Land at Bird in Eye Farm, South of Bird in Eye Hill, Uckfield

LPA ref: WD/2021/2198/MAO

PINS ref: APP/C1435/W/22/3307820

APPELLANT'S CLOSING SUBMISSIONS

INTRODUCTION and BENEFITS OF THE APPEAL SCHEME

1 This Appeal concerns a proposal for up to 290 homes, associated infrastructure and landscaping, a strategic SANG, and access from the B2102. The Appeal Scheme will bring very weighty planning benefits, in particular much-needed new market and affordable homes, and is not affected by the various alleged technical defects advanced by other parties (relating to ancient woodland/tree impact, access arrangements, locational sustainability and flooding). A high quality scheme in a verdant and attractive setting is eminently achievable.

2 There is no "in principle" landscape objection to the release of the Appeal Site – itself a striking feature of a substantial new housing scheme in so constrained a District as Wealden. Indeed, in 2009, the Inspector regarded the Appeal Site as "urban fringe" [**CD/K1** at IR672/689] and the Secretary of State described it as a "natural or logical urban extension" [**CD/K1**, DL26]. Nothing has changed in these respects in the period since.

3 The very substantial planning benefits that the Appeal Scheme will bring are set out in the paragraphs that follow.

4 First, the **provision of up to 290 new homes** in a District with a significant 5 year deficit. The Council's claimed supply is 3.92yrs, resulting in a minimum shortfall of **1579** new homes that should be provided in the 5 year period, but won't be. Indeed, as Turner conceded in XX, the Council has lacked a 5 year supply for over 7 years, and has been a "20% buffer authority" for the last 2 years. The Council's area is heavily constrained (with AONB and the National Park alone comprising over 60% of the District; and the Ashdown Forest SPA/SAC and Pevensey RAMSAR site also introducing substantial constraints on the achievability of material new development). The Core Strategy [**CD/E1**, §5.8] acknowledges it is "inevitable" that "there will have to be a substantial use of greenfield land to meet existing and future housing needs".

5 The land supply position has not been assisted by the Council's failure to progress a review of its long out of date Core Strategy. A draft Local Plan (which proposed no new allocations around Uckfield) was submitted for examination in 2019, but withdrawn 12 months later, the examining inspector having issued an excoriating letter [**CD/E30**] identifying breaches by the Council of its duty to cooperate, in particular for having disregarded Natural England's advice about development in the vicinity of Ashdown Forest without good reason, thereby prejudicing the proposed distribution strategy for new homes. Nearly 4 years later, we are not materially further forward, with no new submission draft, and the promises in the most recent LDS that a new Local Plan would be adopted this year unrequited. In all the circumstances, the provision of up to 290 new homes is a substantial planning benefit.

6 Second, the **provision of up to 101 new affordable homes**. The Council has long recognized that delivery of affordable housing is a "priority" [Core Strategy at §2.17]. But its actions have not matched this recognition. The District has a very high affordability ratio (13.25), well above rates in the South East. The latest assessed need (in the LHNA) is for 854dpa (519dpa for affordable rent; and 335dpa for ownership), in which regard there is already a cumulative deficit – in just 3 years – of **1838**. Reasonably available opportunities (such as the Appeal Scheme) to make a material contribution to these acute needs must be taken. The current unsustainable and socially unacceptable deficits must be addressed. The Appeal Scheme's ability to contribute to such needs should, by itself, be afforded substantial weight.

7 Third, the substantial **economic benefits** that the Appeal Scheme will bring. These are enumerated in the infographic at **SB3**, and are not disputed as regards quantum by the Council. The benefits include £54m in construction value, and thereafter £35.7m additional GVA (economic output) every year. Construction will support around 450 jobs, and 42 jobs during the operational phase. Resident spend in the local area can be expected to be around £4m annually, which will no doubt be very welcome for the many retailers / restauranteurs etc in and around Uckfield. The Council quibbles that these are the benefits of a comparable housing scheme located anywhere. Maybe so, but that misses the point. In light of its long-standing 5 year supply deficits, this District is not enjoying the level of housing-related economic benefits which it should be. The opportunity to redress this situation to a meaningful extent via the Appeal Scheme should be recognized by according these matters substantial weight in any planning balance. Indeed, NPPF 81 advises that significant weight should be accorded to the need to support economic growth, and Turner agreed in XX that there was no reason this policy should not be applied here. For these reasons, the Council's mean approach, according economic benefits only "limited" weight, should be rejected.

8 Fourth, the **provision of a strategic SANG**. The proposed SANG is 26.17ha, with a 2.7km circular walking route, parts of which will enjoy very attractive views over the surrounding countryside. There is capacity to provide mitigation for 1363 new homes (or 1073, after accounting for the Appeal Scheme). The SANG would be available for future developments within a 5km radius (which encompasses the whole of Uckfield),

thereby offering a substantial benefit in terms of addressing one potential constraint (given proximity to the Ashdown Forest SAC/SPA) on new housing at Uckfield. Again, on any fair appraisal, these are matters to which substantial weight (rather than the "no weight" advocated by the Council) should be accorded. As to the numerous attempts made by the Council to diminish the weight attached to the ability of the Appeal Scheme to "clear a constraint" for 1073 other potential homes at one of (if not the) most sustainable location(s) in the District:

8.1 It is mischievous for the Council to rely on the fact that strategic SANG capacity would be "mitigation" for future housing schemes. Considered in the context of an application for such future housing schemes, that is of course correct. But that is irrelevant here, where the fundamental point is the ability to "clear a constraint" for a significant volume of future development that might otherwise be unable to come forward to meet needs by inability to provide their own SANG.

8.2 The present position is not materially different from a scenario where a residential-led scheme proposes (say) a public park which is quantitively in excess of policy requirements for POS associated with the amount of housing proposed. The public park is mitigation to an extent but also provides "over and above" public benefits. These public benefits fall to be taken into account in any planning balance, and it would be legal error to ignore them. The present situation is materially comparable, and it would be legal error to ignore the benefits of the strategic SANG part of the Appeal Scheme.

8.3 Nor would it offend the CIL Regulations to take account of the additional SANG capacity created. In addition to the points above, it can be noted that the SANG is not physically larger than is necessary to mitigate the relevant impacts of 290 schemes – as Brown's evidence at the Inquiry confirmed. Further, all CIL Regulation 122 tests are met when it is appreciated that scheme to be considered is not limited to 290 homes, but comprises the full Appeal Scheme proposal before the Inquiry – 290 homes and a strategic SANG. Thus, planning permission is sought for a strategic SANG, not just SANG as mitigation for 290 homes.

8.4 Turner §5.9.22 complains about future residents accessing the SANG through the town centre. This is not a serious issue in circumstances where the s106 contribution to a MOVA / SCOOT system linked across numerous junctions will alleviate minor town centre queuing issues to materially below current levels. Turner §5.9.22 also speculates about the future growth of Uckfield being on the other side of town, but as she accepted in XX (i) no decisions have been made about this, given the stalling of progress on a new Local Plan, and (ii) future growth on the other side of Uckfield would still be well within the 5km range of the SANG which Natural England applies.

8.5 At the Inquiry (but not before), the Council pointed to the absence of a need assessment for additional SANG. That is not a credible objection. The Council knows perfectly well what SANG has been approved in the Uckfield area, and what allocation to that SANG has been made for existing/consented development. If the Council had been able to use such information to make a positive case that new SANG is not currently needed, the Inspector can be assured that it would have sought to do so. It has not. In any event, it cannot sensibly be disputed that additional SANG at Uckfield will be required in the near future, even if not now. As the Council repeatedly ignores, Uckfield is one of the (if not the) most sustainable location(s) in the District.

8.6 Disappointingly, it appears that the proposed strategic SANG, and the capacity to "clear" a significant constraint for 1073 future homes in the Uckfield area appears to be one of the principal reasons why the Council and Rule 6 party have opposed this Appeal on a "kitchen sink" basis. It is, unfortunately, the position that some local residents in the Uckfield / Framfield area will be no more welcoming of an additional 1073 new homes in this vicinity than they are of the Appeal Scheme.

9 Fifth, the **provision of c40% BNG** (secured by condition – see draft condition 25) is a further benefit of the Appeal Scheme to which substantial weight should be attached. The relevant policy requirement [NPPF 174d] is merely for a "net gain" (the minimum 10% statutory provision not applying to the Appeal Scheme), which could be satisfied by a 0.1% gain, rather than the c40% gain across a substantial Site. The Council's attempts to diminish this significant benefit do it no credit. Further, the Council's primary argument – that BNG is "wiped out" by deterioration to irreplaceable habitats – makes no sense. If the Council is correct on "deterioration", the Appeal will be dismissed. If the Council is not correct on "deterioration", it is not possible to understand how its rejected case on such issues would undermine the value of the c40% BNG proposed here.

10 Sixth, the substantial **highway safety benefits** in replacing the current "sub-optimal" access to the Appeal Site with a proposal (21P) that is itself safe and which allows for visibility splays reflecting the speed of the B2102 and considerably wider carriageway widths on the B2102 than existing. Mr New's evidence in XX was that it is "fortuitous" that the current access deficiencies have not led to any accident. The absence of an accident over the last 10 years does, as regards HGV drivers, confirm the care those drivers take, in accordance with their considerable training. As regards the c190 car movements per weekday through the existing access to the Farm, it is not right that we should simply wait for an accident caused by the sub-standard visibility splay to the west before acting. The benefits of replacing the existing "sub-optimal" arrangements with a new, safe access (21P) should be accorded substantial weight in any planning balance.

11 Seventh, there are **additional benefits to which moderate weight** should be accorded as outlined in Brown's evidence (such as the sustainability benefits which the Appeal

Scheme will introduce that will be available to be enjoyed not just by new residents, but also by existing residents of the area).

12 Taken together, the benefits of the Appeal Scheme cannot be described as anything other than extremely weighty.

HERITAGE

13 The Appellant's submissions on heritage are as follows:

13.1 There will be no "less than substantial harm" ("**LTSH**") to the Oast House, applying the approach endorsed by the Court of Appeal in the ***Bramshill*** judgment [**CD/F10**, para 78] which permits offsetting heritage benefits and impacts in respect of the same heritage asset to arrive at a "net" appraisal as to whether there is "harm" engaging NPPF 202. Applying that approach here:

13.1.1 The harm to the Oast House's significance from the proposed development within its wider setting is very limited taking into account that (i) the Oast House's significance is primarily derived from the then innovative technology it employed, which can only be seen and experienced internally, (ii) that the Oast House's immediate setting is dominated by the roads, parking areas and tired, utilitarian buildings associated with Bird in Eye Farm, and (iii) as such, the wider agricultural/equestrian land comprising the Appeal Site makes only a limited contribution to the asset's significance.

13.1.2 This very limited impact on significance is directly offset by the opportunity to introduce new, close up views of the Oast House within public open space to its immediate west (land that is currently private). This opportunity can be further optimized with an interpretation board (secured by condition – see now draft condition 34) explaining to members of the public / new residents the significance of the asset. The introduction of such new views is a well-recognised form of heritage benefit. NPPF 206 specifically advises that opportunities to enhance or better reveal the significance of heritage assets are to be welcomed. Similarly, GPA3 [**CD/F5**, at para 38 on p14] provides that positive changes within the setting of a heritage asset include the provision of public access and public views, thereby aiding the interpretation and appreciation of the asset. It is respectfully submitted that these matters are sufficient to offset any harm to significance that would otherwise be identified. It can be noted that this approach was essentially that of the Council's Senior Heritage Officer [**CD/B14**], whose view was that the Appeal Scheme could come forward in a manner that caused no heritage harm, taking account of the "heritage benefits" capable of being secured at the detailed stage.

13.2 If, however, the Inspector took the view that LTSH remained following the offsetting exercise explained above, an NPPF 202 balance would need to be struck. In this context, and giving considerable weight to any low level of "net" heritage harm, the very substantial public benefits of the Appeal Scheme plainly outweigh. The public benefits to be weighed into account are summarised in Brown's evidence (in particular, the table at the end of his rebuttal), and have been set out in relevant detail in the first section of these Closing Submissions. It can be noted that there is common ground with the Council (per Turner in XX) that any heritage harm engaging NPPF 202 is outweighed by the admitted substantial benefits of the Appeal Scheme (market and affordable housing) alone. Further, the Rule 6 party has not sought to suggest otherwise. And such a conclusion would be consistent with the Secretary of State's (briefly explained) conclusion in 2009 [**CD/K1**] that there was no heritage-related reason to refuse that scheme. It can also be noted that Historic England elected to make no specific comment about the proposals when consulted [**CD/B29**], which is not the position they would have adopted if concerned that the Appeal Scheme would cause an unacceptable degree of harm.

13.3 Adopting either of the approaches set out above, the Inspector will have discharged her duties under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

13.4 Finally, and for completeness, it can be noted that local policy on heritage dates either from the 1998 Local Plan, or the 2013 Core Strategy. Relevant policies are in some respects inconsistent with the NPPF (see Copp §3.22), but anyway add nothing to the statutory / NPPF regime which falls to be applied.

ALLEGED "LOSS OR DETERIORATION" TO ANCIENT WOODLAND / VETERAN TREES [NPPF 180c]

14 There will be no "loss or deterioration" to ancient woodland or veteran trees.

15 The Appeal Scheme is fully supported in relevant respects (indeed was formulated alongside) the relevant national consultee, Natural England. It is inconceivable that Natural England would support a scheme that caused "loss or deterioration" contrary to NPPF 180c.

16 Natural England's views must be accorded substantial weight given its status as relevant statutory consultee, and its acknowledged expertise in relation to "irreplaceable habitats". But that is especially so here, where a succession of Natural England officers were involved in the evolution of the relevant aspects of the Appeal Scheme, and a number of such officers conducted site visits on a number of occasions (per the evidence of both Rose and Brown). There is no evidence that Natural England misunderstood

the Appeal Scheme or its impacts that would enable its views to be disregarded. While it can be inferred from Rainbow's evidence that the Council made efforts to try and persuade Natural England to change its position of support (under the guise of alleged queries about the status of the final consultation response at [**CD/B26**]), the latter declined to do so. The planning process is rendered un-navigable for developers, as well as protracted and expensive, where (as here) a Council simply refuses to accept Natural England's considered conclusions, following detailed and site/scheme specific assessment. That is all the more so where the Council's objections are ever-evolving and founded on complaints the credibility of which is fundamentally undermined by its relevant witness (Rainbow) not having raised them at application stage.

17 Unfortunately, this Council has "form" in terms of disregarding Natural England's advice without good reason. This can be seen in the highly critical letter of Inspector Nurser at [**CD/E30**] which censored the Council's approach to a (since withdrawn) submission draft LP, concluding that the Council had failed to co-operate with Natural England (among many others) and had failed to provide any coherent justification for ignoring Natural England's advice as to how to assess air quality impacts on the Ashdown Forest. The Council's irrational approach on that occasion was fueled by an evident desire not to bring forward new residential development in the Uckfield area, and regrettably history appears to be repeating itself in this Appeal.

18 The Council's Cl/Subs at §49 clutch at straws in referencing the fact that Natural England's first consultation response [**CD/B12**] included what the Inspector will well know to be its "standard rubric" that it does not normally provide bespoke advice on (eg) ancient woodland issues. It is perfectly plain that Natural England has provided bespoke advice on ancient woodland issues in this case, including working collaboratively with the Appellants to devise the proposals which it then advised the Council should be accepted; and providing consultation responses which in express terms grapple with ancient woodland issues [**CD/B12, B26**]. The Council's sorry history of attempting to stop development in the Uckfield area based on irrational approaches to matters within Natural England's area of expertise may have been one of the factors which persuaded Natural England to play the active role which it played here, and to offer the bespoke advice to the Council which it has.

19 In relation to the **ancient woodland**, the Council's inquiry evidence (Rainbow) complained about 3 aspects of the Appeal Scheme: (i) water-related matters, (ii) the proposed buffer zones, and (iii) the path improvements. It is convenient to take these matters in turn.

20 On **water-related matters**, the following key points can be made:

20.1 The water-related concerns at Rainbow §§7.6-7.9 and §7.20-7.21 were surprising additions to the Council's case, as none had been raised at application stage by anyone, least of all in Rainbow's two consultation responses [**CD/B16**; and the May 2022 comments annexed to his proof].

20.2 The concern about noise and light being reflected off the SUDs basin was based on a fundamental misunderstanding that the basin would be permanently wet, as Rainbow accepted in XX. In fact, per Hensler Reb §3.1.4, it will only be for rare and short periods that there is water in the basin above the level of the relevant vegetation. Further, the buffer zone to the houses in this part of the Appeal Scheme is substantial (75m to the road, across the basin itself), and Rainbow accepted in XX that, assessed on the correct factual basis, he had no evidence that the SUDs basin would in fact cause any particular impact to any particular species. This *de minimis* point should never have been made by the Council.

20.3 Rainbow accepted in XX that his point about the spread of invasive species (his proof, §7.8) was founded on a misunderstanding about which direction the stream flowed. While this is a small point in the context of this case, it does illustrate the unreasonable lengths to which the Council's scattergun case was extended.

20.4 Rainbow §7.20 expressed concern about the proposed swales affecting the RPAs of the trees in the ancient woodland. This point is wholly without merit. The swales (shown on Rose Appendix C) are well outside the minimum 15m buffer zone (measured from canopy edge). Further, as shown on the plan at Hyett App 1, the swales are a significant distance beyond the RPAs of all ancient woodland trees, to include the additional veteran tree buffer for tree T6 (located at the northern edge of W2). The plan at Hyett App 1 was included within the original AIA [**CD/A26**], but Rainbow does not appear to have reviewed it for purposes of his proof.

20.5 Rainbow §7.20 also raised concern about "change to the water table" affecting relevant irreplaceable habitats. Neither Rainbow nor the Council called their own evidence on this matter (another point not raised in Rainbow's consultation responses). In any event, the point was comprehensively answered in section 7 of Hensler's main proof. She explained [proof §7.3.2] why there would be "negligible impact on the hydrological regime" of the ancient woodland, and thus no impact on the water table. Her evidence also explained how SUDs water management features would operate as water quality treatments (beyond the requirements of C753): see Hensler comments in Rose App I, p3, and at §5.2.1*ff*. None of her evidence on these matters was challenged at the Inquiry. Rainbow's concerns about the potential for adverse impact on the water table or the quality of surface water flow to the ancient woodland must be rejected.

20.6 Finally, it can be noted that there was no dispute at the Inquiry that a surface water route running between the SUDs basin and an outfall north of W1 can be achieved without intruding (either at construction or maintenance stages) on the 15m minimum buffer zone to W1, or the RPA of any tree. [See Hyett §6.1, §6.4; Rose §4.8; Hensler §5.1.6 (final bullet) and §5.3.5].

21 Turning to the issue of **buffer zones**, the graduated buffer zones reflected in the Appellant's evidence notably Rose App C (15m minimum for most purposes, but much greater in relation to the location of houses and roads) demonstrate one way in which the Appeal Scheme could satisfactorily come forward without breach of NPPF 180c. Specific considerations in this regard are:

21.1 Natural England was plainly satisfied with the proposed buffer zone regime, otherwise it would not have supported the Appeal Scheme. Similarly, the Forestry Commission [**CD/B21**] stated that it was "pleased to see that buffer zones have been taken into account and planting of trees incorporated into the buffer zones to further protect" the ancient woodland.

21.2 Strikingly, given that the Council's only evidence on buffer zones is given by Rainbow, he was content with the proposed buffer zones at application stage. His consultation response [**CD/B16**] merely noted: "A minimum 15 metre buffer zone has been proposed from development to ancient woodland, this is greater in places and appears to have been taken account of in proposed development design". The consultation response contained not a word of concern or objection in relation to buffer zones. His proof, by contrast, complained about the buffer zones across 3 pages. There has been no satisfactory explanation (indeed, no explanation at all) for the Pauline conversion Rainbow has latterly undergone. A witness's evidence has no credibility at all where such a breathtaking *volte face* cannot be explained. The inference is irresistible that the Council has approached this appeal on the basis that it is entitled to raise whatever new point it can think of in order to try and cause difficulties. In the same vein, and similarly undermining Rainbow's credibility, was his inability to explain in XX how much larger he thought the buffer zones should be. The "larger than proposed but I can't say by how much" answer is again revealing as to the Council's approach to this Appeal.

21.3 Apart from access to the improved path through W2, the minimum 15m buffer zone is proposed to be given over primarily to defensive planting which will have the effect of significantly discouraging human or dog access into W1 or W2 (other than via the improved path). There will also be post and wire fencing, which can be installed without affecting tree RPAs. Further, in relation to the route through the buffer zone to access the path across W2, Hyett's evidence confirmed that this will cause no harm to surrounding trees. His evidence carefully explained the substantial degree of soil compaction necessary to affect trees and their roots adversely, and that there was no prospect of a harmful degree of "soil density" arising here. The Council called no arboricultural expert, and is in no position to dispute Hyett's assessment, which the Inspector is invited to accept.

21.4 Similar points apply to the mown grass paths illustrated on Rose App C to the south-east of the residential areas, although it was not disputed by the Council (and will have been noted during the site visit) that there is scope at reserved

matters stage (if thought appropriate by the Inspector or during subsequent discussions with the Council) to re-route these outside the 15m buffer zones and through existing gaps in the newly planted woodland marked "8" on Rose App C. In further support of the points above, it can be noted that the Standing Advice [CD/G3, p8] is supportive of allowing "access to buffer zones if the habitat is not harmed by trampling". The latter aspect is addressed by Hyett's evidence summarised above.

21.5 There is one location (to the east of W2) where access to the southern SANG is located within the 15m buffer zone. However, not even the Council could muster an objection to this, as Rainbow confirmed in XX. The route in question is along a well-established and compacted farm access track and incorporates an existing bridge over the E-W watercourse. Hyett was not challenged on his explanation (proof, §9.8) that use of this route will cause no harm to the ancient woodland or the trees within it.

21.6 As regards the proposed buffer zones to the new housing, Rose App C shows minimum separations of c28m between the canopy edge and the nearest road (although separation is significantly greater where the SUDs basin is proposed). Separation between the ancient woodland and the nearest house facades will therefore be in the region of at least 40m.

21.7 Contrary to his consultation response [**CD/B16**] expressing no disquiet whatever on the topic of buffer zones, Rainbow's proof adopted a "kitchen sink" approach, exemplified by §7.13 where he articulated concern about "**dust, noise, light, air quality, domestic pets**" as the basis for a contention that the effects of the development mandated a larger (by some unspecified amount) buffer zone to the built development. None of these points has merit.

21.8 In relation to **dust**, this point was fully addressed in the Air Quality Assessment [**CD/A14**] submitted to the Council 2 years ago. §7.2.1 thereof sets out the mitigation measures that would (see conclusion at §8.1) need to be taken to ensure dust at construction stage caused no discernible impact. The measures in question are all standard, and can be secured via a construction management condition [see now draft condition 12c].

21.9 As regards Rainbow's new point on **noise**, the following can be noted:

21.9.1 Ordinarily, a 15m separation between ancient woodland and new housing (and the occasional noise events associated with it) would suffice to satisfy the Standing Guidance [**CD/G3**]. The Council and Rainbow have failed to identify any particular factor or feature of the ancient woodland ecology here which would indicate that the proposed >40m separation to housing is insufficient.

21.9.2 There is no evidence, as Rainbow conceded in XX, that the ancient woodland is used by any species that is particularly "noise sensitive", or that would be materially adversely impacted by the normal incidents of a residential estate at the separation distances proposed here. As Rose explained, that concern may arise if the Site were used by noise-sensitive species such as migratory geese – but it is not.

21.9.3 Rainbow's oral evidence made much of possible impact on badgers. But as Rose explained, badgers are not known to be particularly "noise sensitive", as illustrated by the sett established close to the B2102 (carrying between 4000-5000 traffic movements a day). Further, as badgers are nocturnal, they will largely be in their burrows during the day. And badgers in W1 and W2 are further protected by the topography, notably the steep banks leading down into the woodland from its edges.

21.9.4 Rainbow produced no noise reading based evidence. In that context, it was surprising that he sought to make a point that the Appellant (never having been asked by the Council to do so) had not produced any either.

21.10 As regards Rainbow's new point on **light**:

21.10.1 While Rainbow spent much animated time during oral evidence (in particular, discussing car headlights), this point appeared to have evaporated from the Council's case following his XX, as no questions about light were pursued during Rose's XX.

21.10.2 Rainbow's banner point on car headlights fell away, in any event, when he accepted that it could be addressed at RM stage by a low hedge (which could, of course, be required to be evergreen) alongside relevant parts of the roads. This would be in addition to the substantial proposed defensive planting, which (per Rose's undisputed evidence) would establish within 2 years (ie, long before the housing nearest the ancient woodland would be constructed).

21.10.3 Rainbow accepted in XX that he had no evidence the ancient woodland was home to any particularly light-sensitive species. Rose confirmed that it was not. As Rose explained, there is no evidence badgers are light-sensitive, or would be affected by the Appeal Scheme's light. And none of the bat species using the Appeal Site are light-sensitive so as to be adversely affected (as Rose explained). Further, dark corridors (including along the N-S hedgerow through the middle of the residential area) will be preserved at RM stage.

21.10.4 Finally, there was no dispute at the Inquiry about Rose's evidence that a sensitive lighting scheme could be brought forward at RM stage

which would result in Lux levels at the edge of the ancient woodland being no brighter than moonlight. His evidence to this effect during EiC was not challenged in XX.

21.11 In relation to **air quality**, this is comprehensively addressed by the expert report at Rose App H confirming (per Rose §4.28) that "air quality impacts will have no material effect on the diversity, distribution or structure of woodland vegetation at the [ancient woodland], nor by extension any effect on woodland fauna". This evidence was not challenged by the Council at the Inquiry, nor could it be. (The report at Rose App H was commissioned because, although the Council had raised no point and requested no information at application stage about air quality, its statement of case [**CD/C4** at §5.22] purported to do so.)

21.12 And in relation to **domestic pets**:

21.12.1 Dogs will be suitably deterred from entering W1 or W2 by the extensive proposed defensive planting, and the dog-proof fencing alongside the improved path through W2. Rainbow did not seriously suggest otherwise during XX.

21.12.2 For the reasons explained by Rose (see his proof at §4.29, as amplified during oral evidence), cat predation will not have material impacts for species diversity or for any particular species using the ancient woodland. Cat predation issues are not material for dormice. Where such issues could be material (ie, in relation to common species such as common birds, voles and mice) there will in fact be a neutral impact overall taking into account the mitigation proposed (significant habitat creation and enhancement, both in the SANG generally, but also in the defensive planting), such that overall populations in the ancient woodland and its immediate vicinity will not be negatively impacted.

21.13 It is worth emphasizing, having addressed in turn each of the laundry list of new alleged effects said to justify a larger buffer zone (by unspecified amount) cited by Rainbow, that none of these alleged concerns are shared by either Natural England or the Forestry Commission, as referenced above. It is accepted that, by contrast, the Woodland Trust sought 50m buffer zones [**CD/B31**]. This accords with the Woodland Trust's longstanding views (evidenced, in almost identical language, in its objection to the Ridgewood proposal: see **RP4**) that the Standing Advice [**CD/G3**] is wrong to identify a 15m minimum buffer zone. The Woodland Trust is not a statutory consultee. It is a charity with conservation objectives and particular views on buffer zones which conflict with the views of both Natural England and the Forestry Commission. The letter at [**CD/B31**] is signed by the "Lead Campaigner – Woods under Threat". The Woodland Trust's consultation response in this case should be given no weight in the face of the factors set out above.

21.14 In summary on **buffer zones**, none of the matters considered above will cause loss or deterioration to the ancient woodland, individually or cumulatively. It was agreed at the Inquiry that "deterioration" can (per the OED definition) be thought of as the process or fact of "becoming worse". This is supported by the definition of "irreplaceable habitat" in the NPPF Glossary, emphasizing that relevant policy is founded on avoiding impacts which are very difficult to reverse or "replace once destroyed". Immaterial and/or temporary impacts are different and are not to be confused with the material worsening of the ancient woodland's condition which is the essence of NPPF 180c. For example, cutting back a tree branch without affecting the tree's health may be an "impact" (per the Standing Advice), but it would not cause "loss or deterioration". Rainbow's current approach to buffer zones did not occur to him at application stage, and his belated alleged concerns should be roundly rejected.

22 Turning now to the proposal to **improve the path through W2** as part and parcel of the SANG circular walk, this too will not cause loss or deterioration to the ancient woodland. Specifically:

22.1 At risk of wearing this point out, Natural England was thoroughly supportive of the path proposal, indeed the evidence is that improving this path was Natural England's idea. This support was not the result of a whim or some fundamental misunderstanding. It was the product of a careful consultation process between the Appellant's ecologists and Natural England's experts. The latter conducted site visits on a number of occasions, and fully appreciated the nature of the proposal, including that the path was through ancient woodland. Natural England's support following such a process should be accorded substantial weight.

22.2 It is noted that the Forestry Commission expressed some concerns about the proposed path [**CD/B21**] however on analysis this letter does not diminish the weight to be accorded to Natural England's views. First, the Forestry Commission conducted no site visit (as confirmed by Rose's oral evidence), and appeared from the text of its letter to be under a misapprehension that the proposed path was "new" as opposed to reflecting a route well-used and frequently cleared/maintained by the landowner to facilitate his own use (as Natural England's site visits will have confirmed to it). Second, the letter requested fencing etc arrangements if the Scheme was consented – reflecting the Forestry Commission's acknowledgement that it would be reasonable to reject its concerns. Third, the Forestry Commission was not asked for an updated opinion following Natural England's confirmation of support for this aspect of the Appeal Scheme two months later. It is entirely likely that the latter's considered support for the proposal would have assuaged the earlier concern.

22.3 Next, the Council complains that it does not have a detailed design relating to matters such as precise path width at every point along the route, location of every single fence post or possible locked gates within the fences, or precise design parameters for any replacement of the small bridge along the route of the path. In part, that it because the Council never asked for such details until XX of the Appellant's witnesses at the Inquiry. In part, it is because this is an outline application, and the total precision the Council now requests is not necessary to make a suitably informed judgment as to whether the improved path will cause "loss or deterioration" to the ancient woodland (certainly, Natural England did not require further specificity). And in part, this is because the SANG management plan [**CD/A23**] was drafted over 2 years ago, and is not intended to be "writ in stone". Accordingly, the SANG management plan's principles are to be secured by condition (see draft condition 8), but the details are to be re-discussed with the Council at RM stage. In any event, it is evident from the evidence given by Rose and Hyett that the path will be around 1m-2m in width, accommodating narrower stretches than c2m where it is appropriate to do so. Further, the Woodland Strip available to the Appellant is 10m wide, but for the most part the intention will be for the fences on either side of the path to be c6m apart. The evidence on this is not as confusing as the Council appears to think. Overall, there is more than sufficient information to make a judgment on the Council's claim that "loss or deterioration" will be caused.

22.4 The Council's attempt to advance a technical argument that the improved path will somehow result in "loss" of ancient woodland is absurd and should be rejected. The credibility of this technical argument is undermined by the fact that the Council and Rainbow did not think up such a point at application stage (Rainbow's consultation responses being confined to commentary on what materials should be used, with particular objection to wood-chip – which is not proposed – rather than the "principle" of improving the path), nor in the Council's Statement of Case [**CD/C4**]. Further, as confirmed by the evidence of Hyett and Rose, Rainbow's new argument is wrong, and there will not be "loss" [NPPF 180c] or "destruction" [NPPF Glossary] of ancient woodland. An existing path will be improved - that is all - so facilitating "recreation, health and wellbeing" for more people, wholly in accordance with the objectives of ancient woodland identified on p2 of the Standing Advice [**CD/G3**]. The soil under the improved path will continue to contribute as it currently does to supporting surrounding fauna and flora (Hyett's evidence being that no harmful soil compaction will occur), and branches of trees and other vegetation will continue to span over the path (so facilitating passage for species such as dormice and squirrels). Further, species diversity within the ancient woodland for ground flora will not be diminished (per Rose). Accordingly, in no reasonable sense of the term "loss" is there a "loss" of ancient woodland. There will be no need for Natural England to re-draw the map in its inventory to exclude the area of the path from what is shown as ancient woodland – another clear indication that there is no "loss" of ancient woodland here.

22.5 For similar reasons, there will be no "deterioration" of ancient woodland from introduction or subsequent use of the improved path. In addition to the points made above:

22.5.1 The Inspector has of course visited the route of the proposed improved path, and she will be able to judge for herself the limited impact that improving the path will have (taking account of the current condition of the existing, compacted route; the evident management regime employed by the landowners to ensure the current path remains useable to themselves and their invitees; and the sensitive construction techniques, such as "no dig" construction and working by hand, described in Hyett's evidence which can be secured by condition). Such limited impacts come nowhere near "deterioration", ie worsening the condition of the ancient woodland.

22.5.2 As above, there is no evidence that any limited clearing of ground flora or cutting back of tree branches will have a material impact on matters such as flora species diversity, distribution or abundance within the ancient woodland, or as regards the health of particular trees (none of which would need to be removed or substantially cut back to facilitate the improved path), particularly taking account of the landowner's existing management regime. Nor is there evidence from Rainbow (or anyone else at the Council) to contradict Hyett's assessment that the hoggin gravel path itself – because the weight of walkers is distributed across the self-binding gravel used - will not result in the "substantial" soil compaction necessary adversely to affect surrounding trees/roots.

22.5.3 For the reasons given by Rose, the proposed dog-proof fencing will not have adverse impacts for badgers using the ancient woodland. Badgers are not deterred by defensive planting, so will readily be able to cross between the eastern and western parts of W2 – at either end of the improved path, or under the bridge across the watercourse (which, if improved, could also incorporate a ledge underneath which facilitated ease of crossing for badgers). The Council's Cl/Subs at §54 contend that "badgers would be required to leave the AW". That is not correct in relation to a badger crossing at the watercourse, but in any event it is impossible to see how the need for a badger (at night) to move a few feet out of the designated ancient woodland and through the defensive planting areas for a short distance before re-entering the designated ancient woodland will cause loss or deterioration. Moreover, questions as to whether additional dog-fencing is needed along any part of the southern SANG can now be left to the SANG management plan condition process (see draft condition 8). Rose's evidence to the Inquiry that the defensive planting proposed will suffice to deter dogs (while not impacting badgers) indicates that the SANG management plan approved

under draft condition 8 need not involve provision of dog-proof fencing anywhere other than alongside the improved AW path.

22.5.4 At the Inquiry, the Council went to extraordinary lengths to introduce alleged concerns about use of the path that even Rainbow's proof had not contemplated. Concerns about litter can be readily addressed by the provision of bins on or within the fences to either side of the path over its short length (100m) through W2. Concerns about people talking as they walk the path, or the very occasional crying child, were supported by no credible evidence from Rainbow (or otherwise) that this will cause impacts amounting to deterioration. Rose was clear in his oral evidence that such limited and occasional matters would cause no disturbance of any material consequence to woodpeckers, badgers or other fauna within W2. The "threshold of noise that would cause disturbance" was, he explained, very considerably higher than the limited matters to which the Council pointed. And to return to reality, it must be remembered that large parts of the Appeal Site are presently available for agricultural use, with Hyett's evidence being that the eastern part of the area proposed for residential use was recently ploughed, and the Inspector will have observed indications on the site visit that shooting parties take place in the vicinity.

22.5.5 The Council also raised concerns about the rest of W2 (apart from the 10m wide "Woodland Strip" which will be managed under the SANG management plan; and within which the 1m-2m wide path is located) being outside the Appeal Site and thus outside the scope of SANG management regimes. However, there is no credible evidence from the Council that this will lead to "deterioration" of W2. Nor did this point cause any concern to Natural England. The proposed chestnut paling fence (c1.8-2m in height) will deter residential access to W2 from the path, and strict management/repair obligations can be insisted on (through scheme conditions – see draft condition 8) in relation to its maintenance. The defensive planting and post/wire fencing in and around the buffer zones will perform a similar role. Overall, there is no reason to suppose that any material level of trespass into W2 will occur so as to result in "deterioration". Rainbow was at his least convincing when unable to provide any intelligible explanation in XX why anyone should wish to enter and wander around W2 (by scaling the chestnut paling fencing; or seeking to fight their way through the defensive planting and down the steep banks), when there is 26 hectares of high quality SANG (parts of which have stunning views of the surrounding countryside) available.

22.5.6 It goes without saying that Natural England were not concerned by any of this litany of new concerns floated by the Council at the Inquiry.

22.5.7 Finally, there is nothing remarkable about the site visit having identified a new entrance to a badger sett within W2. The Council's attempts to rely on this observation at the Inquiry simply demonstrate that there is no length to which it will not go to create difficulties for the Appeal Scheme. Returning to the badgers, identification of a new sett entrance confirms Rose's point as to the dynamic nature of badgers. This is why construction-stage update badger surveys are undertaken. The (only to be expected) identification of a new sett or new sett entrance does not in some way evidence the deficiency of the ecological surveys undertaken by the Appellant. It must be recalled that the Council's position – per Rainbow's consultation response at [**CD/B16**] – is that the ecological surveys undertaken by the Appellant were "adequate to inform the application, with appropriate methodology and survey effort", and with comparable endorsement of the proposed mitigation arrangements.

22.6 Further, the evidence is that there are plenty of paths through ancient woodland, including the many ancient woodlands around Uckfield. These ancient woodlands are in many cases specifically managed for public access (see eg the Woodland Trust's Views Wood), and there is no evidence before the Inquiry that this situation habitually or even occasionally) causes "deterioration" to ancient woodland. Indeed, Rose was able to confirm to the Inquiry during his oral evidence that he has recently visited Views Wood, and that he had observed no "loss or deterioration" to the ancient woodland from the various public footpath routes. Revealingly, after it had been demonstrated by Brown in EIC that the Council's approach to an improved path through ancient woodland at nearby Ridgewood Farm [officer report at his **RP4**] was to conclude that there would be no "loss or deterioration", the Council's response was to suggest to him in XX that "maybe the Council got it wrong then". This simply will not do. The truth is that the Council has not come to terms with the inconsistency between the technical arguments it belatedly seeks to advance here (through a witness who raised no such concerns at application stage) and the approach it has taken elsewhere. Furthermore, there is a complete absence of actual evidence from the Council that it did "get it wrong" at Ridgewood Farm (ie, through demonstrating subsequent adverse impacts on the relevant ancient woodland amounting to "deterioration").

22.7 Finally in relation to the improved path, the Council is in error in seeking to rely on the Standing Advice commentary on "existing condition" [**CD/G3**, p7]. This plainly does not apply. The thrust of the advice in question is that the existing condition of an ancient woodland cannot be used to justify <u>actual</u> "loss or deterioration". That is not this case. The Appellant is not saying "we cause loss/deterioration, but the existing condition of the path route justifies that". Rather, the very question for the Inspector is posed by the opening words of the commentary in question – "where a proposal involves the loss or deterioration …". The Appellant disputes that its proposal does involve any "loss or deterioration", and there is absolutely no reason (whether in principle or based

on the commentary in the Standing Advice) why the existing condition and use of the extant path through W2 is not relevant when answering the question whether "loss or deterioration" will in fact occur. The Appellant's approach is not "circular" (as the Council's Cl/Subs allege) – it involves a straightforward application of the wording of the Standing Guidance as written. The credibility of the Council's argument can be further tested in this way – imagine a case where a narrow tarmacked road through an ancient woodland is to be replaced by a narrower hoggin path. Why would the existing condition of the route (tarmacked road) not be relevant to an assessment whether the proposal would cause loss or deterioration?

23 Moving on to **Veteran Trees**, it is impossible to understand what (if anything) is the Council's case here. It did not call an arboricultural expert as a witness. Nor was Hyett challenged with even a single question on Veteran Trees during XX. It appears that the commentary in Rainbow on G9 is fundamentally flawed by the failure to appreciate that the route of the proposed path is (as the Inspector will have observed during her site visit, and as is shown in the photos on Hyett App 4) comprised of an area covered with hardcore and brick rubble, and (from the visible tracks) presently used by farm tractors. Anyway, as Rainbow did not dispute in XX, and as the Inspector will have seen from her site visit, at RM stage, the route of the path could (if the Inspector or Council thought appropriate) be adjusted to move a little west (around the existing willow tree which is at the edge of woodland "8" shown on Rose App C), and so entirely outside the veteran tree buffers associated with G9. Finally, the Appeal Scheme offers an opportunity to improve the setting and enhance the ground conditions of G9, as illustratively shown on Hyett App 4.

24 In summary, the Council's ever-evolving case as to alleged loss or deterioration to irreplaceable habitats should be dismissed.

ALLEGED "UNACCEPTABLE IMPACT ON HIGHWAY SAFETY" [NPPF 111]

25 **Highway Safety matters**. As the Inspector will recall, 21P amended 21K with a view to seeking agreement with the County Council on access design, inter alia by (i) providing 3m-wide through lanes (rather than 2.75m); (ii) providing for a "side road ahead" sign (and a solid white line) to provide additional guidance for west-bound drivers on the B2102; and (iii) providing 10m corner radii on the minor road into the Site. While this has significantly reduced the highway-related issues, the County Council / Council have maintained limited concerns relating to (i) the swept paths of HGVs, and (ii) cyclist access – although this was expressly stated by Mr New not to be a "standalone" concern that would by itself justify refusal of consent. These matters will now be addressed in turn.

26 The points made by the County Council / Council need to be considered in the context and expectation that motorists operate their vehicles reasonably and with due caution, and that HGV drivers manoeuvre in accordance with their considerable training and

knowledge as to the dimensions and swept paths of their HGVs. It is not possible or reasonable to design for bad or incautious driving.

27 As regards the swept path / tracking points advanced (in respect of drawing 5330/228H – within Twinberrow App 28), it is not accepted that any inherent safety flaw has been identified:

27.1 The Left-In [top left frame] does not cause a safety concern in relation to traffic behind the HGV. Such traffic should be positioning itself a safe distance behind the HGV, and slowing as the HGV in front slows to make the left turn. The HGV's brake lights and left-turn signal will further alert drivers behind. In addition, the HGV driver approaching the junction has excellent visibility of the junction itself and for a substantial distance into the Site, and so will be aware of any arriving traffic. There is no serious prospect of the HGV needing to come to some sudden, emergency stop, without warning to fast-moving traffic behind it. Further, this scenario is exactly the same as currently applies in relation to Left-Ins by HGVs – see the tracking shown at plan 5330/245 (Twinberrow App 6). There has been no accident at the existing access junction for at least the last 10 years, clearly indicating that the County Council / Council concerns are misplaced.

27.2 The Right-In [bottom left frame] also raises no credible safety concern. Only around 1 or 2 HGVs will make a Right-In on an average weekday. The HGV will not leave the right-turn lane until the HGV driver judges it is safe to do so. Again, there has been no incident involving an HGV driver turning into the Site in the last 10 years, notwithstanding that (i) the survey information suggests around 190 car/van movements through the access every weekday (ie, 95 departures), and that (ii) the 4m wide existing access road does not have enough space for both an HGV and a car/van. Similarly, the County scenario of an arriving HGV wishing to turn right and an arrived car wishing to exit to the right (the direction that only 1 out of 5 cars leaving the Site would wish to turn – taking account of the 80/20 trip distribution in favour of the Uckfield direction which is agreed with the County) gives rise to no safety concern. Where the HGV driver intimates that the car should make its manoeuvre first, the car driver can be expected to proceed with appropriate care, and will not start or complete its turn until satisfied that there is no "through traffic" from either direction. The car driver will, from the site access junction, be able to see c90-100m behind the HGV to satisfy themselves there is no potential through traffic coming from the west, and will be able to check again having crossed the west-bound lane before proceeding further.

27.3 The Left-Out [top right frame] also raises no credible safety concern. Again, there will only be around 1 or 2 such movements by HGVs on an average weekday. The HGV will not start their turn unless and until sure it will be safe to complete it. If there is any doubt about the intention of arriving traffic (notwithstanding that right-turners will have slowed down and, especially with

an HGV waiting to exit, signalled), the HGV driver will wait. Further, the situation with 21P is a marked improvement over the existing situation (see Twinberrow plan 6), where the HGV encroaches across the entire through lane (in which speeds will be c42mph for through traffic – not the low speed of a car moving into the right turn lane in order to turn right into the Site).

27.4 Neither New nor White expressed any concern about the Right-Out movement [bottom right frame], which, again, would not be undertaken by the HGV unless safe.

28 Moreover, it is relevant to take into account the infrequency of relevant HGV movements. Specifically:

28.1 New confirmed in XX that the County Council would not have raised any issues on swept paths if HGV trips to the Appeal Site were limited to refuse vehicles. This confirmation was given by New in circumstances where the tracking/swept paths shown on drawing 5330/228H (within Twinberrow App 28) are **exactly those** that apply to the County's refuse vehicles.

28.2 Evident from New's evidence above is the recognition that the design of a junction should not be allowed to be dictated by vehicles which make very infrequent use of it. Otherwise, one ends up with significantly and unnecessarily over-engineered road works. This point is clearly illustrated here because, instead of the proposal on 21P with its c25m bellmouth, DMRB (and New's starting-point) might indicate the massive arrangement pictured at the bottom of p9 of New's main proof (with a bellmouth around 60-65m wide).

28.3 Further, DMRB itself – even though not directly applicable here as the B2102 is not a motorway or trunk road – contemplates that strict adherence to such provisions is not expected where relevant HGV movements are "only a very small percentage of the total number of vehicles that will use the junction": see [**CD/I7**, para 5.2(1)] quoted at §2.20 of New's main proof.

28.4 It is plainly the case here that HGVs will only be a "very small percentage" of the total numbers using the junction – around 0.5% (6-8/1482). The County has accepted (as New confirmed in his oral evidence) that the video survey carried out by the Appellant is representative. This identified that weekday HGV traffic visiting the Farm is 6 movements (3 in and 3 out), with occasional additional refuse trucks during the week. On any balanced assessment, that is both a very low absolute number of movements, and a "very small percentage" of total numbers using the junction.

28.5 New's point about HGVs among the through traffic along the B2102 (which the Council's Cl/Subs make no attempt to rely on) can be rejected, as these vehicles may pass the access junction, but they do not "use" it in any meaningful sense. Further, New's attempt to suggest that such B2102 through traffic HGVs should

be considered is inconsistent with his acceptance that he would have raised no point if the only HGVs visiting the Site were refuse trucks.

28.6 New's rebuttal proof raises a concern about numbers of HGVs using the junction increasing. This is wholly unrealistic, and New's evidence was exposed by the concession in XX that he has not visited Bird In Eye Farm to assess the existing employment offer there. The poor and outdated quality of the employment offer, coupled with the limited space available and low garage heights, explains (i) why there are only around 3 HGV arrivals and departures per weekday (with only 2 of the 8 businesses on site attracting any such movements, per Twinberrow), and (ii) why there is no credible prospect of that increasing – at least without planning permission for substantial redevelopment, which the Council would have control over.

29 For these reasons, Twinberrow's design shown on 21P is safe, and avoids being over-engineered for the "very low" percentage of HGV movements that will use it, entirely consistent with the thinking behind para 5.2(1) of DMRB.

30 Accordingly, the Inspector is invited to agree with the assessments of Twinberrow and Fenley (the road safety auditor instructed to make an independent assessment of the various proposals) that there will be no "unacceptable impact on highway safety" (in the language of NPPF 111). The road safety auditor had raised concerns about some aspects of the tracking for 21K (see Twinberrow App 22), but advised that all such matters were addressed satisfactorily by 21P (see Twinberrow Apps 24 and 29). The road safety auditor reasoned that the movements in question would not be "undertaken unless it is safe to do so" (Twinberrow App 22, p9). Plainly, therefore, the road safety auditor was no "push over". He challenged the Appellant, and was only satisfied after the changes shown on 21P. The Rule 6 party's assertion to Twinberrow in XX that the road safety auditor was somehow misled or did not know what he was doing are completely lacking in substance. Significant weight should therefore be given to the road safety auditor's final views on the matter, which provides independent assurance as to the acceptability from a safety perspective of the proposal shown in 21P.

31 As regards the (non-standalone) point relating to cyclists turning right into the Site from the B2102, Mr New accepted in XX that the position is no different than applies to a cyclist needing to make a right turn anywhere else in the country. Again, therefore, proceeding on the basis of reasonable and cautious driving by both motorists and cyclists (the latter looking behind and duly signalling to any traffic behind before moving over to execute a right-turn, having judged that it is safe to do so), there is no credible concern. In any event, most cyclists (almost all may be more accurate) travelling to the Site from Uckfield would take the option of entering the Site via the new pedestrian / cycleway route along the southern side of Framfield Road, rather than cycling up the relatively steep hill which precedes the access junction.

32 In addition, the Rule 6 party had a point about the visibility splay to the west (2.4m x 113m). This has been agreed between the County Council / Council and the Appellant,

based on the result of the speed survey (an 85th percentile eastbound speed of 42.4mph) at Twinberrow App 2. The Rule 6 party's point (see White Rebuttal) is that the visibility splay should be substantially more (and is unachievable without third party land) based on the County's more recent survey at Twinberrow App 3. This is a completely misconceived contention which by itself torpedoes White's credibility. The survey at Twinberrow App 2 measured speeds at two distinct locations, one to the east and one to the west of the access point. By contrast, the County's survey at Twinberrow App 3 only took measurements at a location to the east of the access point. This is of no possible relevance to an assessment of the visibility splay to the west of the proposed junction. The relevant measurement location was c250m east of the point at which measurements should be taken (and were taken in the surveys at Twinberrow App 2). The Rule 6 party's contentions must be rejected.

33 **Deliverability of 21P / validity of the Appeal Scheme**. The Council's purpose in causing as many difficulties as possible for this much-needed housing development has led it to pursue unreasonable concerns about the deliverability of 21P and/or the validity of the Appeal Scheme. These objections are without merit, and it is noted that issues about validity do not feature in the Council's Cl/Subs. Specifically:

33.1 It is for the party contending that a scheme is undeliverable or that the application/appeal is or has been rendered invalid to prove that this is so. The Council has plainly failed to do this.

33.2 The centre-piece of the Council's argument is that 3rd party land will be required to deliver 21P, primarily because of an alleged need for a retaining wall to the north which cannot be accommodated in the available highway land. The Council needs to prove that this is so for its arguments to have any traction, but it demonstrably comes nowhere near doing so. There is no analysis presented by New which amounts to proof, as it is normally understood. The Council presents no levels plan (something which, of course, is not ordinarily expected until the detailed design stage), nor sections, nor any other detailed assessment to establish its point. It has not "shown its workings". All the Inquiry has is New's hearsay assertion during oral evidence that an unidentified person at the County (who may or may not have visited the site) considers it "more likely than not" that a retaining wall (and consequentially, more space) will be needed. That is simply not a good enough basis for the Inspector to accept that the Council's objection is proven. Further, the Appellant disputes New's unidentified colleague's un-reasoned assessment, for the reasons clearly explained in Twinberrow's proof at §5.53 and Appendix 27. In short, Twinberrow has assessed that the northern bank has slopes below 65 degrees and on that basis can be suitably addressed with a reinforcement mat / geogrid – all achievable within highway land. The Council had this evidence for a month before New gave his oral evidence, but despite a plethora of rebuttals on other matters, neither New nor the Council has sought to answer this part of Twinberrow's evidence. Nor was Twinberrow's evidence on these matters challenged during XX. In the final analysis, as explained above, the short point

is that it is for the Council to prove that 21P is undeliverable and/or that the application/appeal is invalid, and the Council has got nowhere near doing so.

33.3 In any event, even if the Council were correct that 21P is undeliverable without use of some additional land to the north (beyond the highway boundary), that has no consequence for present purposes. Specifically:

33.3.1 First, it is not a valid objection to a planning application that the works are said to be undeliverable for reasons unrelated to their planning merits. Hence, it is possible to apply for planning permission to develop a third party's land, there being no requirement for an applicant to demonstrate a right to implement the scheme (if granted). Land ownership issues are generally outside the planning process.

33.3.2 Second, as the Council well knows, the relevant land to the north of the B2102 is owned by the Berrys, the same landowners as currently own the Appeal Site. The Berrys were originally applicants when this application was first made, and were so named on the original application form. It is absurd for the Council to have suggested that any validity issue arises in these circumstances – even if (which the Council has not) it could prove that such land is indeed required.

33.4 Confirmation that the Council was doing no more than raising an arid technical objection was provided by New's confirmation in XX that an appropriately worded Grampian condition would assuage the Council's / County Council's relevant concerns. See now draft condition 18. Such a condition ensures that, if it turns out to be right that additional land to the north is required (ie, to re-contour the relevant bank and/or provide a retaining wall), a scheme to achieve this (which would of course include securing any additional planning consent, if such were required – though none would be for mere bank re-contouring) is first approved. New conceded in XX that he could not say there was "no prospect" of such a Grampian condition being discharged, given the obvious interest of the Berrys in facilitating the Appeal Scheme. That concession is a sufficient basis on which it can be determined that the proposed draft condition 18 is lawful and in accordance with relevant policy. In particular, §21a-009 of the NPPG [the section on the use of conditions] makes clear that "conditions … relating to land not in control of the applicant" are permissible in Grampian form, so long as it cannot be said "there are no prospects at all of the action in question being performed within the time-limit imposed by the permission".

34 The Rule 6 party (with the Council leaping onto the bandwagon) submit in their Cl/Subs that alleged doubts about deliverability of 21P affects the weight to be attributed to the benefits of the Appeal Scheme. On reflection, this is not correct. If the scheme in fact proves to be undeliverable, it will not come forward. But the benefits of the Appeal Scheme have to be assessed on the basis that the Appeal Scheme is delivered, and does

come forward. Accordingly, on further assessment, deliverability issues are sufficiently addressed by the points made in the preceding paragraph, and they play no further role.

35 **Ecological, landscape and arboricultural impact**. The Council has also sought to suggest that 21P would cause undue impacts in ecological, landscape or arboricultural terms and/or that insufficient information has been provided to assess such matters. None of this is accepted. It is largely undermined by the Council's decision not to raise any of this collection of complaints in relation to the very similar 21K proposal (which materially only differs in expanding part of the proposal c0.5m to the north over a distance of c38m). Furthermore:

35.1 **Ecological** impact. The Council calls no evidence of its own to establish an unacceptable impact in ecological terms. By contrast, Rose's evidence establishes that (i) vegetation removal on the south side of the B2102 to facilitate visibility splays is of no ecological importance, and (ii) vegetation removal on the north side of the B2102 equally raises no ecological concern because on any view the bracken and scrub within and beyond the existing hedge will remain and ensure no habitat fragmentation. Rose was clear in XX that sufficient ecological surveys have been carried out to inform his judgment that 21P would have no adverse ecological impact. As regards the Council's position, whereby it failed to raise any ecological concerns regarding 21K, it is quite impossible to understand how the minor widening in 21P could seriously be suggested to have some materially different ecological impact.

35.2 **Landscape** impact. As the Inspector will have seen on her site visit, the vegetation, scrub and bramble that will need to be removed to facilitate carriageway widening and visibility splays makes no contribution to the landscape value or character of the area.

35.3 **Arboricultural** impact. Again, the Council did not seek to call its in-house arboricultural expert on tree matters (Mr Massheder), even at rebuttal stage. Rather, it sought to advance an objection through two rebuttal proofs of Rainbow, the latter confessing to the Inspector during oral evidence that arboricultural matters were "at the limit" of his area of practice. Moreover, the Council's position was advanced without any positive case being made, and without Rainbow having undertaken a site visit, whether for purposes of his 1st rebuttal (raising the issue generally) or his 2nd rebuttal (admitted on Day 1 of the Inquiry, where Rainbow launched a wholesale attack on the analysis in Hyett's rebuttal of the preceding week). In such circumstances, it is unsurprising that Rainbow's quibbling falls away on analysis, and in light of the clear and convincing explanations offered by Hyett in his written and oral evidence. Notably:

35.3.1 Hyett's assessment categorizing the trees to the east of the access point as category B or C has been clearly explained by him. The Council has no basis whatever for questioning his judgments, and certainly calls no

evidence which does so. It must further be pointed out that Rainbow's concern in his 2nd rebuttal about the trees being "downgraded" was wrong. As Hyett explained in his rebuttal and orally, the trees in question had previously been categorized as A(2) because the assessment was of the landscape value of the trees as a group. That has nothing to do with the individual assessments of T1-T5 set out in Hyett's rebuttal.

35.3.2 Rainbow's assumptions that Hyett has conducted no site visit and had not appropriately measured the relevant trees were both wrong.

35.3.3 Rainbow's speculation that there "may be" unassessed veteran trees in the vicinity of the relevant area was just that, and was again supported by no evidence from the Council. And for his part, Hyett explained at the Inquiry that he had considered whether there were nearby veteran trees to be taken into account, but was clear that there were not.

35.3.4 Hyett's evidence (rebuttal proof and orally) explained why there is no credible concern about 21P adversely affecting the stability of any of T1-T5. The short point is that the trees in question will be preferentially rooting towards the south (where the water and nutrients are) and not towards the north (under the B2102). As he explained during his oral evidence, Hyett's expert assessment and conclusion to this effect takes into account both that 21P does not involve new works in >20% of currently unsurfaced RPA, as well as the cumulative position of existing and proposed RPA coverage (to the north). Hyett further explained the range of standard construction techniques available to ensure tree stability, and which can (as is the usual process) be determined and implemented at the detailed design stage.

36 For these reasons, 21P is not unsafe, nor is there any other coherent planning objection to it.

LOCATIONAL SUSTAINABILITY

37 The Council / County Council are also demonstrably wrong (just as they are in relation to the acceptability of 21P) to suggest that the Appeal Scheme should be dismissed on locational sustainability grounds.

38 It is very surprising this objection is being taken in circumstances where the Secretary of State made clear in 2009 [**CD/K1**] that any perceived "drawbacks" with the Site in sustainability terms were insufficient to justify a refusal [DL37 read with DL55], and that the Appeal Site was a "natural or logical urban extension" [DL26]. That is manifestly the case now too, the Council presently being unable to demonstrate a 5 year supply and the "tilted balance" (which was obviously not a feature of the 2009 decision)

placing the onus on the Council to demonstrate that objections such as this "significantly and demonstrably outweigh" the benefits of the Appeal Scheme.

39 New conceded in XX that no complaint is made as to the Appeal Scheme failing to take some appropriate "opportunity" to maximise sustainability (as NPPF 105, 110a expects). That is unsurprising in circumstances where (inter alia):

39.1 The Appeal Scheme proposes (in the s106) a substantial contribution (£484,474) to maintain bus services at current levels for 3 years post 2026. The sum in question was precisely what the County Council requested from the Appellant, and it can reasonably be presumed that it was calculated on the basis of what was considered appropriate by the County to maintain services for a sufficient period such that the service in question becomes self-funding, taking account of users from the Appeal Site.

39.2 Off-site works to improve the nearby bus stops are proposed (secured by the s106).

39.3 A cycleway / pedestrian access route on the south side of Framfield Road is proposed (secured via the s106), connecting into the Site at its north-west corner. This was described by New in XX as a "betterment".

39.4 Off-site works to improve footway surfacing along Framfield Road, and to provide dropped kerbs etc are also proposed (and secured in the s106).

39.5 In addition, a Zebra crossing of Framfield Road is proposed (secured, again, in the s106), half way between the town centre and the bus stops at the Hospital access. New's evidence (main proof §4.22) says the Zebra is at "the only potential location for such a facility", and he confirmed orally at the Inquiry that a Zebra was "approvable by the County" with tweaks only to the illustrative plans before the Inquiry (Twinberrow Apps 37 and 39). This is again a material betterment for pedestrians, there not currently being any formalized crossing of Framfield Rd along the relevant stretch.

39.6 Just as significantly, New confirmed in XX that he does not criticize the Appellant for failing to bring forward other or more substantial proposals for Framfield Road in circumstances where (i) the County Council is not promoting or recommending any such proposals, notwithstanding earlier studies considering such questions, (ii) there is insufficient space available to widen footways or introduce a cycle lane, and (iii) earlier proposals from Twinberrow to introduce improvements at the expense of a loss of a limited number of parking spaces were objected to (and have not been pursued by the Appellant).

40 More broadly, locational sustainability issues need to be considered "in the round". As to this:

40.1 Judged in a Wealden District context, the Appeal Site is at one of the most sustainable locations imaginable for a substantial new housing scheme. Uckfield is one of (if not the) most sustainable locations in the District. It is one of 3 District Centres, and at the top of the Core Strategy's settlement hierarchy (for conurbations within the District). The Core Strategy, policy WCS2, directed 38.5% [1742 out of 4525] of the then assessed housing requirement in the District to Uckfield. The Appeal Site, in short, is precisely the sort of location that the Core Strategy (and settlement hierarchy) directs substantial development to. If the Appeal Site is in principle locationally unsustainable, the Council has no chance of ever getting to grips with its current long-standing housing crisis.

40.2 Bus connections to Uckfield (and to other destinations, including Heathfield, Brighton, Crowborough and Tunbridge Wells) are available, and offer a genuine alternative to the private car. The service is better than hourly, runs on the weekends, and would facilitate commuting to work. Bus stops are between 240m and 900m from the proposed homes: see Twinberrow §4.26 and the plan at his App 13. Again, in a Wealden context, it can be noted that the recent Polegate DL [**CD/K7**, at DL9-11] found the site in question sustainable where the town centre is further away than Uckfield is to the Appeal Site, and with bus stops at 500m-1000m from the proposed homes.

40.3 Uckfield train station is only 1.5km from the centre of the Appeal Site. It is accessible by walking or cycling (there are 44 cycle parking spaces at the station), and a regular service to London Bridge, and nearer destinations, is available. No doubt many local resident objectors commute to London via Uckfield station.

40.4 There are substantial employment opportunities within Uckfield, both in the town centre and at the 2 large industrial estates shown on Twinberrow App 11. Further, the Ridgewood Farm consent allows for 13,500m^2 of new commercial/industrial floorspace less than 2km away. All these opportunities are within walking distance for the reasonably fit (as was concluded in the 2009 decision), and short (almost gradient-free) cycling distance. As Twinberrow explained orally, this is significant because employment related trips represent a substantial proportion of all trips to/from home.

40.5 Uckfield town centre is extremely well provided for in terms of retail, restaurants, cafes, and other facilities. As New eventually accepted in XX, the "quality of the destination" is relevant to the issue of whether it is worth walking to (rather than driving to say Brighton or Tunbridge Wells).

40.6 Primary and secondary schools are also located within Uckfield.

40.7 The County Council and the Council grumble about the quality of part of the walking route along Framfield Road, but this carries limited force in circumstances where:

40.7.1 The County does not itself suggest, and will not be pursuing, any improvements to Framfield Road, because of the limited space available and complaints from existing residents if parking is reduced.

40.7.2 The first 600m from the centre of the Appeal Site to the town centre is within the Appeal Scheme or along the new cycleway / pedestrian link. New confirmed in XX that he raises no concern in relation to this part of the route – which is 40% of the journey.

40.7.3 The County exaggerates the position in relation to the remaining 900m of the route into town along Framfield Rd. The route is street lit, overlooked, has footways on both sides and is flat (save for the last c75m). The footways are generally 1.5m-1.8m wide, in circumstances where the most recent DfT guidance [**CD/I8**, section 4.2] advises that 1.5m is an acceptable width. The only exception is a 45m stretch where one footway narrows to 1m, while that on the other side of the road is 2m wide.

40.7.4 Further, the County's analysis fails to give any consideration to the diverse and high quality retail and other facilities offered within Uckfield – which will make such journeys worthwhile on foot or by cycle, rather than getting in a car and (say) driving to Brighton or Tunbridge Wells.

40.7.5 Surprisingly, the Council's Cl/Subs at §109 place reliance on [**CD/I.4**, table 3.2], notwithstanding that New confirmed in XX that (per §4.5 of his main proof) the table should be treated as superseded.

40.7.6 The Council's Cl/Subs also seek to rely on DL37 of the Secretary of State's 2009 letter [**CD/K1**], particularly the phrase that the Site "would [not] offer a choice of pedestrian/cycle routes into town". That phrase is simply identifying that journeys into the town centre will be along Framfield Road (as the Inspector had noted at IR755), and that there is not a choice of "routes" [plural]. That is a different point from any consideration of whether the Appeal Scheme offers a "genuine choice of transport modes" for purposes of NPPF 105.

40.8 While for reasons above, there will be a genuine choice of travel mode from the Appeal Scheme, any car trips into Uckfield will self-evidently be short trips.

41 For these reasons, the Council's and County Council's alleged concerns about locational sustainability should be dismissed. The gripes advanced have not improved from 15

years ago, when the Secretary of State made clear they were no basis to refuse residential development on the Site.

FLOOD RISK

42 The Rule 6 party pursued during the appeal (not having raised any of these matters during the 12 months the application was before the Council) a series of ill-founded drainage and flood risk-related objections, all of which the Council had rightly eschewed. The Council accepted the advice of the Local Lead Flooding Authority ("**LLFA**") that (i) no sequential test was required, and that (ii) there was sufficient information available at this outline stage to be satisfied that a satisfactory surface water drainage scheme could be accommodated (alongside the other elements of the Appeal Scheme) at detailed stage. Notwithstanding the volume of material submitted by the Rule 6 party on this issue, and the consequential devotion of the whole of Day 3 (and part of Day 7) to such matters, no reason for departing from the conclusions of the Council and the LLFA has been identified.

43 Generally, for the reasons explained by Hensler, the Appeal Scheme (including the access road into the Site) is subject to very low flood risk. The land on which the proposed homes and roads (and the access point) will be situated is all in flood zone 1; rainfall flows on the Site can be readily addressed through a standard drainage condition (as Maiden-Brooks (hereafter "**SMB**") accepted in XX); and the evidence (agreed by SMB in XX, and consistent with his paper at [**CD/H4**]) is that groundwater would only emerge in the areas of the two springs (which are at least 5m below the lowest part of the proposed residential areas). Further, the SFRA's "groundwater concern" notation can be disregarded for present purposes, because it ignores topographic features – fundamental to a proper assessment – and, by the SFRA's own admission, "does not show the likelihood of groundwater flooding for any particular return period": [**CD/E10** §134].

44 Rarely will so much time have been taken at a public inquiry on flooding matters relating to a Site with so limited a flood risk.

45 While the Council originally included a putative reason for refusal associated with an outfall between the SUDs basin and the watercourse to the west, this was resolved to the LLFA's satisfaction with the illustrative scheme outlined at Hensler App B. Even the Rule 6 party has not disputed this aspect at the Inquiry.

46 The points which SMB sought to advance on behalf of the Rule 6 party fall into 4 categories: (i) alleged need for a sequential test, (ii) concern about whether the SUDs basin would impact on the ability to accommodate 290 homes, (iii) occasional flooding on Framfield Road to the north-west of the Appeal Site, and (iv) alleged concerns about the routes to the southern SANG area flooding during extreme events. These points will be addressed in turn below.

47 In relation to the alleged need for a **sequential test**, it is unclear to the Appellant why the Rule 6 party maintained this argument to the end of the Inquiry. It has dissolved following the concessions of SMB during XX. In particular:

47.1 SMB conceded in XX that a drainage outfall and improved path/fences/bridge in flood zones 2/3 would all be "water compatible" development (NPPF Annex 3) such that these matters could not provide a justifiable reason for a sequential test; and that a "change of use" does not attract a sequential test requirement (per NPPF 168). These matters are also *de minimis* in flood terms: see Hensler §4.3.9 (not challenged during her XX). Similarly, SMB conceded in XX that any groundwater flooding would (as noted above) be at least 5m below the nearest part of the residential development, and so would not threaten harm to person or property. Equally, SMB accepted in XX that very limited low risk areas of rainfall runoff on the Site could be readily addressed by a detailed drainage scheme, and that (consistent with the High Court's approach in the ***Wathen-Fayed*** case [**CD/J16**]) this could be discounted as a basis for requiring a sequential test. Finally, SMB agreed in XX that off-site matters (ie, occasional flooding on Framfield Road, to the north-west of the site) could not justify a sequential test, as the latter focused on the location of "development" within the redline area, and there is no policy, guidance or appeal decision that justifies requiring a sequential test because of off-site flood risk.

47.2 It is not enough to require a sequential test that a small area within the application redline is not at "lowest" flood risk. So long as the proposed "new development" [NPPF 162's words –plainly to be understood by reference to the test for "development" in s55 of the Town and Country Planning Act 1990] is <u>not</u> located in such areas (or, to the extent it is, that such new development is either water-compatible, de minimis or capable of being addressed with standard mitigation measures that can be imposed by condition) there is no reason or need for a sequential test.

47.3 It appears that the Rule 6's concern about the absence of a sequential test was based on a fundamental misunderstanding of the Little Bushey Lane DL. However, contrary to SMB's approach, this DL does not reason that a sequential test is necessary just because (say) a small area of the site, even if not proposed for "new development", is within flood zone 3. The Little Bushey Lane DL was an entirely conventional case, where a sequential test was agreed by all concerned to be necessary given that a road, land-raising and construction of a school – ie, "new development" per NPPF 162 -- was proposed in the floodplain. By contrast, in this case, and leaving aside the water-compatible / *de minimis* etc matters addressed above, the proposed "new development" is all in areas at "lowest" flood risk.

48 Further and in any event, the Appellant carried out a sequential test, which is contained at **SB2** and which concluded that there was no suitable sequentially preferable site for

the proposed development. The Council has not commented adversely on this sequential test or its conclusion. The Rule 6's attempts to allege during Brown's XX that this was not a robust assessment should be rejected. The search area was properly defined as within 7km of Ashdown Forest SAC/SPA, given the proposed development includes a strategic SANG intended to relieve pressure on the SAC/SPA - see the relevant part of the NPPG at §27 [**CD/H6**] ("the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed"). The search area is the only part of the District where SANG could be needed or required. In addition, that search area encompasses two of the District's three "District Centres" (Crowborough and Uckfield). Moreover, a suitable site size (100+ units capacity) was considered (ie, large enough to make meaningful provision for affordable housing and the financial burden of securing a strategic SANG as part of the proposal), consistent with the NPPG's guidance that a series of disaggregated sites be assessed, in circumstances where anything smaller would be unduly limiting. Further, it is entirely consistent with NPPF 162 for the sequential test to have rejected sites on the basis of sustainability and other planning objections, because comparator sites must be "appropriate for the proposed development". Finally, and redolent of the technical nature of the Rule 6's "sequential test" point, the Rule 6 has failed at any time to identify a single site (or a series of sites) that it positively promotes to be sequentially preferable to the Appeal Site and appropriate for the proposed development, whether within the search area of **SB2** or anywhere else in the District or its environs.

49 Turning to the issues raised by SMB about the **size and design of the detention basin**, it can be noted that:

49.1 SMB has not produced his own calculations for the necessary size and design of the detention basin, nor has he attempted to demonstrate that, scaled appropriately, there is insufficient space within the Appeal Site to accommodate the detention basin and 290 homes. That is not an auspicious beginning to an assessment of where (if anywhere) SMB's various points lead.

49.2 Further, SMB has advanced no coherent basis for questioning Hensler's "realistic case" assessment – SK11 (within Hensler Rebuttal App B). He sought to rely on arguments about Bird In Eye Farm, and the Appeal Scheme gardens. As to the Farm, this has been excluded because it has its own drainage arrangements which bypass the Appeal Site, and Hensler's site visits have confirmed there is no evidence of this system not working: see Hensler Reb §2.6.1. As to the gardens, Hensler explained to the Inquiry (and see further Hensler Reb §2.6.3) that the LLFA have not requested that these be included (it being normal to exclude them unless specifically requested to include them for identified reasons, ie clay soil – which is not here applicable).

49.3 SK11 shows a modest increase in size from earlier calculations, but one capable of being accommodated without any material impact on the illustrative layout drawn up to date. Anyway, as the illustrative layout is at a density of 22-23 dwellings to the hectare, there is very significant scope to accommodate any

necessary revisions while still providing 290 new homes. Further, as set out in the FRA and explained orally by Hensler, additional SUDs measures (such as rain butts, rain gardens, permeable paving etc) will be incorporated which will ultimately reduce the size of the basin. Accordingly, even the "realistic" case shown on SK11 is conservative in its assumptions, as is best practice.

49.4 Further, SK11 includes (as Hensler explained orally) a "freeboard" of 600m, which is a necessary safety feature the effect of which is to increase the actual storage capacity of the SUDs basin by >60%. There really is no serious underlying point being raised by the Rule 6 party here.

49.5 The LLFA was provided by the Appellant with all drainage proofs well in advance of the Inquiry, but has not indicated any change to its "no objection subject to conditions" position, whether before or after the day of drainage evidence at the Inquiry.

49.6 In any event, it is common ground with the Rule 6 party that a detention basin is not the only way to address surface water runoff at the detailed design stage. When he was acting for the Appellants, SMB's paper supporting the allocation of much of the Appeal Site placed reliance on underground cellular storage tanks – [**CD/H4**, p21-22]. As SMB agreed in XX, such a solution could be relied on here, if necessary, whether instead of or alongside a detention basin. This concession by SMB once again demonstrates with clarity that there is no objection of substance being pursued by the Rule 6 party here. It is entirely understandable why the LLFA and the Council have formed the view that drainage on this substantial site can be satisfactorily left to detailed design.

49.7 Finally on the detention basin, SMB had a nitpicking point that underlying groundwater levels needed to be established at this stage, rather than conditioned as the Appellant has proposed and the Council and LLFA have agreed. The full answer to SMB's point is set out at Hensler Reb §§2.6.22-2.6.24, and is in essence that groundwater impacts (should they arise – which they are not expected to) can readily be addressed through standard mitigation arrangements such a counterforts and cut off drains. SMB gave no coherent response when this evidence was put to him during XX.

50 **Framfield Road flooding** at the access junction to the Hospital. This is a matter that occurs infrequently (SMB's researches suggested relevant flooding in 2000 and again in 2022), and is of short duration (a few hours at most, per Hensler Reb at §§2.5.3 – 2.5.7). It is hard to see how such an issue has any material bearing on the issues in this case, taking account of the manifest need for new market and affordable housing within this under-performing District. Strikingly, when he was acting for the Appellant, SMB did not consider that the matter (arising from the flooding of 2000) warranted any mention in his paper [**CD/H4**] supporting the allocation of much of the Appeal Site.

51 As regards **access to the southern SANG**, it is accepted that very, very infrequently, the route through W2 may be unavailable due to water levels in the E-W watercourse. People will, however, simply turn around and use the alternative route to the southern SANG across the bridge to the east of W2. It was one of the more unsatisfactory aspects of SMB's evidence that he had conducted no site visit (he had not even bothered to ask permission from the Appellant to do so), and thus had no idea that the eastern route to the southern SANG was via a bridge sitting c5m above the E-W watercourse. In such circumstances, as explained at Hensler §4.3.10, §4.4.10, it is not credible that both routes to the southern SANG would be severed during a significant rainfall event – the eastern route will continue to be available.

52 For these reasons, there is no flooding or drainage related reason why the Appeal should be rejected.

SECTION 106 OBLIGATION

53 Following the useful discussion on the last day of the Inquiry, the proposed s106 obligation, in a form not objected to by the Council, was provided to PINS on 29 September 2023.

54 The Rule 6 party maintains an objection that the "Signal Optimisation System Contribution" is not CIL complaint. This objection is not well-founded:

54.1 The "Signal Optimisation System Contribution" is (see definition at p20) the payment of £100,000 plus annual maintenance charge for 20 years towards a "signals optimization system (SCOOT or MOVA) to town centre signalized junctions" there listed. Schedule 8 Part 4 (p64 of the s106) requires this contribution to be paid before the development commences. The Council and County Council have agreed with the Appellant that this is a fair and reasonable provision requiring no additional restriction relating to prior implementation of the underlying scheme. It would not be fair and reasonable to impose a restriction on the Appellant which was entirely out of its control. Once the Appellant has paid the contribution, it will be for the Council / County Council to utilize the sum in question for the stated purpose.

54.2 The Appellant and the Council agree that the contribution in question is otherwise CIL complaint – see §3.7 of the Council's CIL Compliance Statement. The contribution in question is necessary (CIL test 1) to alleviate peak hour congestion in the town centre that the Appeal Scheme will otherwise contribute to. It is directly related to the Appeal Scheme (CIL test 2) as it seeks to mitigate that Scheme's impact. And it is "fairly and reasonably related in scale and kind to the development" (CIL test 3), as it has been quantified on the basis of the County's assessment (with which Twinberrow agrees) of what sum

is required to secure and install a detailed design of the requisite infrastructure that will introduce the anticipated mitigation of congestion.

PLANNING BALANCE

55 As noted earlier, it is accepted that if there is loss or deterioration to irreplaceable habitats, or if 21P is found to have an unacceptable impact on highway safety, the Appeal must fail. It has been explained above why these concerns of the Council (and the Rule 6 party's flood-related concerns) are not well-founded.

56 The heritage balance under NPPF 202 (if it arises) has also been addressed above.

57 On other issues, and in particular in relation to the Council's objections that the Appeal Site is beyond the settlement boundary or insufficiently locationally sustainable, the applicable test is the tilted balance under NPPF 11(d)(ii). The Appellant submits that the clear outcome of the tilted balance is that permission should be granted, the substantial and weighty benefits of the Appeal Scheme not – on any sensible assessment – being "significantly and demonstrably" outweighed by these flimsy additional grounds of objection on which the Council relies. On this basis, "material considerations" exist which justify – indeed, mandate – a decision to grant planning permission notwithstanding conflict with the Council's ancient and out of date development plan.

CONCLUSION

58 For these reasons, the Inspector is respectfully invited to allow the Appeal and grant planning permission.

ANDREW TABACHNIK KC

39 ESSEX CHAMBERS

LONDON

4 October 2023