact that the proposed stadium would have on the landscape, has since been admitted to be incorrect. The site is not within the built up area of Brighton. The Inspectors viewed the site and its surroundings from a variety of vantage points, near and far: Ministers and their Civil Servants have presumably not done so. But this is not the only failure. Inspector Collyer's conclusions about the impact on Stanmer Park have been almost grotesquely misunderstood, and the proposed designation of the South Downs National Park, clearly a material consideration, has simply been ignored.

64. Finally, the policy set out in paragraph 22 of PPS 7 is a key element in ensuring the conservation of the natural beauty of the landscape of nationally designated areas such as National Parks and Areas of Outstanding Natural Beauty. "Major developments should not take place in these designated areas except in exceptional circumstances". If the addition of regeneration benefits to local economic benefits is capable of demonstrating "the need for the development ...in terms of national considerations", there are many other parts of these nationally designated areas that will be at risk, simply because of their proximity to urban

areas suffering from serious levels of economic and social deprivation. And if objectors cannot establish that there is scope for developing elsewhere without demonstrating that there is a “reasonable prospect of planning permission being granted” at an alternative location, with all that this entails in terms of the preparation of detailed assessments and the collection of information from possibly reluctant third parties, this element in a carefully balanced paragraph will have little if any practical value.