

APPEAL REF: APP/C1435/W/22/3307820

**CLOSING SUBMISSIONS ON BEHALF OF
WEALDEN DISTRICT COUNCIL ('the Council')**

Introduction

1. The Council respectfully invites the Inspector to dismiss the appeal.
2. The parties are agreed that the application fails to accord with the development plan. There is therefore a statutory presumption against the grant of permission. The Council considers that in addition to policies addressing the principle of a development's location, the appeal proposals breach policies relating to: (a) Ancient Woodland ('AW') and Veteran Trees ('VT'), (b) highway safety and (c) sustainability. These are addressed below.
3. The parties are also agreed that the terms of paragraph 11(d) apply in this appeal due to the Council's lack of a five-year housing land supply. Therefore, and in light of the reasons for refusal, the appeal should be granted unless:
 - a. the application would lead to the loss or deterioration of AW or VTs (see para 11(d)(i) read with paragraph 180(c) NPPF); or
 - b. the adverse impacts of granting the development would significantly and demonstrably outweigh the benefits.
4. It is common ground that if the Inspector considers that the proposals will lead to the loss or deterioration of AW then the appeal scheme should be refused¹. It is also common ground that if the Inspector considers that the proposed access arrangements are unsafe then this would be an issue which would significantly and demonstrably outweigh the benefits.² The Council considers that, additionally, the unsustainable location of the appeal site is also an issue which in and of itself significantly and demonstrably outweighs the benefits of the appeal proposal in this case. This is addressed below.

¹ Confirmed by Mr Brown in XX, day 7, 21 September 2023

² Confirmed by Mr Brown in XX, day 7, 21 September 2023

Benefits

5. Across the course of his c.100-page proof Mr Brown, for the Appellant, asserted a number of benefits of the proposal. However, at the Inquiry Mr Brown confirmed that he was content to simply rely upon the summary of the benefits as set out at table 1 of his rebuttal proof.³
6. Both parties agree that substantial weight should be given to the provision of up to 189 market homes and up to 101 affordable homes. In light of the Council's lack of five-year housing land supply and the national imperative to boost the supply of housing, that much is incontrovertible. The Government's support for housing delivery is reflected in the tilted balance which, as Mr Brown accepted, does not become more 'tilty' as a result of government announcements or other paragraphs in the NPPF.
7. As explained by Ms Turner, for the Council, the provision of 5% self-build homes should not attract additional weight, this comes within the 189 market homes.
8. A major plank of the Appellant's benefits case is the 'substantial' weight which it gives to the provision of SANG beyond the need of the 290 homes which it is proposing. Mr Brown accepted that the SANG for the 290 homes would be neutral in the planning balance as it was mitigation for the scheme's impact on the Ashdown Forest SAC. In those circumstances, it would be nonsensical for the remainder of the SANG which would also be mitigation (albeit for other housing) to attract positive weight in the planning balance. As mitigation, it must be neutral. As set out in Ms Turner's proof of evidence (paragraph 5.9.28).
9. Also as explained by Ms Turner, regulation 122 of the Community Infrastructure Levy Regulations 2010 makes it unlawful for weight to be given to the excess SANG. That regulation prevents a planning obligation from being a reason for granting permission unless it is: (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development. The provision of SANG over and above that which is required to mitigate the effect of the 290 homes clearly doesn't meet the provisions of this regulation.
10. Further, the Appellant has been unable to point to any need for additional SANG in the District. The Appellant has given no details of any sites which this SANG would 'unlock' for development. Again, the benefit which the Appellant asserts the SANG will bring has not been demonstrated. The benefit can only be neutral.
11. Finally, the Appellant has failed to assess the traffic impact of its proposals which, as Ms Turner highlights, would likely involve routing traffic through the centre of Uckfield, exacerbating the traffic issues experienced by the town (proof 5.9.22).

³ Evidence given day 7, 21 September 2023

12. All in all, it is clear that the provision of SANG can only attract neutral weight in the planning balance. It is notable that the Appellant has not sought to offer an alternative planning balance without what it says are the ‘substantial’ benefits of the SANG.
13. The Appellant also claims ‘substantial’ weight for the provision of 40% BNG. It has now proposed that this is secured by way of a condition. Again, as set out in Ms Turner’s evidence this should attract no weight (proof 5.9.29-30). As Ms Turner points out the BNG can be divided into that relating to the developed area and that which relates to the SANG. The gains which are generated through informal open space, SUDs basins, planting, the LEAP and vegetated gardens are nothing over and above the benefits which would be secured from a development of this size in any location. As set out above, the SANG is a mitigation measure whose purpose is to mitigate adverse impact upon the SPA. Its biodiversity value should not therefore attract weight. Further, as set out below, the provision of the SANG has particular additional adverse impacts upon the AW and Veteran Trees which are not factored into the BNG calculations.⁴
14. The Appellant claims moderate weight from the provision of recreational open space. However, this is a requirement of policy (LR1, LR3 and LR5 of the Wealden Local Plan and the Draft SPG on Outdoor Playing Space). As set out by Ms Turner, this should attract no weight.⁵
15. The Appellant claims ‘substantial weight’ from the creation of jobs during the construction phase and increased spending during the operational phase. This should attract only limited weight. The construction jobs are temporary and there is no guarantee that they will be available to local communities. Further, as Ms Turner highlights, Uckfield is a District Centre with a wide catchment area for those using its services. Uckfield does not need the development in order to sustain and support its local services.⁶
16. Finally, the Appellant claims ‘moderate weight’ due to what it says is proximity to services and facilities and from highway improvements. This is addressed under ‘sustainability’ below.
17. Overall, the benefits of the scheme have been greatly overblown by the Appellant. The Inspector is invited to prefer the evidence of Ms Turner in relation to the scheme’s benefits.

Ancient Woodland

Policy context

18. NPPF 180(c) provides that ‘development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists’. The Appellant confirmed that it is not relying upon the second part of the test (exceptional reasons

⁴ All set out in paragraph 5.9.30 of Ms Turner’s proof

⁵ Ms Turner’s proof 5.9.44-5

⁶ Ms Turner’s proof 5.9.39-41

plus suitable compensation strategy). As such, all parties are agreed that if this development results in the loss or deterioration of AW habitats or VT habitats then it should be refused.

19. The NPPF's glossary defines AW as '[A]n area that has been wooded continuously since at least 1600AD. It includes ancient semi-natural woodland and plantations on Ancient Woodland sites (PAWS).
20. Mr Rainbow, for the Council, described how AW habitats are dynamic. Further, they are host to an ecosystem which includes flora and fauna. In response to a question from the Inspector Mr Rainbow highlighted how animal species within the woodland play a number of roles in its ecosystem which drive regeneration including seed dispersal and creating gaps in wood etc. which would serve as homes to other species.⁷ This is recognised in the Standing Advice⁸ which gives examples of impacts which may lead to direct and indirect loss and deterioration of AW and include impacts such as: increasing noise and light pollution, damaging functional habitat connections, the impact of domestic pets and increasing disturbance to wildlife.
21. Mr Hyatt, for the Appellant, accepted that impacts upon AW should be considered cumulatively and that damage to AW or veteran trees can take a while to manifest themselves.⁹ Mr Hyatt further accepted that the NPPF policy test does not require significant deterioration and that some deterioration is sufficient to require a refusal of planning permission.¹⁰ Further, all relevant witnesses were agreed that it was necessary to consider the impact of the development over the lifetime of the scheme.
22. The Council's relied upon the evidence of Mr Rainbow. An ecologist with experience of well over 20 years. He simply and clearly explained how the proposal would lead to the loss and deterioration of AW in a number of ways, consistent with the Standing Advice¹¹. Each issue is addressed below.

Indirect Effects of the Built Development - Buffer Zones

23. The Standing Advice provides that any development (which would include small developments such as sheds) should have a buffer of at least 15m from the boundary of the woodland. The purpose of this is to avoid root damage. It then goes on to provide that '[W]here assessment shows other impacts are likely to extend beyond this distance, the proposal is likely to need a larger buffer zone'.¹² Mr Hyatt accepted that given the guidance applies to all development it would be unsurprising that a buffer zone larger than 15m would be required for a development of 290 houses¹³.

⁷ Day 1, 12 September, 2023 Mr Rose also agreed with this point in cross examination, day 4 15 September 2023

⁸ CDG.3

⁹ XX day 2 13 September 2023

¹⁰ XX day 2 13 September 2023

¹¹ CDG.3

¹² CDG.3

¹³ XX day 2 13 September 2023

24. Here the woodland is divided into ‘fingers’ it is long and narrow and there is clearly a significant potential for ‘edge effects’.
25. When deciding what level of buffer zone is appropriate, it is necessary to understand what impacts are likely to extend beyond 15m. In this case this will include light and sound from the developed area. However, the Applicant has not done this exercise.¹⁴ It merely points to the fact that its buffer zone will be larger than 15m and will include buffer planting. It offers no evidence as to what impact this will have upon noise and light from the proposed development. It is for the Applicant to demonstrate that its proposals will not lead to the deterioration of AW. The failure to demonstrate the effectiveness of its buffer is a significant flaw.
26. Further, the Appellant’s buffer zone includes footpaths which will themselves lead to the generation of noise.¹⁵ This will be through their regular mowing¹⁶ and also through their use by residents and those visiting the proposed SANG. This noise has not been assessed or considered by the Appellant who simply relied upon assertion that the noise would not disturb wildlife in the woodland.
27. The concerns of the Council are shared by the Forestry Commission and the Woodland Trust. Mr Hyatt accepted that the views of the Forestry Commission should be given significant weight.¹⁷ Their consultation response stated that it was highly likely that the development would impact upon AW which may include ‘noise, air, light and dust pollution’.¹⁸ Further, the Woodland Trust’s consultation response makes the point that the buffer zone has not been tailored to the development.¹⁹
28. Overall, the Appellant has failed to demonstrate that its buffer zones would be sufficient to prevent the deterioration of AW through indirect impacts such as light and noise.

Paths through root protection areas

29. The Appellant has proposed unsurfaced paths through the root protection areas of both veteran trees and the AW. During the Inquiry the Appellant stated that paths could be removed from the root protection areas of veteran trees and that this would be demonstrated on the site visit. It is understood that the Appellant did not in fact seek to demonstrate this during the accompanied site visit.
30. Even if it were possible to move the footpath from within the root protection area from VTG9 it is clear that it cannot be removed from the RPAs of the AW. The Appellant’s own

¹⁴ Accepted by Mr Hyatt in XX day 2 13 September 2023

¹⁵ Accepted by Mr Hyatt in XX day 2 13 September 2023

¹⁶ The paths are proposed to be mown every fortnight, CDA.23 PDF page 35

¹⁷ XX day 4 15 September 2023

¹⁸ CDB.21

¹⁹ CDB.31

arboricultural assessment notes that: ‘compaction of soils can occur on the basis of increased protection access. Compaction crushes out soil pore space and prevents tree respiration from occurring...Compacted soil is denser and therefore inhibits/prevents any further new root growth.’²⁰ Mr Hyatt confirmed that there was no study or evidence before the inquiry which concludes that the provision of a footpath through the root protection area of a tree will not harm that tree.²¹ When challenged in relation to this Mr Hyatt stated that his conclusions were based upon the existing site usage which he asserted had affected soil condition. This appeared nowhere in his proof but, in any event, is clearly contrary to the standing advice which states that the existing condition of the AW should not be taken into account when the merits of the development proposal are assessed.²² It is therefore clear that Mr Rainbow’s evidence, which accords with indications in the Appellant’s own arboricultural assessment, should be preferred²³ and that the provision of paths within root protection areas of veteran trees and AW will lead to their deterioration.

Footpath through the ancient woodland – direct loss and deterioration

31. It is obvious to the Council that the provision of the 100m path²⁴ through AW 2 (as shown on Habitats Plan at Mr Rose Appendix A) will lead to loss and deterioration of that AW²⁵. This is a view which the Council shares with the Forestry Commission²⁶. The Appellant’s failure to properly evidence its case on this issue forms the subject of a costs application by the Council.
32. In short, the path will involve immediate and ongoing compaction, mulching and suppression of AW plants and plant germination, manipulation of the existing land causing damage to AW soils and the removal and eradication of existing AW plants.²⁷ Obviously, it will prevent AW plants (including trees) from growing in that location in the future.²⁸ Further, the path will be fenced which will include provision of c100 fence posts being driven into the ground creating direct damage to AW soils and tree roots.²⁹ Frankly, the fact that the path will lead to direct loss and deterioration is obvious and this is borne out by the ludicrous arguments which the Appellant chose to make to try and get round the issue (these are addressed in turn below).

²⁰ CDA.26, last page

²¹ XX day 2 13 September 2023

²² CDG.3, PDF page 7

²³ See proof 7.19 – in oral evidence Mr Rainbow recognized that the path would not be surfaced but his conclusions would remain the same.

²⁴ Length of 100m given by Mr Rose in XX, day 4, 15 September 2023

²⁵ Proof of Mr Rainbow para 7.27

²⁶ CDB21 as confirmed by Mr Hyatt in cross-examination. Mr Rose sought to argue that it was relevant that the Forestry Commission was not objecting. However, the Forestry Commission made clear that it does not object to or support applications but provides advice CDB20. This was accepted by Mr Rose in XX day 4, 15 September 2023

²⁷ Proof of Mr Rainbow 7.27

²⁸ Accepted by Mr Hyatt in XX Day 2 13 September 2023

²⁹ Ben Rainbow Proof 7.38

33. Even more extraordinary was that neither Mr Hyatt (arboriculture witness for the Appellant) nor Mr Rose (ecology witness for the Appellant) could give basic details of the path, including its dimensions. Neither appeared to know that their own SANG management plan indicated that the width of the path would be c.2m.³⁰ As set out in the costs application, the assertions that there would be no loss or deterioration without even this basic information is simply not credible, and unreasonable.
34. Further, Mr Rose wasn't able to give any details of the new bridge which would be provided in the AW, how the load would be supported, what stakes would need to be driven into the ground.³¹ He simply said that there would be 'a localised impact' and confirmed that he had not assessed it.³²
35. Clearly the footpath will have to be wide enough to be comfortable to be used by all users. This is particularly the case given the fact that it will be fenced upon both sides.³³ Further, Mr Rose posited that in order for the areas within surrounding the path to be managed there would need to be at least two gates (addressed further below).³⁴ A detail which the Appellant had not considered until Mr Rose was cross examined.
36. The fact that neither Mr Rose nor Mr Hyatt had any clue as to basic details of the path calls into question the reliability of their evidence. The assertion of 'no loss or deterioration' without such information is simply not credible.
37. The Appellant's case as to why there wasn't loss or deterioration appeared to be based upon the following hopeless arguments:
- a. The path would not interfere with 'woody species';
 - b. The path would follow the line of the existing path; and
 - c. For loss to occur 'there would have to be a material change to the abundance of species their distribution and their conservation status within that woodland parcel'.

I deal with each in turn.

(a) The path would not interfere with 'woody species'

38. Mr Hyatt's (arboricultural witness for the Appellant) defence of his position that there would be no loss of AW was that the path would not result in the loss of 'woody species'. It is notable that he initially accepted that 'if the path has to be 2m' there is going to be some loss of AW habitat albeit not including woody species. He then sought to row back from that answer and deferred to the evidence of Mr Rose and stated that he wasn't in a position to answer questions in relation to ground flora.³⁵ The confinement of Mr Hyatt's evidence to 'woody species' meant

³⁰ CDA23 para 6.9

³¹ XX day 4, 15 September 2023

³² XX day 4, 15 September 2023

³³ As confirmed by Mr Hyatt in cross-examination, day 2 13 September 2023

³⁴ XX day 4, 15 September 2023

³⁵ XX and response to question of the Inspector day 4 15 September 2023

that the conclusions in his proof that the scheme accorded with NPPF policy (e.g. para 13.6) were simply untenable. Further, given the fact that Mr Hyatt does not know how wide the footpath will be (Mr Hyatt accepted that his version of the path was ‘entirely flexible’) gives no confidence to his conclusion that there will not be a need to lose even woody species.

39. Even if the path does not amount to the loss of woody species, it is clear, as Mr Hyatt accepted that the location of the path would cause deterioration through preventing re-seeding of those species in that location. Given the importance of this concession it is worth providing a full record of the question and answer:

Question: ‘What this is effectively doing is causing deterioration by preventing that re-seeding, you’ve limited your evidence to woody plants, so I’m just going to just talk about woody plants, preventing the reseeded of those plants in the area within that path sits’

Answer: Well in terms of hazel coppice, trees and species seeds travel a long distance you know they can germinate in many places, yes under the path which is on top of the existing path, yeah you are not going to get a tree growing right through the path.

40. Again, Mr Hyatt sought to row back from this answer and confirmed that there will be areas where trees can currently germinate which will be ‘off limits’ in the future. He further confirmed that this was an impact which could amount to deterioration but stated that he deferred to Mr Rose on this issue. Notably, Mr Rose did not offer any evidence in relation to this. Given the fact that the impact of the proposal should be considered over its lifetime it is clear that the impact of the path in preventing the growth of trees and plants in the future is indeed an impact which amounts to loss and/or deterioration.

(b) The path would follow the line of the existing path

41. The reasoning which Mr Rose gave in his proof for why the path would not lead to the loss of AW was wholly based upon the presence of the existing path. He stated ‘Use of this route will therefore avoid direct impacts to woodland ground flora, and will not result in soil compaction’ (para 4.17(1)). However, under cross examination Mr Rose accepted that there would in fact be loss of ground flora and that there would be soil compaction.³⁶ This is obvious when one compares the width of the current path (c30cms maximum) as against the new path (c2m). Therefore, taking the test which was used by Mr Hyatt in his evidence, and that used by Mr Rose in his proof of evidence (loss being dependent upon the loss of habitat or species) it is clear that the path will lead to loss and deterioration of AW.
42. In any event, the reliance upon the existing footpath as justifying the new footpath is wholly contrary to the standing advice which makes clear that the existing condition of the AW should not be taken into account:

‘Existing condition of ancient woodland, ancient and veteran trees

³⁶ XX day 4, 15 September 2023

Where a proposal involves the loss or deterioration of ancient woodland or ancient or veteran trees you should not take account of the existing condition of the ancient woodland or ancient or veteran tree when you assess the merits of the development proposal. Its existing condition is not a reason to give permission for development. A woodland or tree in poor condition can be improved with good management.³⁷

43. During his evidence, Mr Rose sought to argue that a decision-maker should take into account the condition of the AW in deciding whether there was loss or deterioration and only if one then considers there is loss or deterioration go on to discount the existing condition. The position is entirely circular and completely untenable. It is also wholly inconsistent with Mr Rose's later concession that the use of the woodland by 'shooting parties' (of which there was no evidence before the inquiry) should be discounted, if indeed it occurs, as the existing condition of the woodland should be discounted.³⁸

(c) For loss to occur 'there would have to be a material change to the abundance of species their distribution and their conservation status within that woodland parcel'

44. Whilst giving oral evidence Mr Rose sought to invent a policy test to explain why he had reached the view that the new footpath did not amount to loss or deterioration of AW. He initially asserted that there would be no loss or deterioration of habitat when taken as a whole. When pressed on that point and asked what percentages would have to be lost to amount to loss or deterioration Mr Rose stated that his 'position' was that 'there would have to be a material change to the abundance of species their distribution and their conservation status within that woodland parcel'. Under cross examination he accepted that this was 'his interpretation' and that it is not one which is found in the NPPF, the Standing Advice or any other document including any appeal decision. He further accepted that it was not found anywhere in his proof or the ecological assessment. It is not a test which was put to Mr Rainbow in cross examination.
45. Mr Rose's test is clearly baseless. The NPPF is clear that the relevant test is whether the development would result in 'the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) (para 180(c)).
46. Another similarly hopeless argument which the Appellant sought to run was that the Standing Advice should be viewed in its totality and in light of the paragraph which states that AW is a valuable natural asset important for 'recreation, health and wellbeing'³⁹. Mr Rose accepted that the policy test did not indicate that loss or deterioration could be acceptable if the purpose was recreation health or wellbeing.⁴⁰ That is clearly correct.
47. The reality is that there are a number of areas of AW where there is public access. Either through the accrual or historic rights or potentially the grant of planning permission. In that

³⁷ CDG.3

³⁸ Accepted in XX, Day 4, 15 September 2023

³⁹ CDG.3 PDF page2

⁴⁰ XX Day 4 15 September 2023

regard, the rebuttal of Mr Brown which sought to introduce numerous examples of access through AW is simply irrelevant to this case. Whether or not access has been granted elsewhere or exists by virtue of historic rights does not mean that loss or deterioration should be allowed as part of this appeal.

48. Ultimately Mr Rose accepted that the definition of a habitat is ‘the natural home or environment of an animal, plant or other organism’⁴¹. Applying that definition, on any view, the path would (as set out in the evidence of Mr Rainbow and consultation response of the Forestry Commission) would lead to the loss and deterioration of AW habitat. This is further supported by the standing advice which states that ‘damaging or destroying all or part’ of AW ‘including their soils, ground flora or fungi’ can amount to loss or deterioration of AW⁴². The Appellant’s case to the contrary is simply not credible.
49. It is expected that the Appellant will fall back on the fact that, it claims, that Natural England supports the path. However, that ignores the fact that Natural England’s main consultation response was very clear in advising that:

‘Ancient woodland, ancient and veteran trees You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of the NPPF. Natural England maintains the Ancient Woodland Inventory which can help identify ancient woodland. Natural England and the Forestry Commission have produced standing advice for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.’⁴³

50. The position of Natural England on the SANG does not circumvent the need to comply with national policy and for this to be addressed by the Appellant in demonstrating the acceptability of its scheme.

Footpath through the SANG – badgers

51. Mr Rainbow’s proof highlighted that the fence either side of the path through W2 would ‘disrupt the woodland ecology and prevent movement of species through the woodland’ including badgers (para 7.39). The Appellant’s response to this was wholly unconvincing.
52. Mr Rose’s habitats plan at appendix A to his proof showed two known badger sets to the east of the proposed footpath through W2. It is understood that an active set was seen on the site visit immediately adjacent to the footpath. Mr Rose stated that he was sure that badgers would

⁴¹ XX Day 4 15 September 2023

⁴² CDG.3 PDF page 5

⁴³ CDB.12

currently be traversing east-west through W2 but confirmed that he hadn't mapped out how badgers are moving in order to inform the outline application⁴⁴.

53. Mr Rose accepted that any dog proof fencing would also be badger proof.⁴⁵
54. The impact of the fence upon badgers wasn't addressed at all in the ecological impact assessment. It took up one sentence in Mr Rose's proof (para 4.17) where he asserted that there would be dispersal opportunities for badgers elsewhere. In short, his solution was that badgers could leave the AW. Under cross examination Mr Rose claimed this would be 'momentarily'. With respect to Mr Rose, there can be no confidence in his off the cuff answer. The fact that badgers would be required to leave the AW would clearly be an impact which is capable of leading to deterioration of the AW either on its own or in combination, the Appellant hasn't given any explanation of why it wouldn't lead to such impacts in this case.
55. Further, Mr Rose was taken to the SANG management plan in cross-examination which indicates that there would also be dog proof fencing to the south of W2⁴⁶. This contradicted the fencing plan introduced to the Inquiry by the Appellant. Mr Rose sought to think on his feet and considered that dog proof fencing could be provided to the south of W2 but indicated that it would be possible to provide holes for the badgers.⁴⁷ This was yet another example of an issue which simply hadn't been considered by the Appellant. Any hole which would be big enough for a badger would be big enough for a dog, as accepted by Mr Rose.
56. In his oral evidence, Mr Rose also sought to argue that badgers could go under the bridge. Under cross examination he accepted that with the existing topography this would be extremely difficult for badgers to do.⁴⁸ He then stated that there could be a 'badger underpass' as part of the detailed design. It wasn't at all clear what form this would take. Again, another example of Mr Rose thinking on his feet without any assessment or evidence to support it.
57. Mr Rose's credibility was further called into question when he claimed that badgers weren't bothered by noise. The Inspector raised Natural England's standing advice for badgers (January 2022) which was admitted to the inquiry. This clearly indicates that badgers can be affected by development where it causes noise disturbance to sets. Mr Rose sought to argue that badgers were in fact disturbed by noise such as drilling but not by noise from a suburban environment. Mr Rose stated that there was a threshold above which badgers would be disturbed but he could not give that threshold. Further, he could not give the decibel level of, for example, a child crying.⁴⁹

⁴⁴ Response to question from the Inspector

⁴⁵ XX Day 4 15 September 2023

⁴⁶ CDA.23 para 5.13

⁴⁷ XX Day 4 15 September 2023

⁴⁸ XX Day 4 15 September 2023

⁴⁹ All in XX Day 4 15 September 2023

58. Indeed, the standing advice supports the concerns which the Council has raised in relation to the impact upon badgers as part of the AW ecosystem. In particular, with regards to the impact of the path as a barrier to their dispersal and also noise from the path and wider development. The standing advice states that:

Where possible developments should avoid effects on badgers. Where this is not possible, the developer will need to include mitigation or compensation measures in their proposal.

The proposal could:

- *design a layout that avoids isolating the badgers' territory*
- *...*
- *avoid disturbance, including noise and vibration near active setts...*

59. Mr Rose eventually accepted that badgers would be impacted but stated that it was not material.⁵⁰ He gave no basis for this assertion. Overall, the clear and simple evidence of Mr Rainbow is to be preferred. The impact of the appeal proposal's fencing upon badgers is one impact which will contribute to the deterioration of AW.

Footpath through the SANG – pruning, noise disturbance, littering and additional recreational impacts

60. The Appellant's arboricultural assessment stated that it wasn't anticipated that any facilitative pruning would be required by the scheme.⁵¹ That is patently wrong. As Mr Rainbow explained the use of the footpath will increase significantly in this location and it is simply not credible to assert that there will not need to be additional pruning and facilitative tree removal in order to ensure the safety of the users of the path. This again will contribute to the deterioration of W2.

61. Mr Rose accepted that noise from the footpath was an impact pathway which would be capable of causing deterioration of the AW due to its impact upon animals in that woodland.⁵² Mr Rose accepted that he placed particular reliance upon the buffer and buffer planting to attenuate noise from the residential development.⁵³ However, the footpath through the AW has no buffer and no buffer planting and Mr Rose accepted that sound would travel freely through the AW.⁵⁴ The ecological impact assessment makes clear that the AW is subject to 'minimal disturbance'.⁵⁵ Mr Rose initially sought to raise 'shooting parties' as being relevant to the condition of the woodland despite there being no evidence of this in the documents before

⁵⁰ XX Day 4 15 September 2023

⁵¹ CDA.26 para 5.7

⁵² XX Day 4 15 September 2023

⁵³ XX Day 4 15 September 2023

⁵⁴ XX Day 4 15 September 2023

⁵⁵ CDA.20 Para 5.16

the inquiry. However, in cross examination he accepted that as part of the existing condition of the AW it should be disregarded and be given no weight.⁵⁶

62. Noise from the path would be, general chatter, dogs barking, children crying and shouting.⁵⁷ Mr Rose accepted that the path would be heavily used.⁵⁸ Mr Rose accepted that he had not done a bird or mammal survey near the proposed footpath. Mr Rainbow explained that there were some species which were likely to be present which were sensitive to noise, such as the lesser spotted woodpecker, Mr Rose agreed.⁵⁹ Nowhere in its evidence (including the ecological impact assessment) did the Appellant seek to assess the impact of noise from the footpath upon AW. The ecological assessment did conclude that, in the absence of mitigation, the proposals had the potential to adversely affect breeding birds.⁶⁰ There is no such mitigation on the path.
63. Again, the evidence of Mr Rainbow is to be preferred. The disturbance of species through noise on the path through W2 is another impact which will lead to the deterioration of that parcel of AW. The Appellant has provided no real defence to this point.

Pet predation

64. Mr Rose's evidence (proof para 4.29) was that 26% of households own a domestic cat. That equates to the introduction of c76 new predators as a result of the appeal scheme. Mr Rose accepted that a proportion of the cats would exert a predation pressure within W2 and W1⁶¹. The impact of domestic pets is identified as an indirect effect which can cause deterioration of AW.⁶² That is because the animals and birds they predate form part of the AW ecosystem.
65. Mr Rose argued (proof 4.29) that the species which would benefit from habitat creation and enhancement proposed by the appeal scheme. In short, the solution is to offset losses in the AW with provision of habitat elsewhere. Mr Rose argued that it would be necessary for there to be an undermining of the conservation status of a species for there to be deterioration of AW⁶³. Another threshold test which Mr Rose had invented which has no place in policy, guidance or any appeal decision.
66. Mr Rose asserted that small mammals and bird populations would not be materially reduced within the AW. When asked about this he simply asserted 'that is my conclusion'. Again, the evidence of Mr Rainbow, which accords with the Standing Advice is to be preferred.

Additional recreational impacts to the ancient woodland and management

⁵⁶ XX Day 4 15 September 2023

⁵⁷ Accepted by Mr Rose XX Day 4 15 September 2023

⁵⁸ Accepted by Mr Rose XX Day 4 15 September 2023

⁵⁹ XX Day 4 15 September 2023

⁶⁰ CDA.20 para 5.58

⁶¹ XX Day 4 15 September 2023

⁶² CDG.3 PDF page 5

⁶³ XX Day 4 15 September 2023

67. Mr Hyatt and Mr Rose stated that there would be a 10m corridor within the AW (although the SANG management plan stated it would be 6m⁶⁴). Whichever version of events is correct, there will be some land within the Appellant's control either side of the path. Mr Rose accepted that it was perfectly possible for a person to post litter either over or through the fencing to the path. The SANG management plan states that there would be an annual sweep for litter.⁶⁵ Any litter off of the path would linger for a year⁶⁶ during which organic matter such as dog poo and banana skins would be left to decompose for a year.⁶⁷
68. Mr Rose was unaware of how the area either side of the path would be managed. He stated that it was 'within the realms of possibility to include an access gate' on each side of the path. He accepted that would include stakes being driven into the ground.⁶⁸ Another aspect which simply hasn't been thought through by the Appellant.
69. Additionally, Mr Rose accepted that the Appellant was minimising the potential for trespass in the wider woodland but could not eliminate it.⁶⁹ The proposal includes no management of W2 (save for the 6 or 10m corridor which is within the applicant's control and within which the path will sit). Mr Rose accepted that if someone trespasses into W2 and builds a den or lights a fire there is no mechanism to remediate it.
70. Natural England's email to Ms Turner dated 23 March 2022 makes clear that it is concerned by an increase in recreational pressure. It advised that there should be well-maintained and managed fencing to the entire SANG border' and 'some management of ancient woodland would help mitigate some recreational disturbance impacts that are still likely to occur'.⁷⁰
71. The Appellant argued that Natural England's position was that so long as W1 is managed then W2 did not need to be managed (locations shown on Appendix A to Mr Rose's proof). That would be a wholly irrational position for Natural England to take (and it is not at all clear that this is their position from the emails it exchanged with the Appellant particularly given the fact that no plan was provided). W1 does not form part of the SANG, W2 does. Clearly, if management is required to address recreational disturbance then it is required throughout the woodland where that disturbance is likely to occur, which includes W2.
72. Whatever the position of Natural England, the fact is that when one considers the lifetime of the development it is likely that recreational disturbance will occur into W2. The proposal contains no provision to address this. As highlighted by Mr Rainbow. This is another impact which is likely to lead to the deterioration of the AW.

⁶⁴ CDA.23 para 2.2

⁶⁵ CDA.23 paras 6.16 and 7.11

⁶⁶ Accepted by Mr Rose in XX Day 4 15 September 2023

⁶⁷ Accepted by Mr Rose in XX Day 4 15 September 2023

⁶⁸ Accepted by Mr Rose in XX Day 4 15 September 2023

⁶⁹ XX Day 4 15 September 2023

⁷⁰ Mr Rose Appendix E

Conclusion on Ancient Woodland

73. It is abundantly clear that the appeal proposals will lead to the loss and deterioration of AW. There will, as the Forestry Commission has recognised be direct loss through the provision of the new path through W2. The presence of the path will not only result in the destruction of woodland soils and indicator species, it will prevent growth of plant and ‘woody’ species in the future. Further, deterioration will occur through:
- a. Disturbance to species within the AW species through noise and light from the developed area;
 - b. Disturbance to species within the AW from the use of footpaths within the AW buffer and the footpath within W2;
 - c. Deterioration of AW and VTs through the provision of footpaths in root protection areas;
 - d. Predation of birds and mammals by domestic cats;
 - e. Recreational disturbance to W2 which cannot be prevented and the impact of which will not be managed/remediated; and
 - f. Disturbance to badgers through interruption of their movement through W2.
74. Ultimately, it is for the Appellant to demonstrate that its proposal is acceptable in planning terms and this includes that it will not lead to loss or deterioration of AW. The Appellant’s evidence has been either wholly lacking or simply not credible on this issue. This is addressed further in the application for costs.
75. As the appeal proposal will lead to loss and deterioration of AW and VTs the appeal proposal should be dismissed in accordance with paragraph 180(c) NPPF and also TR13 of the Wealden Local Plan.

Highway safety

Introduction

76. Both the NPPF (paras 110(b) and 111) and local policy (TR3 Wealden Local Plan⁷¹) require that a safe and suitable/satisfactory access should be provided for developments. The Appellant accepts that if its access is unsafe then this is an issue which would significantly and demonstrably outweigh the benefits of its proposal.⁷²
77. Since making its planning application, the Appellant has amended its access proposals multiple times. At the point of the Inquiry, the Appellant confirmed that it relied solely upon the access arrangement – Plan 5330/021 (‘Rev P’)⁷³.

⁷¹ CDE.2 PDF page 89

⁷² Cross examination of Mr Brown day 7, 21 September 2023

⁷³ Appendix 28 Twinberrow

78. The highway authority, ESCC, has been closely involved in the application. This has involved a significant amount of correspondence and meetings. ESCC has objected to the application's access proposals since the application was submitted. It also aired concerns at the pre-application stage. It has reconsidered its position in relation to each new proposal and, having carefully considered Rev P, it has maintained its objection based upon the fact that it remains unsafe. Mr Twinberrow, for the Appellant, accepted that the views of ESCC should be given significant weight.⁷⁴ Clearly, this is particularly the case given that ESCC has appeared at the inquiry, given evidence through Mr New and has been prepared to subject that evidence to cross-examination.

Junction design

79. The form of the junction is a ghost island right turn. Mr Twinberrow confirmed in cross-examination⁷⁵ that the only design standards for such a junction are found in DMRB CD123 'Geometric design of at-grade priority and signal-controlled junctions' (2021).⁷⁶ Mr Twinberrow also accepted that the design presented does not meet the standard in that the corner-radii in Rev P are 10m. The design standard provides that they should be 15m plus tapers^{77, 78}.
80. Mr Twinberrow further confirmed that he was not relying upon being able to extend the corner radii at a detailed design stage⁷⁹. As Mr New stated, such a measure may impact upon the centre line and visibility splays and therefore it was not possible to say whether or not such a measure would be achievable.
81. ESCC, confirmed that it may be acceptable for the Appellant not to meet the design standard in full however this would depend upon demonstrating the safety of the junction through swept path drawings⁸⁰. As became clear at the Inquiry, the swept paths demonstrate that the junction is indeed unsafe.
82. Whether or not paragraph 5.2 of DMRB CD123⁸¹ applies is effectively irrelevant. Whether or not the number of vehicles using the junction is 'very small'⁸² and what the design vehicle should be is not the determinative factor in this appeal. The key question, which all parties appeared to accept, is whether this junction which does not meet design standards will provide safe and suitable access for the lifetime of the development.

⁷⁴ XX Mr Twinberrow, day 6, 20 September 2023

⁷⁵ XX day 6, 20 September 2023

⁷⁶ CDI.6

⁷⁷ CDI.6 para 5.6.4

⁷⁸ It is unclear whether the Appellant will argue that CDI.6 does not apply. If so, that is clearly wrong for the reasons set out by Mr New in his evidence in chief which was that Bird in Eye Hill is not a 'street' with a public realm function, it is clearly a road with speeds in excess of those which are considered in Manual for Streets 2. In any event, Manual for Streets does not provide any design guidance for a ghost island junction.

⁷⁹ XX day 6, 20 September 2023

⁸⁰ New Rebuttal page 7

⁸¹ CDI.6

⁸² Mr New stated that the correct figure was 3%, Mr Twinberrow argued 0.5%

Swept Paths and Frequency of Use by 12m Rigid HGVs

83. Mr New confirmed that ESCC had no concerns regarding the safe operation of rev P for cars. The tracking diagrams show that these can be accommodated without unsatisfactory consequences.⁸³ However, the junction will not only host cars associated with the 290 home development and the SANG but also vehicles associated with the light industrial uses of Bird-in-Eye Farm. Further, ESCC accepts that the number of articulated lorries using the junction is very small and this is unlikely to change and therefore consideration does not need to be given to their swept paths. Similarly, visits from refuse trucks are likely to be infrequent and therefore these do not give rise to a concern in and of themselves. However, the same is not true of visits from 12m rigid HGVs.
84. The current use of Bird-in-Eye Farm was considered through a one-day survey during the month of August by the Appellant. This showed 8 movements by 12m rigid HGVs. At the Inquiry it was explained that one of these was by a refuse vehicle (which is also a 12m rigid HGV).
85. Mr New explained that even if the current levels of 12m rigid HGV used by the farm were to remain then the junction was considered unsafe (as set out below). Further, there is no planning restriction to prevent more intensive use of the junction by 12m rigid HGVs in the future as may occur through future occupants of the existing buildings.
86. The Appellant sought to argue, through the oral evidence of Mr Twinberrow, that visits to Bird-in-Eye Farm by 12m rigid HGVs are unlikely to increase in the future due to the nature of the buildings at the farm. With respect to Mr Twinberrow, this clearly is not a judgment which he is qualified to reach and was backed up by no expert evidence.
87. As explained by Mr New, the swept paths for a 12m rigid HGV and a car using the junction show that three out of the four manoeuvres involve the HGV making incursions into areas where they would come into conflict with approaching traffic and risk either head on collision, rear end shunts or conflict with waiting vehicles. These are not sideswipes where a wingmirror gets knocked but potentially serious accidents.⁸⁴
88. The nature of the safety concerns were explained by Mr New (by reference to drawing 5330/228 Rev H⁸⁵):
- a. Top left – This shows that an HGV turning into the site would not be able to do so if any vehicle of any size was waiting to exit. Either the vehicle waiting would have to make a manoeuvre without full visibility of what was behind the HGV or the HGV would slow and stop potentially unexpectedly with regards to vehicles following it resulting in a rear-end-shunt;

⁸³ Mr New Evidence in chief day 5, 19 September 2023

⁸⁴ Accepted by Mr Twinberrow in cross examination, day 6, 20 September 2023

⁸⁵ Appendix 28 Twinberrow

- b. Top right – This shows the path which would be taken by an HGV exiting and turning left which would occupy head-on a part of the right turn lane. The diagram shows it hugging the corner radius but even as it does so it swings out into the right turn lane. The risk this presents is of a head on collision between other vehicle approaching from the west. This would require the driver of the HGV to not only take account of whether there was a gap in traffic approaching from the right but also to know that any vehicle approaching from the left was going to chose the right turn lane rather than continuing straight ahead. There is a clear potential that a car wanting to turn right into the site would come face to face with an HGV exiting the site;
 - c. Bottom left – here an HGV using the right turn lane to turn into the site would overrun the area occupied by a vehicle waiting to exit from the site access road. It would either be unable to make that movement or would require the right turner to exit without knowing what might be happening behind the HGV. Or the car waiting to exit (and any others behind it) would have to reverse in order for the HGV to make its movement.⁸⁶
89. In response to a question from the Inspector, Mr Twinberrow accepted that the swept path in the bottom left meant that a waiting HGV would present a blind spot for a car seeking to turn right out of the site access.
90. Mr Twinberrow, for the Appellant, made a number of assertions about ‘driver behaviour’ which he said meant that the concerns of ESCC would not arise. First, ESCC is clearly well aware of ‘driver behaviour’ and has made its objection to which significant weight should be given. Second, Mr Twinberrow’s assertions weren’t backed up by any objective evidence. Third, at least one of the concerns which ESCC has raised (rear-end shunts from vehicles suddenly slowing or stopping when wanting to access the appeal site) is noted to be a concern in Manual for Streets 2 which expressly acknowledges the concern that where speeds are high (i.e. above 30mph) ‘vehicles slowing to turn into the minor arm may cause shunt collisions on the major road’.⁸⁷ That situation applies to Bird-in-Eye Hill.
91. As Mr New explained the nature of the proposed junction means that even with the current level of HGV use, there would be potential for c2000 potential safety incidents per year.⁸⁸ This is clearly unsafe and therefore unacceptable in policy terms.

The relevance of the existing junction

92. The Appellant sought to argue at the Inquiry that its junction would be safer than the existing access into Bird-in-Eye farm. This was a surprising argument. Mr New confirmed that although the existing junction is sub-optimal it is operating safely without recorded incidents. However, and crucially, the new junction would not only host the HGVs but a significant

⁸⁶ Explained by Mr New evidence in chief day 6 20 September 2023

⁸⁷ CDI.2 para 9.4.12. It is clear that MfS2 does not apply to the junction. However, the concern set out in that document is plainly relevant to this proposed junction.

⁸⁸ Mr New evidence day 6 20 September 2023

uplift in the number of cars. This figure, based on the Appellant's data is from 198 over a 12 hour period to 1482 over the same period⁸⁹.

93. Each of the safety concerns which ESCC is concerned about involve an HGV and a car seeking to use the access junction. The significant increase in the number of cars therefore means that a comparison cannot be made between the existing and proposed junctions.

Cyclists

94. Mr New explained that the proposed access junction does not include provision for cyclists. Further, the junction itself would present the only opportunity for a car to overtake a cyclist when travelling east up Bird-in-Eye Hill which would present a clear danger for a cyclist turning right. As the numbers of cyclists are likely to be low Mr New explained that this was not an issue which in and of itself would draw an objection on safety grounds but it is a relevant factor to consider in the safety of the operation of the junction overall.

Conclusion

95. For the reasons set out by Mr New on behalf of the statutory highway authority, the junction is unsafe. It is therefore contrary to paragraphs 110(b) and 111 NPPF and policy TR3 of the Wealden Local Plan⁹⁰. It is also contrary to spatial planning objective SPO12 of the Core Strategy Local Plan.⁹¹

Deliverability of the junction

96. ESCC has raised concerns over the deliverability of Rev P, even if it were considered to be safe. As Mr New explained, there is no more than half a metre between the edge of the carriageway to the north and the highway boundary. ESCC considers that a retaining wall will be required and that the minimum separation for this is 450mm. Taking into account the depth of the wall and its reinforcement, Mr New stated that there was no prospect of this being constructed within the 500mm available. On the southern side, there is similarly about half a metre between the junction design and the carriageway. He stated that the position was less clear but it is likely that a retaining structure would be required which also could not be constructed without land outside of the highway to the south.⁹²
97. It was within the Appellant's gift to demonstrate that its junction was deliverable through the production of a levels plan. ESCC asked for such a plan but the Appellant did not provide it⁹³. As such, and taking into account the unchallenged experience and expertise of ESCC, there remains a serious question mark over whether the access junction is, in fact, deliverable.
98. The Appellant has now accepted a Grampian condition to try to address the deliverability point. However, that does not mean that deliverability is irrelevant to this appeal. Mr Brown

⁸⁹ Compare table 2 with table 2 plus table 10 Mr Twinberrow proof

⁹⁰ PDF page 80 of CDE.2

⁹¹ PDF page 33 of CS Local Plan CDE.1

⁹² Mr New Evidence in chief day 6 20 September 2023

⁹³ Mr New Evidence in chief day 6 20 September 2003

accepted in cross-examination⁹⁴ that issues over deliverability would reduce the weight to be given to the claimed benefits of the proposal.⁹⁵

Arboricultural impact of road widening

99. Rev P involves road widening. The Appellant presented what it asserted to be a tree survey of the impacts of road widening. Mr Hyatt confirmed that this had been conducted by trespass and that he had only visited the trees on the plan.

100. Mr Hyatt confirmed that his arboricultural survey did not comply with paragraph 4.4.2.1 British Standard and did not include all trees. He further confirmed that the *'trees, groups of trees and woodlands should be assessed for their quality and benefits within the context of proposed development, in a transparent, understandable and systematic way. The quality of each tree or group of trees should be recorded by allocating it to one of four categories (see 4.5). The categories should be differentiated on the tree survey plan by colours (see 4.5 and Tables 1 and 2), and/or by suffixing the category adjacent to the tree identification number on the tree survey plan (e.g. 217-A, 218-C etc; see 4.4.2.1)'*. Clearly, Mr Hyatt's 'tree survey' did not fulfil these basic requirements. Mr Hyatt also confirmed that no one else can access the woodland to assess whether the judgments are correct or not. The Inspector will therefore have to consider whether she is able to reach a view on whether Mr Hyatt's judgments are robust or not based on what was visible from the site visit.

101. Mr Hyatt asserted that the works were acceptable because they would not impact more than 20% of the RPA of the trees which he had assessed. He stated that cumulative effects should be ignored (5.3.2). He confirmed that this approach would mean that one could execute works which would impact upon 19% of a root protection area and then, months later, do works to another 19% and there would be no need to consider cumulative impacts. Such an approach is wholly illogical.

102. Mr Rainbow gave a view that the encroachment of root protection areas should be considered cumulatively considering the fact that it is likely that T3, T5 and T6 will have roots in the area of the road widening which are used for structural stability and tree health.⁹⁶

103. Further, 7.4.3 of the British Standard makes clear that kerbs can damage root protection areas⁹⁷. Mr Hyatt wasn't clear on whether kerbs would be required or not (despite having indicated that they would be used). Mr Hyatt accepted that if they were required there would be root damage.

104. Ultimately, there is considerable doubt over the Appellant's assertion that the road widening will not lead to the loss of trees in its vicinity. This is even if the highway works are contained within the boundary of the highway.

⁹⁴ By Ms Cook day 7 21 September 2023

⁹⁵ Cross examination by Ms Cook day 7 21 September 2023

⁹⁶ Response of Mr Rainbow to additional tree survey (known as proof 3) paras 2.4-5.

⁹⁷ Highlighted in Mr Rainbow's response para 2.9

Locational sustainability

105. The proposal for 290 houses is, on any view, a significant development. Paragraph 105 NPPF provides that ‘...Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health....’.
106. Various local plan policies also direct development to areas which are or can be made sustainable (see GD2, EN1, EN3 and TR3 of the Wealden Local Plan and WCS14 and SPO7 of the Core Strategy).
107. The Appellant has repeatedly relied upon the sustainable nature of Uckfield as a settlement. However, the appeal site is in fact outside of Uckfield. As accepted by Mr Twinberrow the question of whether or not a resident is likely to use sustainable methods of travel will depend upon the length of the route, the quality of the route and the destination.⁹⁸

Cycling

108. At the outset, it is worth addressing cycling as a potential sustainable mode of travel from the appeal site. The AADT for Framfield Road, with the appeal scheme, would be c6000 vehicles per day.⁹⁹ The relevant guidance, LTN 1/20 ‘Cycle Infrastructure Design’¹⁰⁰ shows, at figure 4.1 that at these traffic levels on a road subject to 30mph speed limits cycling represents ‘provision suitable for few people and will exclude most potential users and/or have safety concerns’. This allied to the lack of suitable cycling access at the main entrance to the appeal site means that, as explained by Mr New, cycling is not likely to represent a realistic alternative for the vast majority of residents of the appeal site. There was no real response to this from the Appellant.

Distances for walking

109. As explained by Mr New, the distances of facilities to the appeal site are right at the outer limit of what a reasonably fit person could be expected to walk. Manual for Streets identifies that walkable neighbourhoods have a range of facilities within 800m.¹⁰¹ Similarly, guidance from the CIHT identifies the preferred maximum distance to town centres as 800m.¹⁰² The only facilities within that distance from the appeal site are the hospital and the surgery. Hopefully, these won’t be facilities which are accessed by residents on a day-to-day basis.
110. Mr Twinberrow claimed that ‘Planning for Walking’ states that most people will walk to a destination of under a mile. However, that is not what it says. Rather, it states that ‘[A]cross

⁹⁸ Cross examination day 6 20 September 2023

⁹⁹ Adding table 1 and table 10 from Mr Twinberrow’s proof

¹⁰⁰ CDI.22

¹⁰¹ CDI.1 para 4.4.1

¹⁰² CDI.4 table 3.2

Britain about 80% of journeys shorter than 1 mile are made wholly on foot...'¹⁰³. Necessarily, that will cover journeys of 10s of metres up to one mile. The same is true of the National Travel Survey.

111. Given the significant walking distances to facilities (around and over 1 mile) as stated by Mr New, the quality of the walking route will be a significant factor as to whether residents are realistically likely to opt to walk into Uckfield.

Quality of the walking routes

112. As accepted by Mr Twinberrow, the quality of a walking route will include the widths of footpaths, the level of traffic on the carriageway, gradient and the safety of road crossings. It is notable that the Appellant declined to cross examine Mr New on the detailed evidence he provided in his proof on the route's quality.

113. The majority of guidance documents addressing the quality of walking routes are clear that the desirable minimum width for footpath is 2m (see CIHT 'Designing for Walking' (2015) section 4.2¹⁰⁴ and Manual for Streets 1 para 6.3.22¹⁰⁵). The Appellant has sought to rely upon Inclusive Mobility¹⁰⁶. However, this guidance document is not addressing the quality of walking routes. Rather it is considering what is realistically feasible to allow a wheelchair and a pedestrian to pass. Nowhere does it pass any comment on whether 1.5m footpaths are of sufficient quality to ensure that walking is a realistic choice for pedestrians. In any event, it can be noted that even Inclusive Mobility recommends a minimum of 2m width for footpaths in normal circumstances.

114. The Appellant has claimed that footpath widths are 1.5-1.8m. As explained by Mr New, he has measured the footpath and considers that the vast majority of the footpaths are in fact 1.5m. Further, there is a section of footway which is 45m long and is only 1m. It is notable that Inclusive Mobility states that footpaths of this width should only be provided over a distance of 6m.¹⁰⁷

115. Allied to the inadequate widths is the congested nature of Framfield Road together with the gradient which Mr New stated was about 7% over 75m of the route¹⁰⁸. Also relevant are the nature of the obstructions on the route which include parked cars overhanging driveways and street furniture. As Mr New explained, these are clear from the Walking, Cycling, Horse Riding Assessment and Review¹⁰⁹ conducted by the Appellant and, notably, not even referred to in Mr Twinberrow's evidence.

¹⁰³ CDI.21 part 2.1

¹⁰⁴ CD1.21

¹⁰⁵ CDI.1 PDF page 69

¹⁰⁶ CDI.16, section 4.2

¹⁰⁷ CDI.16, section 4.2

¹⁰⁸ Proof para 4.11

¹⁰⁹ CDC.2 PDF page 301

116. The unattractive nature of the pedestrian route from the Appeal site into Uckfield has not only been recognised as part of this appeal. It has also been the subject of: (a) the previous appeal decision and (b) an independent review by Sustrans.

117. The appeal site was considered in 2009 by the Secretary of State. The proposal was for the erection of 197 dwellings, access and recreational space. In that appeal decision the Secretary of State made a clear finding that the Appeal Site would not ‘offer a choice of pedestrian/cycle routes into town’ (see para 37 decision letter and para 755 of Inspector’s report, CDK.1). Through Mr Brown, for the Appellant, sought to argue that the Secretary of State did not make that clear finding, this was dependent upon a tortuous reading of paragraph 755 of the Inspector’s report. It should be rejected. The findings of the Secretary of State in paragraph 37 are clear.

118. It is notable that the policy test is now whether a site offers a ‘genuine choice’ of transport modes (NPPF para 105). It is clear that the previous finding that the site would not offer a choice of pedestrian/cycle routes is highly material to this decision. Particularly given the fact that the key features of the journey into Uckfield have not changed.

119. In 2017 Sustrans carried out a ‘Local Cycling and Walking Infrastructure Plan’ for the Council¹¹⁰. Despite being aware of this document, it is notable that Mr Twinberrow did not refer to it in his proof. It addresses Framfield Road on page 11. It describes Framfield Road as:

‘Busy connector road with residential and commercial frontages along length. Road holds between 5,000 and 10,000 vehicles a day. Parking on some of road. Footways are narrow and are crossed by driveways. No facilities to support cyclists. 20mph speed limit with no traffic calming.’

120. It goes on to set out ‘barriers to walking and cycling’:

‘Cyclists are required to mix high levels of traffic (between 5,000 10,000 per day), with no traffic calming or separated facility. Vehicles able to speed due to good visibility and no traffic calming. Footways are narrow in places, leading to low levels of pedestrians comfort. Lack of pedestrian crossings requires people travelling by foot to crossing informally, leading to high risk of collision with vehicles, and uncomfortable pedestrian environment.

Framfield Road holds high level of traffic, and gaps in traffic are limited. This has significant impact on those using mobility aids, as well as delays pedestrians making journeys across the road.

Side junctions cross footway, forming risk of collision with pedestrians, and high risk of left/ right hook for cyclists.’

¹¹⁰ CDI.18

121. The Sustrans document goes on to make a number of recommendations for Framfield Road. These include widening the footway to shared use. On paragraph 38 this is given 'high' priority which is defined as 'safety critical and essential to the overall quality of the route'.

122. The Sustrans document provides clear support for the position taken by ESCC and adopted by the Council. The reality is that walking will not be a realistic option for those living in the Appeal Site who will undoubtedly choose their cars over such long and unattractive routes.

Highway mitigation works

123. The Appellant proposes to install some tactile paving, bus cages and infrastructure to already existing bus stops and a zebra crossing. It is clear that these measures will not result in raising the quality of walking routes to a level such that they represent realistic alternatives to the private car.

124. In particular, the latest designs for the zebra crossing were contained within Mr Twinberrow's proof of evidence. At the Inquiry ESCC confirmed that it did not object to the crossing being provided. However, Mr New explained that it doesn't address the overall quality of the route. As explained by Mr New, the crossing is located in the vicinity of the car park to the Alma Arms public house. Any resident who is walking west on the south side of Framfield Road (into Uckfield) and needing to get to the north of Framfield Road to access the town centre could use the crossing. However, they would immediately encounter the pub's layby and thereafter would be confronted with no pavement at all on the northern side of Framfield Road in the vicinity of the Alma Arms. This was not disputed by Mr Twinberrow. Thus, residents would be swapping one substandard route (including the 45m stretch of 1m wide pavement) for another substandard route, parts of which have no pavement at all. Clearly, the zebra crossing will be of no assistance in making the walk sufficiently attractive so as to present a realistic choice of transport mode.

Bus Travel

125. Walking distances to bus stops range from 400m to 900m within the appeal site.¹¹¹ The appeal scheme would provide funding to continue bus services at their current level for three years. Mr New accepted that this would be a betterment but, evidently, it would be one which would only persist for 3 years. A minute proportion of the appeal scheme's lifetime.

Conclusion on sustainable transport

126. Overall, the provision of 290 homes and SANG at the appeal site is unsustainable. It conflicts with policies EN1, EN2, GDA2 and TR3 of the Local Plan and SPO7 and WCS14 of the Core Strategy together with paragraph 105 of the NPPF.

127. The Appellant accepts that the location of a development in an unsustainable location is an issue which is capable of significantly and demonstrably outweighing a scheme's

¹¹¹ Twinberrow appendix 13

benefits.¹¹² That is clearly correct. The need to provide development in sustainable locations helps ‘to reduce congestion and emissions, and improve air quality and public health’ (paragraph 105 NPPF). Factors, the importance of which cannot be overstated. Here, the failure to limit the need to travel and offer a genuine choice of transport modes significantly and demonstrably outweigh the benefits of the scheme as set out above.

Impact of traffic on the town centre

128. During the appeal process, the Appellant and ESCC have agreed a traffic contribution which will mitigate the severe impact of traffic generated by the proposal on various junctions within Uckfield. This contribution is secured through the s106.

Conclusion and planning balance

129. The Council respectfully asks the Inspector to dismiss the appeal. In short summary:
- a. the appeal proposals fail to accord with the development plan, breaching a number of policies relating to (i) the principle of the development, (ii) ancient woodland and veteran trees, (iii) highway safety and (iv) sustainability;
 - b. the benefits of the proposal have been greatly overblown by the Appellant;
 - c. the proposal would lead loss and deterioration of ancient woodland and therefore the appeal scheme should be refused in accordance with paragraph 11(d)(i) and 180(c) NPPF;
 - d. the access proposals are unsafe and this is an issue which significantly and demonstrably outweighs the benefits of the proposal and permission should be refused in line with paragraph 11(d)(ii) NPPF; and
 - e. the appeal scheme is in an unsustainable location and the appeal proposals would not make it sustainable this is also an issue which significantly and demonstrably outweighs the benefits of the proposal and permission should be refused in line with paragraph 11(d)(ii) NPPF.

Victoria Hutton

39 Essex Chambers

2 October 2023

¹¹² Cross examination Mr Brown day 7 21 September 2023