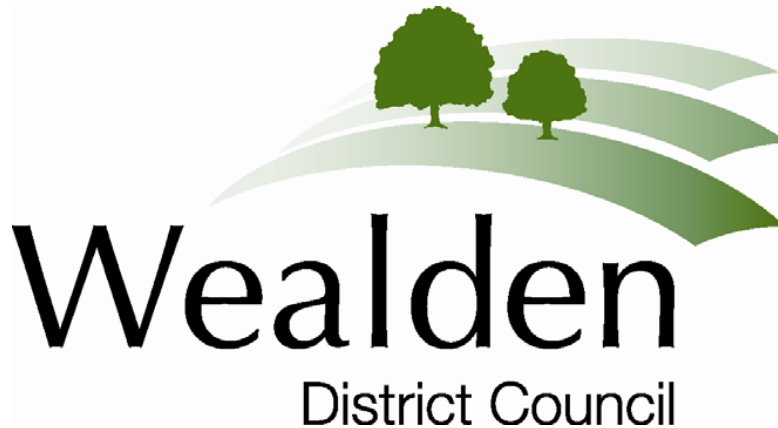




Town and Country Planning Act 1990

Appeal by Croudace Homes Ltd

**OUTLINE PLANNING APPLICATION FOR THE ERECTION OF UP TO 290 DWELLINGS,
ASSOCIATED LANDSCAPING, INFORMAL OPEN SPACE AND STRATEGIC SANG, WITH
ACCESS FROM THE B2102.**

Land at Bird in Eye South, South of Bird in Eye Hill, Framfield, TN22 5HA

Wealden District Council Ref:

WD/2021/2198/MAO

Planning Inspectorate Ref:

APP/C1435/W/22/3307820

PLANNING PROOF OF EVIDENCE

CONTENTS

	Page
1 Introduction	1
2 Site & Surrounding Area	3
3 Planning Policy Overview	4
4 The Council's Case	8
5 Overall Planning Balance	39
6 Summary and Conclusions	58

1 INTRODUCTION

- 1.1 My name is Claire Andrea Turner. I hold a BSc Honours degree in Environmental Planning and Design, together with a Diploma in Town Planning and MSc in Urban Planning. I am a Chartered Town Planner. I have over 38 years of town and country planning experience within multi-disciplinary private practices and since 2004 within local government. I work within the Council as Principal Planning Officer for Major Projects.
- 1.2 The evidence which I have prepared and provided within this proof is true and is given in accordance with the code of conduct of my membership of the Royal Town Planning Institute. I can confirm that the opinions expressed are my true and professional opinions.
- 1.3 This appeal is against the Council's non-determination of the outline application with all matters reserved, except for the means of access from the B2102, for the construction of up to 290 dwellings, associated landscaping, informal open space and strategic SANG, on the 42.8 hectare site at Land at Bird in Eye Farm, south of Bird in Eye Hill, Framfield, TN22 5HA.
- 1.4 The Council's Statement of Case (**CDC.4**) sets out the reasons as to why planning permission should be refused, which are summarised below:
- Conflict with the development plan;
 - The adverse impact of the development on Ancient Woodland and veteran trees;
 - Whether the appeal scheme is in an accessible location so as to offer a genuine choice of transport modes;
 - Whether the appeal scheme can provide safe access;
 - The impact on the safety and operation of traffic on the local highway network and town centre; and
 - No mechanism to secure affordable housing, custom built housing and other key infrastructure mitigation measures.
- 1.5 My Proof of Evidence relates to planning issues and the overall planning balance is set out as follows:

- Section 2 describes the site and its surroundings;
- Section 3 sets out the relevant planning policy policies applicable to the appeal site;
- Section 4 sets out the main issues relevant to the Appeal;
- Section 5 analyses the benefits, harm and the appropriate planning balance required for the determination of the appeal; and
- Section 6 provides a summary and conclusions.

1.6 My evidence should be read alongside that of:

- Mr Ben Rainbow in relation to the impact on the Ancient Woodland and how the appeal proposals would lead to direct and indirect impacts upon veteran trees and ancient woodland, leading to degradation and loss of irreplaceable habitat; and
- Mr Roger New in relation to accessibility, transport and highways.

2 SITE & SURROUNDING AREA

- 2.1 The appeal site comprises mainly open pastures (used for grazing horses) surrounding the Bird in Eye Farm complex on the eastern side of Uckfield, to the south of the Framfield Road (B2102) off Bird in Eye Hill. The topographical survey shows that the site falls west from a high point of approximately 53.0m AOD at the north eastern corner towards a low point of 21.0m AOD on the western boundary which equates to an average gradient across the site of 1:15. There are however steeper gradients in localised areas of the site on the western side of the site with gradients of 1:6 and also adjacent to the ancient woodland.
- 2.2 The site contains a small complex of farm buildings and other business uses. Within the existing group of buildings is a Grade II listed Oasthouse.
- 2.3 Section 2.0 of the Planning Statement of Common Ground (**CDD.1**) provides a full detailed description of the appeal site and the surrounding area.

3 PLANNING POLICY OVERVIEW

THE DEVELOPMENT PLAN

- 3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions.
- 3.2 The adopted development plan documents relevant to the application proposals are the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan (2013) **(CDE.1)**, the Affordable Housing Delivery Local Plan (2016) **(CDE.3)** and the 'saved' policies of the Wealden Local Plan (1998) **(CDE.2)**.

Local Plan 1998

- 3.3 The Wealden Local Plan was adopted in December 1998. A number of the policies have been 'saved' by approval of the Secretary of State under paragraph 1(3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004. The policies of particular relevance to the proposed development are set out below:
- **GD2 Development outside development boundaries:** advises that development will be resisted unless in accordance with specific policies of the plan.
 - **EN1 Sustainable Development:** states that the Council will pursue sustainable development, having regard to the principles contained in Government guidance and in considering development makes specific reference to the location of development and assessing the effects of proposals on the environment.
 - **EN2 Development Pattern:** seeks to maintain settlement patterns and ensure that major new development generating significant traffic movements is located efficiently in relating to existing development and to public transport.
 - **EN12 Protection of Trees and Woodlands:** seeks to retain and enhance the contributions of trees and woodland areas to the landscape character of the District.
 - **EN13 Ancient Semi-Natural Woodland:** seeks to resist development that would prejudice the ecology of Ancient Semi-Natural Woodlands.

- **DC17 Housing Development in the Countryside:** states that development will not be allowed outside development boundaries unless it complies with other policies of the plan.
- **TR3 Traffic impact of new development:** states that planning applications for new development will be permitted provided the proposed development does not create or perpetuate unacceptable traffic conditions, it provides a satisfactory means of access to meet the Local Highways Authority standards and, where appropriate provides suitable public transport facilities.
- **TR13 Footpaths and Bridleways:** seeks to ensure the provision of safe and convenient pedestrian routes and appropriate linkages to the existing networks.
- **LR1 Provision of outdoor playing space, LR3 Children's play space in developments of 30+ dwellings, LR5 Informal amenity space in new residential developments:** Policies LR1, LR3 and LR5 of the Wealden's Local Plan set out the requirements for open space. Policies LR3 and LR5 set specific policy expectations for open space provision in new developments. In summary, these policies require:
 - (i) The seeking of adequate outdoor playing space to be provided in towns and villages in the District in line with National Playing Field Association's standards (LR1);
 - (ii) New residential development of 30+ homes must provide 0.6-0.8 hectares of children's play space per 1000 population (0.2-0.3 hectares should be equipped). The play space should well designed and located within the site. Contributions towards future maintenance are also required (LR3); and
 - (iii) All new large residential development must provide informal amenity space in addition to the required children's play space (LR5).
- **CS1 Provision of Capital Works and Services:** seeks to ensure that the capital works directly required to service the development are provided at the time the development takes place or will be provided at an appropriate time.

Core Strategy Local Plan

- 3.4 The Core Strategy was adopted on 19th February 2013. The Core Strategy is the overarching planning policy document for the Wealden District area, setting out the Council's vision for the future development of the area over the period to 2027. It sets down a number of strategic objectives, and key planning policies for the area together with the broad locations, amounts and types of development that will take place within

Wealden over this period. The strategic planning objectives (SPO) and policies (WCS) of particular relevance to the proposed development are set out below:

- **SPO1 Management of Countryside Resources:** sets out the overarching vision of management of the countryside as a resource to be protected and enhanced including recognising biodiversity and geodiversity. This includes in particular internationally important sites including the Ashdown Forest;
- **SPO3 Need for Homes:** sets out the quantum and distribution of development that the Core Strategy seeks to deliver;
- **SPO7 Reduction in Need to Travel by Car:** seeks to encourage greater use of sustainable modes of transport;
- **SPO12 Safety:** makes reference to working towards improving safety records on the district's roads;
- **SPO13 High Quality and Sustainable Development:** encourages the creation of high quality sustainable developments; and
- **SPO15 Infrastructure Requirements:** emphasises the importance of securing the necessary infrastructure improvements both on site facilities contributions for off-site works.
- **WCS6 Rural Areas Strategy:** identifies where development boundaries have been retained and those settlements where additional housing would be allocated up to 2027
- **WCS7 Effective Provision of Infrastructure:** sets out that the release of land for development will be conditional upon there being sufficient capacity in the existing local infrastructure to meet the requirements generated by the proposed development;
- **WCS12 Biodiversity:** seeks to prevent a net loss of biodiversity, ensure a comprehensive network of habitats, and work with partners to maximise opportunities to ensure habitats, biodiversity features and ecological networks are maintained, restored, enhanced and where possible created to achieve a net gain in biodiversity and sustain wildlife in both rural and urban areas. The policy also seeks to avoid adverse impacts to the Ashdown Forest Special Protection Area and Special Area of Conservation.

- **WCS13 Green Infrastructure:** states that development proposals will not be permitted which would result in the loss of existing open space or harm to Wealden's network of green spaces unless measures are incorporated within the development that will either mitigate the effects of development or alternative and suitable provision is made that is accessible, of good quality and value to its users, in an appropriate location, at an appropriate scale and nature and would positively contribute to the overall network of green space.
- **WCS14 Presumption in Favour of Sustainable Development** notes a positive approach reflecting the presumption in favour of sustainable development contained within the NPPF. Where there are no relevant policies or such policies are out of date, the Council will grant planning permission unless material considerations indicate otherwise.

Affordable Housing Delivery Local Plan 2016

- 3.5 The Affordable Housing Delivery Local Plan was adopted on 18th May 2016 and supersedes Policy WCS8 in the adopted Core Strategy Local Plan and associated text in paragraphs 7.10 to 7.14 concerning affordable housing. Policy AFH1 sets out the Council's requirements for the provision of affordable housing in new housing developments. It is noted that the Appellant's Hearing Statement at Paragraph 5.32 incorrectly refers to Policy WCS8 (Affordable Housing), which as stated above has been superseded.
- 3.6 Policy AFH1 sets out the requirement for a provision of 35% affordable housing provision.

The National Planning Policy Framework (NPPF)

- 3.7 The latest iteration of the NPPF came into force in July 2021. I will draw attention to specific references within the NPPF as applicable.

National Planning Policy Guidance (NPPG)

- 3.8 The NPPG provides useful guidance for the implementation of the NPPF and will be referred to where relevant.

4 THE COUNCIL'S CASE

- 4.1 Below I set out the Council's case on each reason for refusal. As will be seen below, the Council considers that the scheme should be refused for each reason for refusal taken either individually or cumulatively.

Reason for Refusal 1: Conflict with Development Plan

- 4.2 The spatial strategy for the District is set out in the Wealden Local Plan (LP) (**CDE.2**) and the Wealden (Incorporating Part of the South Downs National Park) Core Strategy Local Plan 2013 (the CS) (**CDE.1**).
- 4.3 The site is beyond the defined built-up area boundary of Uckfield and is in the countryside. The explanatory text at Paragraph 17.18 of the LP relates to the Uckfield development boundary with specific regard to considerations on the eastern side of the Town. (**CDE.2**):

"17.18 Along the eastern edge of the town, the development boundary follows the curtilages of existing properties and includes the committed housing sites south of Hempstead Road and at Harlands Farm, together with the new community hospital. However, land within the floodplain of the River Uck and Framfield Stream, the wider areas of farmland and woodland to the east, and the small ribbon of properties along Bird-in-Eye Hill have been excluded to prevent an outward encroachment of development into an essentially rural landscape."

- 4.4 Saved Policies GD2 and DC17 of the LP resist new housing development in the countryside which is not essential for agriculture or forestry needs or has some other similar justification for a rural location (such as rural affordable housing exception sites) as set out in saved Policies GD2 and DC17 of the Wealden Local Plan 1998 but also in national guidance through the NPPF. The supporting text of Paragraph 5.91 to Policy DC17 sets out the range of special justifications for allowing development outside development boundaries. The proposed application does not comply with any of these exceptions, nor does the site qualify as a Rural Exceptions site under Policy WCS9 of the Core Strategy Local Plan 2013.
- 4.5 The CSLP confirms that development boundaries are used to define built up areas (within the development boundary) and the countryside (outside the development boundary) and that in principle development in the countryside is subject to greater restrictions, to preserve the character of the rural area. The CS has retained the

development boundary for Uckfield as the town has been categorised as a District Centre. Paragraph 3.6 of the CSLP indicates that development boundaries may be moved where housing growth indicates that it will be required which would be undertaken as part of the Site Allocations DPD. This is formalised by Policy WCS6 which advises that retained or new development boundaries will be reviewed as part of the Delivery and Site Allocations DPD as appropriate.

- 4.6 The adopted CSLP accepted that the development boundaries contained within the 1998 Local Plan would have to be breached to deliver the level of housing required and also identified Uckfield as a suitable location for development. Indeed under Policy WCS2 Uckfield is allocated for an additional 1000 dwellings. This quantum of development and its general location was formalised under Policy WCS4 through the Strategic Development Area SD1 Land at West Uckfield. Planning permission for this strategic allocation of 1000 homes at Ridgewood has been granted under application WD/2015/0219/MEA on the 24 March 2016. Subsequent Reserved Matters have been approved for the first two phases of development, coupled with key infrastructure such as two new roundabouts and a cross site linking road. Policy WCS4 postdates the 1998 Local Plan and has clearly identified the southern sector of Uckfield as the direction of growth for the town. This is part of a spatial strategy that recognised the need to breach the 1998 settlement boundaries in order to deliver the housing and community needs of the town. The proximity of the Strategic Development Area SD1 on this side of Uckfield provides direct access to the A22 (and the wider district) and avoids the need for traffic (whose destination is not Uckfield town centre) having to go through the town, creating unnecessary additional pressure on the capacity of the town centre junctions.
- 4.7 The Appellant relies on two main points as justification for the proposed development beyond the development boundaries:
- (i) that the development plan does not deal with sufficient growth; and
 - (ii) that other sites locally and elsewhere have been approved outside development boundary locations.
- 4.8 I will deal with each of these points in turn:
- (i) that the development plan does not deal with sufficient growth
- 4.8.1 The Council accepts that under the standard method set out in the NPPF, the Council cannot demonstrate a five year housing land supply (as agreed in the

SoCG) and there is a clear need for housing within the housing market area, including a need for affordable housing.

4.8.2 For the record though, I would point out that the appellant's comments regarding the deliverability of a number of sites as set out in their Statement (for Hearing) Appendix WB5: Assessment of Wealden District Council's Five Year Land Supply Position (**CDC.2**) as a basis for contending that the Council's five year housing land supply is actually less than the 3.92 years figure are incorrect. However, I do not intend to go through the individual sites as such an exercise would not assist the Inspector. It has already been agreed in the SoCG that the Council does not have a five year housing land supply (**CDD.1**). Further, the agreement of the parties that the appeal would be considered on a basis of an agreed range of housing land supply is recorded in the Inspector's note following the CMC. There is relatively small difference between the Council's figure of 3.92 years and the Appellant's figure of 3.35 year supply (Paragraph 1.23 of Appellant's Statement (for Hearing) (**CDC.2**) However, if required, I can set out the sites that the appellant has queried as being deliverable with specific regard to those sites that have outline planning permission with completed legal agreements and the sites that have submitted Reserved Matters applications pending determination with imminent referral to the respective Planning Committees.

4.8.3 There is no dispute that the Council do not currently have a 5-year supply of housing land. Paragraphs 4.15 and 5.1 of the Planning Statement of Common Ground (**CDD.1**)

(ii) that other sites locally and elsewhere have been approved outside development boundary locations.

4.8.4 I confirm that indeed development has been approved outside of the development boundary locations in the District, but this does not mean that all development outside of settlement boundaries is necessarily acceptable. All applications are assessed on their individual merits against the development plan policies and the NPPF.

4.8.5 At the local level, in Uckfield, one new major development that has been approved recently, is Land North of Eastbourne Road WD/2020/0410/MAO in September 2021. This site whilst outside the development boundary, followed the spatial strategy of the Core Strategy, whereby major new development would be focused to the southern side of the town. The officer report to Planning

Committee North (**CDO.1**) clearly sets out the justification for the recommendation to approve:

To conclude, the development accords with all the relevant planning policies in the adopted development plan with the exception of the two policies GD2 and DC17, which for the reasons set out above, are given very limited weight. Whilst the proposal is contrary to the development plan taken as a whole, paragraph 11d (ii) of the National Planning Policy Framework (2019) (the Framework) applies for the reasons set out in the main body of the report (having regard to a positively concluded Appropriate Assessment). This sets out that that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is known as the 'tilted balance' in consideration towards housing supply. Whilst it is acknowledged in the main body of the report that the development will impact on the character of the immediate locality, the adverse impacts are not considered to significantly and demonstrably outweigh the advantages of the delivery of up to 90 dwellings in the context of the district's lack of a five year housing land supply.

4.8.6 Having regard to the NPPF, it was not considered that the development would have an unacceptable impact on highway safety or that the likely residual cumulative impact of development would be 'severe', and therefore there were no reasons in transport terms to justify a refusal. The site was not adjacent to nor did it include any assets of particular importance. The application was screened and an appropriate assessment undertaken under the Conservation of Habitats and Species Regulations 2017 (as amended). The Appropriate Assessment Stage 2 concluded that, having regard to the conservation objectives of the European designations, and the implementation of mitigation measures there would be no impact on the Ashdown Forest SPA.

4.8.7 The appellant has referred to a number of planning approvals that the Council has granted for development outside development boundaries in Paragraph 5.38 of Statement (for Hearing) (**CDC.2**). The merits and circumstances of these schemes are materially different to those of the appeal proposal and therefore not comparable.

- 4.8.8 To further support their argument that development has been approved outside the settlement boundaries, the appellant specifically refers to recent appeal decisions at:
- Land West of Station Road, Hailsham **(CDK.3)**;
 - Mornings Mill Farm, Eastbourne Road, Lower Willingdon **(CDK.4)**; and
 - Old Nursery House, The Street, Framfield **(CDK.5)**.
- 4.8.9 The individual circumstances for each of these sites are very different to the appeal scheme and cannot be regarded as a precedent for approval. All the sites were recommended for approval by the Planning Officers but overturned by Members of the Planning Committee, whereupon all three appeals were allowed by the Planning Inspectorate.
- 4.8.10 None of these sites impacted on irreplaceable habitats such as Ancient Woodland and Veteran Trees. With regard to Land West of Station Road and Mornings Mill Farm, there were no objections from ESCC Highways on issues of safety of access, impact on highway network or adequacy of sustainable transport measures. With regard to Old Nursery Road, Framfield, this is addressed later in my proof under the considerations relating to sustainable location and accessibility. There were no adverse impacts identified that would significantly outweigh the benefits of each respective development. Most notable was the fact that the Mornings Mill site was in accordance with the Council's development plan as it lay within Strategic Growth Area SD4 as set out under Policy WCS4 of the CS and therefore bears no comparison to the current appeal scheme as it was in conformity with the Council's adopted development plan including its spatial policies when read as a whole, unlike the appeal scheme.
- 4.9 I note that Paragraph 1.43 of the Appellant's Hearing Statement **(CDC.2)** refers to the fact that the site was identified in the Strategic Housing and Economic Land Availability Assessment (SHELAA) (2019) **(CDE.54)** as a potentially suitable site.
- 4.10 The SHELAA involves a technical, high-level assessment of sites which could contribute towards the future supply of housing and employment land within Wealden District. It provides background evidence on the potential availability of sites. The last SHELAA document was published in January 2019. This helped to inform the choice for broad locations for housing development and inform the Sustainability Assessment for the Submission Wealden Local Plan (withdrawn in February 2020).

- 4.11 Part of the application site (9.27 hectares gross) was considered as a Potentially Suitable site in the Wealden SHELAA January 2019 under site reference 002/1410 for residential with an overall capacity for 197 dwellings or employment use. The supporting justification was: *“This is a substantial site which comprises of sloping farmland located to the east of Uckfield and generally facing towards the town and therefore visible from it. The B2102 adjoins the site to the north with scattered farmland to the south and east and the urban edge of Uckfield (including the Uckfield Hospital) to the west. This site was refused planning permission for housing by Wealden Council and a subsequent appeal was dismissed in 2008, taking account of circumstances existing at that time. The Inspector at the appeal for this site suggested that the site might be considered as a natural or logical extension to the urban area. In view of the existing landscape features, any development would need to introduce a strong and reinforced landscape framework to the site to complement the form and layout of any scheme. A small part of the site to the west is within Flood Zone 3, and this has been excluded from the site area. The development of this site for housing would require the provision of a new vehicular access and also pedestrian/cycle links towards the town centre. Off-site improvements would also be necessary to the Framfield Road to ease traffic movements to and from the town centre, as well as improvements within the town centre itself. Directly adjacent to the site at the main Bird-in-Eye Farm is a Listed Farmhouse. However the design and layout of any scheme could ensure that the setting of this building is not materially harmed. The site is within 7km of the Ashdown Forest SPA therefore if the site were to come forward for development it would require a Habitats Regulations Assessment.”*
- 4.12 It is noted that whilst the appeal site was identified as “Potentially Suitable” this did not result in the site being allocated in the now withdrawn Submission Plan.
- 4.13 Following the withdrawal of the Submission Wealden Local Plan (January 2019), the Council began work on the new Wealden Local Plan. As part of this process, the land availability evidence is being updated, which has included a review of all sites previously submitted to the Council. A ‘Call for Sites’ exercise took place between 1 June and 10 August 2020 in support of the new Local Plan and work is well underway to publish an updated SHELAA report aligned with Regulation 18 consultation on the new Local Plan.
- 4.14 The Strategic Housing and Economic Land Availability Assessment (SHELAA) will provide up-to-date evidence on the availability of land for new development within the District, to support the development of options for consideration later in the Local Plan

process. It will be used as an aid to plan making, but does not in itself determine whether a site should be allocated for development. Once the assessment is finalised it will be used to assess the relative merits of the most suitable, sustainable and deliverable sites in order to establish which sites should be put forward for allocation. I consider that the fact that the appeal site was identified as a potentially suitable site should be given no weight in relation to this application.

- 4.15 To the extent that development plan policies are material to this appeal, the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004. The Council acknowledges that in the absence of a five year supply of deliverable housing land the effect of policies GD2 and DC17 would be to restrict the supply of housing and prevent local housing needs being met. It also does not dispute that limited weight should be given to these two policies when considering applications outside development boundaries. Despite this, there is conflict with the development plan as a result of the development's location. The development plan is the starting point for the decision. Conflict with the development plan is capable of being outweighed by other material considerations. These are addressed below.
- 4.16 One such material consideration includes the NPPF which, at paragraph 11 sets out the presumption in favour of sustainable development. Paragraph 11d of the NPPF advises that where there are no relevant development plan policies, or the policies which are most important for determining the applications are out of date, which includes applications for housing where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing development or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole. The presumption in favour of granting planning permission under Paragraph 11 of the NPPF does not automatically apply where Footnote 7 of the NPPF applies, and policies of the NPPF provide a clear reason for refusal.
- 4.17 Before moving on to the other material considerations relating to the appeal site, I would point out that the appellant incorrectly states at Paragraph 1.26 of their Statement (For Hearing) **(CDC.2)** *"As confirmed by the Council in numerous Officer Reports to Planning Committee, the local plan policies that are most important for determining applications for housing carry less weight, and the NPPF's presumption in*

favour of sustainable development will apply” This statement does not place the consideration of the cited applications (as referred to in their footnote 3) in the correct context. The officer reports to committee did advise Members that the weight to be given to Policies DC17 and GD2 was limited having regard to the lack of a five year housing land supply, but the reports then considered all other material considerations. It was only after these other material considerations were assessed and it was determined the application of policies in the NPPF that protect areas or assets of particular importance did not provide a clear reason for refusing the proposed development and that there were no adverse impacts arising from these developments that would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole, that officers proceeded to recommend approval.

- 4.18 Reverting back to the material considerations relating to the appeal site.
- 4.19 The effect of the appeal scheme on the Ancient Woodland and veteran trees, which is the subject of policies to protect an asset of particular importance provides a clear reason for refusing the proposed development under Paragraph 11(d)(i), therefore the tilted balance of the Framework does not apply. This is addressed further under RfR2 below. Even if the Inspector disagrees on this matter and considers the tilted balance does apply, the harm identified, means that the proposals would not be sustainable development, as the scheme’s impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
- 4.20 I address this in more detail under the planning balance below. However, in short, the proposed development would bring significant benefits in terms of housing supply and the provision of market and affordable housing (assuming a legally compliant s106 agreement is forthcoming) in the context of the Council’s shortfall in housing land supply and the Government imperative to boost the supply of housing. These and other benefits of the scheme as submitted by the appellant are addressed later in Section 5 of this proof of evidence.
- 4.21 However, as set out in the Council’s Statement of Case (**CDC.4**) the adverse impacts include:
- Harm to the ancient woodland and veteran trees and therefore contrary to development plan policies EN1, EN12, EN13 of the LP, Policies WCS12 and WCS14 of the CS and Framework paragraphs 180(c);

- Unsustainable location of the site and the inability of the proposals to offer a real choice of sustainable transport modes and therefore contrary to development plan policies GD2, EN1, EN2, TR3, TR13 of the LP, Spatial Planning Objective SPO3 SPO7, SPO15 and Policies WCS7 and WCS14 of the CS and Framework paragraphs 104, 105, 110, 112 and 113;
- Failure to provide a safe access, contrary to development plan policies TR3 and TR13, Spatial Planning Objective SPO12, Policy WCS14 of the CS and Framework paragraphs. 104, 110 and 112; and
- Failure to mitigate a severe traffic impact (contrary to development plan policies TR3 and CS1 of the LP, Policy WCS7 and WCS14 of the CS and Framework paragraphs 111).

Reason for Refusal 2: Impact on Ancient Woodland and Veteran Trees

- 4.22 The appeal site is for a large scale residential development. The site adjoins two areas of Ancient Semi Natural Woodland known as Bird-in Eye Shaw and Nightingale Shaw. Appendix G of the LVIA (**CDA.25**) submitted in support of the application classifies the ancient woodland with regard to its quality and sensitivity as Category A. There are also veteran trees present which are similarly categorised as Category A. Mr Ben Rainbow confirms in his evidence that the ancient woodland present on and bordering the site appears of good general condition, structure and species diversity, generally devoid of invasive species (Para 4.8 of Mr Ben Rainbow's evidence) Paragraph 4.15 of the same, refers to the confirmed presence of Veteran Trees on site and Paragraph 4.16 on the impact on one of those trees (G9 Oak) where there is incursion of a footpath and part of the SANG walkway within the edge of its buffer.
- 4.23 Ancient woodland is a valuable biodiversity resource both for its biodiversity of species and for its longevity as woodland. Such areas may not have statutory protection but local and national policy and guidance is clear that Ancient Woodland is an irreplaceable habitat and proposals should not result in its loss or deterioration. Saved Policy EN13 of the LP states that the Council will resist development proposals that involve the clear felling or otherwise prejudice the ecology of Ancient Semi-Natural Woodlands. SPO1 of the CS indicates that the Council will seek to protect and enhance recognised biodiversity assets and seek to ensure that the distinct landscapes of the District, including those not nationally designated, are managed and enhanced. Policy WCS12 of the CS seeks to prevent a net loss of biodiversity, ensure a comprehensive network of habitats, and ensure habitats, biodiversity features and ecological networks

are maintained, restored, enhanced and where possible created to achieve a net gain in biodiversity and sustain wildlife in both rural and urban areas. Whilst the LP predates the NPPF the objectives of the policies in both the LP and the CS are consistent with those of the Framework.

- 4.24 Paragraph 180(c) of the NPPF clearly advises 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. Footnote 63 explains wholly exceptional reasons which are identified as being infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills) where the public benefit would clearly outweigh the loss or deterioration of habitat. The appeal proposals do not include those exceptional works/circumstances and the Appellant has made no case that it does.
- 4.25 I would refer to the Woodland Trust's Planning for Ancient Woodland: Planners' Manual for Ancient Woodland and Veteran Trees (July 2019) **(CDG.5)**. Principle 2 at page 11 states *"If development is likely to harm ancient woodland or veteran trees, unequivocal and credible evidence should be prepared to justify the exceptional need and benefits. Simply restating a national drive for housing, or need for new transport infrastructure, does not constitute exceptional circumstances."*
- 4.26 The Standing Advice published by Natural England and the Forestry Commission **(CDG.3)** instructs LPAs to use the Assessment Guide. In summary, it requires direct and indirect effects of construction and site operation to be assessed. Importantly and contrary to the Assessment Guidance the Appellant has not demonstrated that the development could not be located on less ecologically sensitive land to avoid adverse impacts upon the ancient woodland.
- 4.27 As set out in the evidence of Mr Ben Rainbow the appeal proposal will have both direct and indirect impacts on the ancient woodland and veteran trees. He sets out his concerns under three categories relating to (i) the proposed sustainable drainage systems and associated engineering operations; (ii) the buffer to the ancient woodland; and (iii) the footpath through the ancient woodland and associated recreational disturbance, direct and indirect impacts.
- 4.28 I address these further below. However, first I briefly address the consultation responses of Natural England, the Forestry Commission and the Woodland Trust.

Consultation Responses

- 4.29 It is noted that Paragraph 4.10 of the Appellant's Appendix WB1 Ecology Statement **(CDC.2)** states that *"Natural England no longer object to the Appeal Scheme"*. Natural England provided two consultation responses dated 10 November 2021 and 23 March 2022 **(CDB.12 and CDB.26)**. The responses related specifically to the Designated European Sites and the impact of recreational disturbance and the proposed SANG. With regard to ancient woodland, ancient and veteran trees the consultation response of November 2021 advised that the LPA should refer to Natural England and the Forestry Commission Standing Advice. The consultation response also stated that *"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"*
- 4.30 However, despite this, Natural England has raised concern that the adjacent ancient woodland could experience an increase in recreational pressure. It has advised that fencing along the entire SANG boarder should help avoid this impact together with management of the ancient woodland **(see CDB.26)**. As highlighted by Mr Rainbow in his proof of evidence, the appeal proposals do not include the management of the ancient woodland.
- 4.31 The Forestry Commission has raised significant concerns with regards to the impact of the appeal proposals on ancient woodland. This is set out in detail in their consultation response at **(CDB.21)**. It is also addressed in some detail in the proof of Ben Rainbow.
- 4.32 Finally, the Woodland Trust has objected to the appeal scheme **(CDB.31)**. Again this is addressed in the proof of Ben Rainbow.
- 4.33 I now go on to briefly summarise the loss and deterioration which the appeal scheme will give rise to.

(i) Proposed Sustainable Drainage Systems.

- 4.34 Mr Ben Rainbow has addressed in Paragraphs 7.6 to 7.9 of his evidence the ecological impact on the Ancient Woodland arising from the close proximity of the attenuation basin outside but close to the edge of the 15m ancient woodland buffer zone and therefore in close proximity to two stretches of Ancient Woodland boundaries. The appeal is for principle of development only and access with all other matters reserved, therefore it is acknowledged that the location of the attenuation pond is not definitive at this stage, however having regard to the topography of the site, it is apparent that there

are limited options for relocation of the attenuation pond in order to address the impacts on the ancient woodland as raised by Mr Ben Rainbow.

(ii) Adequacy of Buffer Zone

- 4.35 The Council's Tree and Landscape Officer raised concerns in his consultation response (November 2021) that the standard 15m buffer zone was proposed, having regard to the proximity and lengthy interface between the existing ASNW habitat and the proposed development. In this regard reference to Natural England's Standing Advice (SA) recommends, that at least a 15m buffer be provided and where other impacts are likely to extend beyond this distance, a larger buffer zone is likely to be required. The SA states that the size and type of buffer zone should vary depending on the scale and type of development and its effect on ancient woodland, ancient and veteran trees and the character of the surrounding area. Examples are given as to where large buffer zones are more likely to be needed which includes less densely wooded areas and steeply sloping sites. The SA also advises that larger buffer zones are more likely to be needed where there is the effect of air pollution from development that results in a significant increase in traffic. Mr Ben Rainbow refers to the advice set out on Page 20 of The Planners' Manual for Ancient Woodland and Veteran Trees from the Woodland Trust (Planners Manual) **(CDG.5)** in Paragraph 3.23 of his evidence. It is advised that buffers should be designed to meet the requirements of the location and type of development proposed. Based upon a precautionary approach, a minimum of 50 metre buffer is recommended between development and ancient woodland, including during construction *"unless the applicant can demonstrate very clearly how a smaller buffer would suffice"*. No such justification has been put forward by the Appellant as to why the minimum of 50 metres is not applicable in this instance or why the application deems the minimum 15m buffer zone is acceptable.
- 4.36 Paragraphs 7.16 to 7.24 of Mr Ben Rainbow's proof of evidence sets out reasons why the appellants proposed buffer of 15m would not be sufficient to prevent the deterioration of the Ancient Woodland.
- 4.37 The concerns of the Woodland Trust accord with those of the Council with regard to proposed extents of the Ancient Woodland Buffer.
- 4.38 The purpose of the buffer is to ensure it is retained permanently and it is allowed to develop into semi-natural habitat. Public access should be restricted within the buffer zones. The appellant has put forward that the proposals exceed the minimum 15m buffer with wider buffers, however, this is not strictly correct as within this calculation they are including publicly accessible amenity space with paths and swales which form

part of the Sustainable Drainage Systems. These would not normally be acceptable within an ancient woodland buffer zones having regard to the Standing Advice.

- 4.39 The issue of whether or not the depth of the buffer is a matter that would need to be established before outline planning permission is granted, or whether it could be subject to a planning condition imposed to inform the reserved matters submissions was considered by an Inspector at Paragraph 18 in his decision letter for appeal at Hawthorn Cottage, Harvey Road, Congleton Appeal Ref APP/R0660/W-21/327/5804 **(CDK.20)** where he concluded that the use of a planning condition with respect to the depth of the buffer zone would not be appropriate. Similar to the considerations in that appeal, the Council is of the view that having regard to the quantum of development proposed on the appeal scheme and the proposed location of the attenuation features, there is no scope within the land area available on the appeal site to provide an increased buffer as indicated as necessary by the Woodland Trust and to address the concerns of the Council's Biodiversity Officer. The provision of a larger buffer to the ancient woodland would have knock on implications in terms of the numbers of dwellings that could actually be accommodated on the site and a similar reduction in the number of affordable homes that could be provided. In these circumstances, I consider the use of a planning condition with respect to the provision of a buffer zone would not be appropriate for the appeal scheme.

(iii) Introduction of Footpath to provide Circular Route for SANGS

- 4.40 The strategic SANG forms an integral part of the scheme and comprises 26.17 hectares of SANG land, a walking route extending to around 2.7km and a car park for thirty vehicles.
- 4.41 Natural England has established guidelines and criteria for SANGs **(CDG.9)** aimed at ensuring each site is suitably designed for recreation and is attractive enough to encourage visitors to make repeat visits rather than visiting the protected sites, in this case Ashdown Forest. The guidelines state that the *"identification of SANG should seek to avoid sites of high nature conservation value which are likely to be damaged by increased visitor numbers. Such damage may arise, for example, from increased disturbance, erosion, input of nutrients from dog faeces, and increased incidence of fires. Where sites of high nature conservation value are considered as SANG, the impact on their nature conservation value should be assessed and considered alongside relevant policy in the development plan."* It is evident that if regard was had to Natural England's own guidance the provision of SANG should avoid irreplaceable habitats such as Ancient Woodland.

- 4.42 The guidance acknowledges that most visitors to SANG come by car and want the site to be close to home. The guidance states that unless SANG are provided for the sole use of a local population living within a 400 metre catchment around the site, then the availability of adequate car parking at sites larger than 4 hectares is essential. With regards to paths, the guidance suggests they should supply a choice of routes around 2.3-2.5km in length with both shorter routes of at least 5km as part of the choice, space permitting. The guidance states “Paths have to be of a width acceptable to visitors. Paths should be routed so that they are perceived as safe by the users, with some routes being through relatively open (visible) terrain (with no trees or scrub, or well space mature trees, or wide rides with vegetation back from the path) especially those routes which are 1.3km long.
- 4.43 *“The guidance also highlights that it is imperative that SANG allow for pet owners to let dogs run freely over a significant part of the walk. Access on SANG should be largely unrestricted, with both people and their pets being able to freely roam along the majority of routes. This means that sites where freely roaming dogs will cause a nuisance or where they might be in danger (from traffic or such like) should not be considered for SANG”.*
- 4.44 Paragraph 7.81 of the Appellant’s Statement (for Hearing) (CDC.2) states that:
- “The SANG proposals include areas of plantation woodland, ancient woodland and grassland. Residents will be able to use this area for walking and dog exercising, with visitors and their dogs having open access over SANG land **at all times without restriction**”* (emphasis added).
- 4.45 In order to provide a suitable footpath configuration for the proposed strategic SANG an existing narrow informal track through Bird in Eye Shaw (ASNW) is proposed to be “improved” extending from the main site to the northwest corner of the strategic SANG area. Paragraph 7.25 of Mr Ben Rainbow’s evidence states *“The current informal path comprises of a narrow line of bare earth largely no greater than 300mm in width bordered by an ecotone of Ancient Woodland habitat grading from lower growing ground flora up to full canopy mature Ancient Woodland trees”.*
- 4.46 The justification for providing a footpath through the Ancient Woodland as set out in Natural England’s letter 10 November 2021 relates to the need to provide a circular route for the proposed SANG. *“A pinch-point along the walking route was identified as a constraint on the design. This has now been rectified by the addition of a footpath through the Ancient Woodland. This will prevent a bottle neck where the two paths would cross and creates a more circular route”*

- 4.47 The adverse impacts of the proposed path are fully addressed in the Mr Ben Rainbow's evidence paragraphs 7.27 to 7.40 evidence with regard to both ancient woodland and the veteran tree and RPA incursion at Paragraphs 7.50 to 7.56.
- 4.48 Natural England were of the view that the inclusion of fencing along the entire SANG border should help avoid and restrict recreational impacts to the ancient woodland and that management of ancient woodland would help mitigate some recreational impacts.
- 4.49 The appeal scheme proposes that to prevent access into the wider ASNW, the path will be enclosed with chestnut rail fencing held in place with driven timber posts at appropriate (2-3m) centres. Paragraph 6.5 of Mr Ben Rainbow's evidence sets out the efficacy and effectiveness of this fencing in deterring access to the wider woodland by the public and dogs. Furthermore, he highlights the negative impact that this would have on the ancient woodland ecology including *"restriction of larger ancient woodland mammals including protected species known to be living in the vicinity"*. Indeed, Paragraph 7.87 of the Statement (for Hearing) acknowledges there would be adverse impacts on a range of species that are found largely within the areas of ancient woodland and refers to the ecological reports and the recommendations for a range of ecological mitigation measures. Contrary to Natural England's views, Mr Ben Rainbow also sets out in his evidence the clear issues with the proposed method of surfacing in the form of wood chip/gravel surfacing retained by timber edging boards held in place with timber pegs.
- 4.50 With regard to Natural England's comments relating to some management of ancient woodland as being sufficient to balance and mitigate some of the recreational disturbance (albeit they still acknowledge that these would still likely occur), Mr Ben Rainbow's evidence (para 6.6) states this is contrary to Paragraph 180c of the NPPF and the Standing Advice. In any event, the Appellant is not proposing to manage the ancient woodland in as part of its proposals.
- 4.51 The consultation response from the Forestry Commission of the 6 January 2022 (CDB.21), echoes the concerns of the Council regarding the provision of the SANGS footpath through the ancient woodland: *"We have concerns about the proposed pathway to be created through the Bird in Eye Shaw. We appreciate that it has been included to prevent a pinch point on the required circular walk as part of the SANG provision, but do not feel that loss of ancient woodland through creation of this path is acceptable for this reason."* The advice from the Forestry Commission (CDB.21) was that measures should be implemented to avoid increased footfall and recreational pressure on AW by restricting access both by people and their pets.

- 4.52 The Woodland Trust have also expressed significant concerns regarding new the footpath within the ancient woodland areas that would result in direct loss and damage to the ancient woodland. They acknowledge that some of the impacts have been recognised by the Appellant such as the increased recreational activity and disturbance but the Woodland Trust do not consider that the direct loss and deterioration of the ancient woodland will be appropriately mitigated and advise that the only suitable mitigation is to avoid siting such elements, in this case the footpath within the woodland.
- 4.53 The views from both the Forestry Commission and Woodland Trust concur with that of the Council that the provision of a footpath through ancient woodland does not and cannot be justified as an exceptional circumstance. It is indeed perverse to create direct adverse impacts on a protected asset to meet the criteria for the provision of SANGS, which is in itself a mitigation measure for impacts on another protected asset, in this case the Ashdown SPA.
- 4.54 The impact however would not only be from the future occupants of the development, but as the appellant has clearly indicated in the Statement (for Hearing) **(CDC.2)**, it is proposed that this is a strategic SANG and therefore would not only be serving the immediate development of up to 290 dwellings but as indicated in their statement at Paragraph 4.42 will provide additional headroom capacity of around 15.6 hectares which could become available for the mitigation of future local development of up to 1073 dwellings or 2575 residents.
- 4.55 Mr Rainbow in his evidence has set out the direct and indirect impacts to the ancient woodland which includes:
- (i) the direct loss of ancient woodland habitat under the path surface as set out in Paragraph 7.27;
 - (ii) the direct loss of ancient woodland habitat through the removal and on-going removal of ancient woodland tree branches (facultative pruning) Paragraph 7.28;
 - (iii) the direct loss of ancient woodland habitat arising from an increased requirement for ancient woodland tree risk management tree felling (Paragraphs 7.29 to 7.32);
 - (iv) trespass into the ancient woodland habitat and formation of new desire-line paths avoiding the unusable paths. This will cause trampling and damage of ground flora, soil erosion, compaction of ancient woodland habitat and disturbance through human and dog presence, wild animal disturbance, additional noise, dog fouling and litter (Paragraph 7.35)

- (v) soil erosion on the steeper parts of the ancient woodland proposed path location, causing direct degradation and loss (Paragraph 7.36)
- (vi) installation and maintenance of fence line causing direct impact to ancient woodland, soils and habitat. Furthermore this would disrupt woodland ecology and prevent movement of species through the woodland (Paragraphs 7.38-7.41)
- (vii) increased noise and disturbance from significantly increased recreational pressure (Paragraph 7.42) and associated pollution through litter and dog faeces nutrient enrichment; and
- (viii) cat predation (paragraph 7.23)

4.56 Of particular concern is that no measures have been put forward to monitor or manage the ancient woodland not within the appellant's control. As stated in Paragraph 7.47 of his evidence: *"It is noted there is no management of monitoring of the ancient woodland has been proposed to be secured as part of the proposal. As per Natural England response of 23rd March 2022, they explicitly recommended that management of the Ancient Woodland should be secured. Should recreational issues occur as a result of the scheme, there appears a missing mechanism to address these or prevent further ongoing or increased degradation"*

4.57 Mr Rainbow's evidence regarding the impact on the Veteran Tree is set out in paragraphs 7.50 to 7.54 of his evidence. The issue relates to part of the SANG walkway within the edge of the protective buffer to the Veteran Tree. Mr Rainbow refers to the fact that access is only allowed in buffers where the habitat will not be harmed from trampling which in his view is not the case in this instance, as the walkway would be heavily used with users of the SANG passing in very close proximity to the Veteran Tree. Mr Rainbow is of the view that this would likely result in the direct impacts listed in the Standing Advice that decision makers are told to avoid. Furthermore Mr Rainbow also raises concerns with regard to the form of hard surfacing proposed being contrary to British Standards BS5837:2012 with regard to the veteran tree.

Conclusion on Ancient Woodland and Veteran Trees

4.58 Ancient Woodland is an irreplaceable habitat, once lost it is gone forever. Any development resulting in loss or deterioration of ancient woodland must consider all possible measures to ensure avoidance of adverse impacts.

4.59 It is acknowledged that the previous appeal was not dismissed on the grounds of impact on ecology/ancient woodland. However this ignores the fact that there are three fundamental differences between the previous appeal and the current appeal proposal:

- the previous appeal scheme was not proposing a public footpath through the ancient woodland, indeed it was intended that public access would be restricted;
- the current appeal proposal not only provides an access through the Ancient Woodland but the impacts would be amplified by virtue of the higher number of units with the previous appeal being for 197 dwellings compared to the current appeal scheme which is for 290 dwellings. There is also the proposed SANG which as already addressed earlier is proposed as a strategic SANG and therefore significantly increasing the footfall using the route through the Ancient Woodland.
- The policy bar for protection for ancient woodland was considerably lower under PPS9 paragraph 10 which only advised that permission should not be granted for any development that would result in the loss or deterioration of AW unless the need for, and benefits of the development in that location outweigh the loss of woodland habitat. As stated by Mr Ben Rainbow in his POE paragraph 5.3:

“It is important to note that the previous appeal decision from 2009 referred to in paragraph 2.10 of the hearing statement predated the current NPPF and Standing Advice by a number of years and decisions at that time would have been made on assessments based upon a ‘where benefit outweighs harm’ argument rather than the current ‘wholly exceptional’ test that is applied today under NPPF para 180c”

4.60 There can be little doubt that the AW is under threat both directly and indirectly from the appeal scheme as set out in the Council’s expert witness, Ben Rainbow’s evidence. Section 5 of the Ecological Impact Assessment EclA (**CDA.20**) that accompanied the original application assessed the impact of the development within Paragraphs 5.15-5.17 on the Ancient Woodland. The EclA acknowledged there is potential for direct impacts, namely impacts to root protection areas and pollutants and indirect impacts from disturbance from light spill, specifically close to the woodland as the site is currently unlit at night. Paragraph 5.16 of the EclA states that *“The blocks of ancient woodland within the Site are currently not accessible by the public and as such have very little disturbance currently from recreational activity. The proposed SANG will include a path leading through woodland W2 to connect the northern and southern SANG fields. Therefore the level of disturbance as a result of recreational activity will*

increase and there is the potential for impacts such as trampling which could reduce the abundance of ground flora, including notable plant species such as bluebell.”

- 4.61 Paragraph 5.18 of the EcIA states that; *“Given the importance of ancient woodlands and these impacts combined, without mitigation there is the potential for a negative effect on this habitat, significant at the County level (given the distribution of ancient woodland habitat locally)”* As pointed out in the evidence of Mr Ben Rainbow (Para 5.6) *“....mitigation of ancient woodland impacts would infer an impact (and degradation or loss) was still present and the exceptional test is met”*.
- 4.62 The mitigation measures proposed in the EcIA Executive Summary page 1 **(CDA.20)** to minimise impacts on the ancient woodland blocks include the provision of buffer planting, interpretation boards and dog mess bins. These mitigation measures are deemed inadequate and do not address all the direct and indirect impacts that will arise from the development as set out in Mr Rainbow's evidence. Even Natural England's second consultation response **(CDB.26)** highlighted that recreational disturbance impacts are still likely to occur because of the proposal.
- 4.63 Whilst the extent of the adverse impacts have been underestimated by the appellant, the Executive Summary page 2 of the Ecological Impact Assessment (ECIA)**(CDA.20)** nonetheless concludes that *“Based on successful implementation of the proposed avoidance, mitigation and enhancement, the development is anticipated to result in a residual negative impact on ancient woodland at Site level”*. Mr Ben Rainbow addresses this classification by the appellant as a “site level” impact at Para 5.3 of his evidence which he states is inconsistent with guidance and best practice principles.
- 4.63 Here, the negative effect on ancient woodland which has been acknowledged by the Appellant will be deterioration and/or direct loss on this basis alone, and in the absence of any wholly exceptional reasons, the appeal ought to fail.
- 4.64 The scheme is contrary to National Planning Policy Framework 2021, section 180c, Natural England Standing Advice, ancient woodland & veteran trees and saved policies EN1, EN12 and EN13 of the Wealden Local Plan 1998 and Wealden District Core Strategy Local Plan 2013, policy WCS12 Biodiversity and WCS14 sustainable development.

Reason 4 Suitability of Location and Accessibility_and Reason 5 Safe Access, Effect on the Local Road Network and Town Centre

- 4.65 ESCC Highways is an expert statutory consultee which has been closely involved in the access proposals and has provided details responses to a number of different

proposals. Their views have been informed by site visits and clear and detailed knowledge of the site and its location. They are also effectively the “overseeing organisation” for the purposes of assessing the suitability of Safety Audits under the Design Manual for Roads and Bridges. It is therefore appropriate to give significant weight to their views.

- 4.66 Mr Roger New, Project Manager at GTA Civils and Transport, will present evidence on behalf of the Council and County Council in relation to refusal reasons 4 and 5.
- 4.67 The appeal scheme is in outline for all matters apart from access. Access is defined in the Town and Country Planning (Development Management Procedure) Order 2015 **(CDN.1)** as “*the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.*” Therefore the issue is not only whether it is in principle possible for the access to be provided but also whether the scheme designs are safe and suitable in relation to the volume of persons using them and also wider issues on the road network.
- 4.68 I address reasons for refusal 4 and 5 below.

Reason 4: Suitability of Location and Accessibility

- 4.69 NPPF paragraph 105 confirms 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. Paragraph 110 (a) seeks to ensure that appropriate opportunities for sustainable development can be or have been taken up
- 4.70 Core Strategy Strategic Planning Objective SPO7 reflects the NPPF Guidance by recognising that development will need to be concentrated where it can most closely relate to public transport opportunities.
- 4.71 The site lies within the Parish of Framfield, outside of any development boundary and approximately 1.5 km from Uckfield town centre. The site is dependent on Framfield Road for sustainable connectivity between the site and the town centre and other facilities. Framfield Road is classified as the B2102 and is a busy cross-country route linking Uckfield with the A275 at Cross-in-Hand. Framfield Road is narrow with inadequate footways and no specific provision for cyclists. There are on-street parking controls along its northern side in order to aid the free-flow of traffic. The use of Framfield Road by through traffic adds to the problems of congestion and road safety,

caused by a general lack of off-street parking and servicing provision for both residential and commercial.

4.72 As set out in Mr Roger New's evidence the site is not close to key facilities providing for the day to day requirements of future occupants of the appeal scheme. Most are in the town centre which is approximately 1.5km distant from the site. Mr New states that for these distances walking or (in particular) cycling are likely to be the more likely chosen sustainable modes of transport as opposed to buses. Paragraph 4.9 of Mr Roger New's proof translates these distances into real time based on average walking and cycling speeds and is of the view that *"In the context of this site would such distances and times contribute by themselves, irrespective of network quality, to providing a 'genuine choice of transport modes' sufficient to consider that this site is sustainable in transport terms? In my professional opinion they would not. At such distances network quality is crucial"*

4.73 Mr New refers in his evidence, to various guidance which underpins the importance of network quality. Mr New addresses the issue of network quality with regard to the appeal site at Paragraphs 4.11 and 4.12 of his evidence:

"Sustainable connectivity between the site and the key town centre and other facilities is dependent on Framfield Road. Framfield Road east of the Hospital access road is narrow with extensive on-street parking in places, inadequate footways and no specific provision for cyclists. There is also a significant gradient at its western end (about 7% over about 75m).

Its deficiencies as a major sustainable transport corridor for non-motorised users (pedestrians and cyclists) has long been recognised and was a feature of the Inspector's consideration of previous proposals for the application site and two other sites at a previous planning Appeal held in 2008."

4.74 It is noted that Paragraphs 2.12 and 2.15 of the Appellant's Statement (for Hearing) (**CDC.2**) states that the Inspector's report on the previous appeal decision confirmed the accessibility of the site in terms of walking distance to the town railway station and bus station (2.12) and although the previous scheme was refused on the basis of a lack of demonstrable housing need at the time, that the scheme was not refused on technical grounds (2.15).

4.75 I consider that this is incorrect as Paragraph 37 of the previous appeal decision for Bird in Eye South (APP/C1435/A/07/2053422) (**CDK.1**) addressed the matter of Transport Sustainability with the Secretary of State agreeing with the inspector that the site would

not offer a choice of pedestrian/cycle routes into the town (IR755). The current appeal proposal has still not addressed this matter.

- 4.76 Mr New's evidence sets out the issues and confirms the unsuitability of Framfield Road west of the hospital access road, and the unsuitability of the proposed alternative route using residential roads to the north of Framfield Road between Keld Avenue and the High Street, to provide for pedestrians and cyclists in its current state and the difficulties involved in attempting to retro-fit any enhancement measures.
- 4.77 The Appellant has submitted various proposals for Framfield Road as detailed in Mr New's evidence. ESCC Highways have advised that the Appellant's proposals are not sufficient to overcome their concerns and that considerable further work remains to be done to develop a scheme that can be demonstrated to be effective, feasible, deliverable and acceptable taking all relevant considerations into account.
- 4.78 ESCC consider that the existing facilities for pedestrians and cyclists along Framfield Road into the town are limited and sub-standard and would not, even with the measures proposed by the appellant, encourage the use of sustainable travel modes by site residents and those accessing other site uses.
- 4.79 Whilst all appeal decisions turn on the merits of the particular development proposed and its particular location, a similar issue was considered by the Inspector at Land east of North Wallington Road, Wallington, Fareham Appeal (Ref APP/A1720/W/22/3297544) (**CDK.19**) in relation to whether the appeal site was an appropriate location for the proposed dwellings having regard to the Council's spatial strategy and access to services and facilities on foot. Paragraphs 17-19 of the decision are particularly relevant to this appeal whereby the Inspector considers that the route was not safe, secure or attractive and did not minimise the scope for conflict between users with the result that occupiers of the proposed development would therefore be more likely to opt for the convenience of the private motor car.
- 4.80 At paragraph 18 and 19. The Inspector concludes that:

"..the site represents an inappropriate location for the proposed dwellings, having regard to access to services and facilities on foot and conflicts with the council's spatial strategy..

Paragraph 110 of the National Planning Policy Framework (the Framework) sets out that safe and suitable access to the site should be achieved for all users and paragraph 112 sets out that development should create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians,

cyclists and vehicles. The identified conflict with both the Development Plan and the Framework is a matter which attracts significant weight.”

- 4.81 In considering the planning balance and notwithstanding the fact that the Council could not demonstrate a five year supply of housing, the Inspector was of the view that:

“53....the identified adverse impacts of the development, in respect of the lack of an appropriate pedestrian access to nearby services and facilities are notable. The Framework is clear that significant development should be focused where the need to travel can be limited and promote walking and cycling. I consider that the conflict I have identified in this regard, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, including its presumption in favour of sustainable development.

- 4.82 The appeal was dismissed on grounds of conflict with the development plan and no other considerations, including the Framework and its presumption in favour of sustainable development that would outweigh this conflict.

- 4.83 The importance of reducing the need to travel by car was reflected in the Inspector’s decision at the Hop Garden Nursery, Eastbourne Road Halland under APP/C/1435/W/19/3226973 **(CDK.21)** under Paragraph 16 where he states: *“However the proposed development would not provide a suitable location for housing having regard to local and national policies, the accessibility of services and facilities and policies concerned with rural housing. Therefore, it would not accord with Saved Policies GD2 and DC17 of the LP, and Policies WCS4, WCS6 and SPO7 of the CS. Amongst other things, these seek to preclude residential development outside development boundaries and in the countryside unless in accordance with specific policies in the plan and seek a reduction in the need to travel by car. These policies generally accord with the Framework and therefore I attach significant weight to them both.”*

- 4.84 Notwithstanding the fact that in the above appeal the Council, only had a 2.62 year supply, the Inspector dismissed the appeal on the basis that the location of the development would conflict with the development plan policies as a whole.

- 4.85 The Inspector’s decision under APP/C/1435/W/19/3229579 The Forge, Eastbourne Road, Halland **(CDK.22)** similarly concluded in Paragraph 13 that *“The location of the proposed development would not be appropriate, conflicting with the policies of the Framework and with saved LP policies EN1, EN2, GD2 and DC17 which promote sustainable development, which seek to ensure that new developments generating*

significant travel movements are located efficiently in relation to public transport and which resist housing development outside development boundaries unless it accords with other policies in the Plan.”

4.86 The decision of the Inspector under APP/C1435/W/21/3275234 Bramblebank, Lewes Road, Halland **(CDK.23)** at paragraph 13 was of the view there was a considerable degree of social harm in respect of providing new homes in a location which does not provide suitably for the day to day needs of its residents, nor give ready access to them by sustainable means and so would encourage unsustainable patterns of travel. The appeal was dismissed on the basis that it would not be sustainable development.

4.87 I would now turn to the following appeals referred to by the Appellant:

(i) Land at Old Orchard House, Horebeech Lane APP/C1435/W/22/3297371
(CDK.2)

4.88 The site had previously been subject to a dismissal at planning appeal APP/C/1435/W/19/3235753 **(CDK.24)** for a proposal of 58 dwellings on the grounds of non-determination. The Inspector dismissed the appeal, one of the grounds being significant harm in relation to suitability of location (including reliance on the private car by future occupiers), which would be a material consideration in terms of assessing the proposal.

4.89 The amended scheme reduced the number of dwellings to 38 dwellings. The application was refused by Planning Committee contrary to officer recommendation. In considering the appeal scheme and accessibility to regularly required services Paragraph 11 of the Decision Notice refers to the previous appeal decision. Further consideration is given to this matter in Paragraphs 12-13 with the Inspector concluding that the proposal did give rise to conflict with SPO7 and SPO9 in so far as future occupiers would generally need to have some private car access to meet all regularly required needs. In the planning balance at Paragraph 30 he assigns the harm from the level of service accessibility in this location of moderate weight. This was on the basis that whilst not within the 800m walking distances as recommended in Manual for Streets, the distances (approximately 850m) were not greatly in excess of this and would be mainly accessible by footpaths and that cycling or walking to some services would remain a realistic option for many future occupiers who would be far from entirely dependent on car travel.

4.90 This is not comparable to the current appeal site which is only 38 dwellings compared to current appeal scheme of up to 290 dwellings where the existing facilities for pedestrians and cyclists along Framfield Road into the town are limited and sub-standard and would not, even with the measures proposed by the appellant, encourage the use of sustainable travel modes by site residents and those accessing other site uses.

(ii) Old Nursery House, The Street, Framfield APP/C1435/W/22/3301104 (CDK.5)

4.91 This application for 58 dwellings was refused by Planning Committee contrary to officer recommendation, following Members concerns about the location of the development and its relative unsustainability, specifically access to day-to-day shops and services and the lack of non-car alternatives to access those necessary day-to-day shops and services. This had been based on ESCC Highway's objection at the time. Subsequent to the lodging of the appeal the highways authority withdrew its objection and prior to the hearing the Council withdrew the single reason for refusal.

4.92 In examining the issue of accessibility, the Inspector was satisfied that the existing services would be within reasonable walking distance with possible routes using either footways along the B2102 and/or connections through the development to the north. Importantly the proposal included provisions to improve footpaths and footway connections in the vicinity of the site to encourage and support pedestrian activity. The Inspector acknowledged that whilst the site would be within generally reasonable cycling distance of Uckfield the relatively narrow and unlit section of the B2102 would mean cycling was unlikely to be an attractive option to the majority of cyclists. The site however had access to the bus stops in Framfield with walking distances from the furthest part of the site being only slightly above the 400m generally recommended in Institute of Highways and Transportation Guidance. Furthermore with only 58 dwellings, the scale between the two appeal schemes is not comparable.

4.93 With regard to the current appeal site, whilst the applicant is proposing enhancements to bus stop provision at the existing bus stops close to the hospital access and at other locations along Framfield Road, the highways authority consider that the existing stops close to the hospital are too remote from the site to encourage bus use. They state that unless access to routes is very convenient, the use of buses will not be an attractive alternative to the car and unlikely to form a significant component of overall sustainable transport. Therefore unlike the Old Nursery House appeal, the current appeal scheme

cannot provide the necessary footpath connections and convenient access to bus services.

(iii) Land North of Jubilee Drive and Highgrove Crescent APP/C1435/W/22/3310445)
(CDK.7)

4.94 This was for a development of up to 180 dwellings which was refused by Planning Committee contrary to officer recommendation. The site is approximately 1.8km to the north east of Polegate Town Centre and immediately to the north of the recently constructed “The Mill” residential development. As far as pedestrian and cycle connectivity goes, the site is easily accessible for both pedestrian and cyclists, connecting into the new developments of The Mill and Bluebells but also benefiting from the many off-site highway improvements relating to pedestrian and cycle accessibility from the new housing developments as set out below:

- Within the recently built out ‘The Mill’ residential area, there is a 3.0m wide shared-use footway/cycleway located on the northern side of Highgrove Crescent along the site frontage. This provides a dedicated cycling link to Shepham Link to the west and to the adjacent Bluebells development via Lavender Grove, to the east.
- Jubilee Drive, the principal spine road within the development, provides 2.0m wide footways on both sides of the carriageway. These tie in with the existing pedestrian facilities located along the B2247 Pevensey Road, which forms the principal pedestrian route linking the site with Polegate town centre, via dropped kerb crossings at the mini-roundabout junction.
- A footway, approximately 1.9m wide, is located on the northern side of the carriageway and a shared use footway/ cycleway is provided on the southern side of the B2247. Continuous footways extend the length of the B2247 on both sides of the carriageway until Levett Road where a signalised pedestrian crossing is provided 55m east of the Levett Road junction. There are dropped kerbs with tactile paving at the majority of the minor road junctions along its length.
- Levett Road benefits from footways on both sides of the carriageway.
- Shepham Lane provides a footway on the southern side of the carriageway and is street lit. Both of these roads provide a connection from the site to the National Cycle Network (NCN) and Cuckoo Trail.

- Pedestrian crossings with dropped kerbs, tactile paving and pedestrian refuge islands are located on the Dittons Road and Pevensey Road arms of the Jubilee Drive/ Shepham Lane/ Dittons Road/ Pevensey Road roundabout. These pedestrian crossing points provide a link to the bus stops located to the east and west of the roundabout.
- Dittons Road provides a continuous shared footway cycleway on the southern side of the carriageway towards the Chaucer Industrial Estate and Chaucer Business Park and is typically some 2.5m – 3.0m wide. On the northern side of the carriageway, the footway is a minimum of 1.3m wide.
- A signalised pedestrian crossing is located approximately 140m west of the entrance to Chaucer Business Park. The footway on the northern side of Dittons Road and the footway cycleway on the southern side of the carriageway provides a suitable route for pedestrians and cyclists to access the Chaucer Industrial Estate, Chaucer Business Park and Lidl store.
- The Cuckoo Trail forms part of the NCN route 21 (London to Pevensey via Eastbourne) and is a permissive cycle path that intersects with NCN 2 two.
- The Cuckoo Trail provides a walking and cycling connection from Polegate which ties into NCN route 2 (Dover to St Austell) and into Hailsham town centre to the north.
- In addition, there is a 3m shared use footway / cycleway immediately west of the A22/Dittons Road Roundabout which provides a continuous link to the B2247/High Street junction in Polegate, approximately 200m north of Polegate railway station. For the remaining 200m there is an on-road signed cycle route. The Cuckoo Trail can also be accessed via the cycleway which ties into the northern end of Shepham Lane. This provides a signed off-road shared use footway/cycleway which connects directly to the Cuckoo Trail to the west.

4.95 The issue on this site had related to accessibility to public transport as the site entrance itself was a distance of approximately 470m from the nearest bus stops on Dittons Road/Pevensey Road which combined with further within site walking distance meant total distances of approximately 950m. The Inspector did not find harm with regard to accessibility of the site and was of the view that having regard to the proposed improvements to bus services and travel plan that the development could be made suitable accessible by sustainable modes of transport.

- 4.96 The only comparable issue between the appeal decision and the current appeal is that they are both significant developments, however the Jubilee Drive site benefits from good pedestrian and cycle connection which this appeal site does not; and there was the ability to improve access to bus services, which also remains an unresolved issue for the current appeal scheme.

Conclusion

- 4.97 Saved Policies EN1 and EN2 of the LP and Policies SPO7 and WCS14 of the CS reflect the presumption in favour of sustainable development which is set out in the Framework and indicate that the Council will seek to locate major developments generating significant travel movements efficiently in relation to existing development and public transport and to reduce the need to travel by private vehicle. Paragraph 105 of the Framework states that the planning system should actively manage patterns of growth to support the objectives of sustainable travel. Significant development should be focussed in locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes.
- 4.98 Therefore in relation to the sustainability of the appeal site I consider that the location is not appropriate, conflicting with policies EN1, EN2, GD2 and TR3 of the LP and SPO7 and WCS14 of the CS and Paragraph 105 of the NPPF which promote sustainable development and travel patterns. Further, I consider that this is an issue which significantly and demonstrably outweighs the benefits of the proposal which I address under the planning balance below.

Reason 5 Safe Access, Effect on the Local Road Network and Town Centre

Safe Access

- 4.99 The vehicular access into the site is proposed to be relocated approximately 30m to the east of the existing farm access and will be in the form of a simple priority T-junction arrangement. The retained uses at Bird in Eye Farm and the existing dwellings Lycroft, 18 and 19 Bird in Eye Hill would have vehicular access from the proposed arrangement. The proposed access is within a section the B2102 that is currently subject to a derestricted speed limit of 60mph. A separate shared footway/cycleway is proposed to connect onto Bird-in Eye Hill at the north-west corner of the appeal site.
- 4.100 The highway access junction designs have changed from those submitted with the application but remain unacceptable to ESCC for detailed permission (subject only to

minor amendment revision at S27 stage) because of ESCC's outstanding highway safety issues and concerns.

4.101 ESCC Highways have objected in relation to the suitability and acceptability of the proposed new junction on B2102 Bird in Eye Hill. The view of ESCC is that the proposed access as shown on Dwg 021 Rev K does not provide:

- a safe means of access to and from the site for non-motorised users; and
- a safe means of access to and from the site for motorised users of the junction.

4.102 Paragraph 2.6 of ESCC evidence sets out that the proposed vehicle access junction would be serving not only a major housing development but also the existing operations on Bird in Eye Farm and a proposed SANG. Having regard to the mixed demands, the access arrangements would need to support many types of users and ensure that all users are accommodated safely, not only vehicles generated by the proposed housing but those related to the existing residential properties and business use vehicles but also pedestrians, potentially with children and/or dogs, cyclists and bus passengers.

4.103 The fact that the access has not been demonstrated to be safe and suitable amounts to a breach of local plan policy TR3 and TR13 of the LP and WCS14 of the CS. Furthermore there is a breach of Paragraphs 104 and 110 of the NPPF. If there isn't sufficient information to demonstrate highway safety then this should lead to a refusal under paragraph 111. If the tilted balance does apply to this application then this is clearly sufficiently weighty a material consideration to significantly and demonstrably outweigh the benefits.

4.104 An Inspector in considering an appeal at Mornings Mill Farm (APP/C/1435/W/19/3230484) considered that despite benefits being substantial from the proposed housing (700 units) which she gave significant weight to, the impact on highway safety would be unacceptable in terms of Paragraph 109 and gave the harm great weight in her decision (Para 53 of **CDK.17**)

4.105 Paragraph 54 of the decision letter in dismissing the appeal states:

“Overall the basic risk to highway safety constitutes an adverse impact of the proposed development which would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole.. The proposal does not therefore benefit from the presumption in favour of sustainable development set out in paragraph 11d) and it follows that such a presumption does not weight in favour of the scheme in the

balance required by Section 38(6) of the Planning and Compulsory Purchase Act. Applying that balance, I conclude that the conflict with the development plan in respect of highway safety is not outweighed by other material considerations in favour of the scheme. The proposals should therefore be determined in accordance with the development plan and so the appeal should be dismissed, and planning permission refused.”

- 4.106 I consider that the same approach should apply here. The failure to provide safe access for all users is clearly a consideration which significantly and demonstrably outweighs the benefits which the proposal provides (and which I address in more detail below).

Effect on the Local Road Network and Impact on Town Centre Highway

- 4.107 Paragraph 3.4 of Mr New’s evidence advises that currently the town centre signals are operating as best they can with the existing operating system and linking, with significant issues of lack of capacity with associated queuing and delays.
- 4.108 Mr New’s evidence states that the Appellant’s modelling shows that the impact of the proposed development would be severe and require mitigation (Paragraph 3.4). It is understood that ESCC Highways have agreed with the Appellant that the impacts of the proposed development could be sufficiently mitigated through the implementation of an enhanced control system, but that system would have to cover a more extensive area within the town centre than the junctions assessed and proposed by the Appellant. There is currently no such area wide scheme.
- 4.109 It is understood that the costs of the implementation of such an area wide scheme and financial contributions towards the introduction and on-going maintenance of that system have been agreed with the Appellant. Having regard to the fact that ESCC Highways consider that the impact of the proposed development would be severe in this respect, it is necessary that any occupation of the appeal site if allowed, should be restricted until these works have been completed.

Reason 6; Lack of Necessary Infrastructure Improvements.

- 4.110 Saved Policy CS1 of the WLP and Policy WCS7 of the CSLP provide for contributions to be secured towards the costs of providing the infrastructure required to serve the additional needs it will generate. Policy AFH1 requires the provision of affordable housing.
- 4.111 Reason 6 for refusal relates to the need for the development to secure the necessary infrastructure improvements to serve the development.

- 4.112 It is acknowledged that the appeal proposal would, if approved, be liable to pay CIL contributions providing revenue to the Council's infrastructure fund that can then be utilised to assist in providing additional services for the area.
- 4.113 However, there are infrastructure needs associated with this development which are not currently provided for and that in the absence of a section 106 obligation there is no mechanism to secure any necessary off-site highway works directly related to the provision of the new access, provision of 35% affordable housing, custom built homes, delivery of the SANG and its retention and management, in perpetuity, and financial contributions towards mitigation of town centre impacts.
- 4.114 At the time of compiling this Proof, no detailed S106/unilateral agreement has been agreed between the parties. Thus without such a legal agreement, refusal 6 has not yet been overcome.
- 4.115 Consequently, as submitted, it is considered that the proposals would not be sustainable development and would be contrary to saved Policies CS1 and TR3 of the WLP, Policies WCS7 and WCS14 of the CS and Policy AFH1 of the AHDLP. There would therefore be a breach of the development plan as a whole and the guidance given in the NPPF regarding planning obligations and the provision of sustainable development which mitigates its impacts. In the event that the tilted balance applies to this application the failure of the scheme to mitigate its impacts significantly and demonstrably outweighs the benefits of the proposal when considered against the NPPF read as a whole. Reason for refusal 6 remains justified.

5 THE OVERALL PLANNING BALANCE

- 5.1 At the heart of the NPPF is the presumption in favour of sustainable development as set out Paragraph 11. In this regard the starting point for the determination is the development plan and thereafter the consideration of material considerations including the tests set out in paragraph 11 of the NPPF.

THE DEVELOPMENT PLAN

- 5.2 The adopted development plan documents relevant to the appeal site are the “saved policies” of the Wealden Local Plan (1998), The Wealden District Core Strategy Local Plan (2013) and the Affordable Housing Delivery Local Plan (2016). Many aspects of the development plan are consistent with the NPPF when read as a whole.
- 5.3 Spatial Planning Objective SPO7 and Policy WCS6 (Rural Areas Strategy) of the CS are in accordance with the Framework’s approach to locate development according to the range of facilities within settlements and the need to encourage the use of sustainable modes of transport to access them. There are no policies in the development plan that support development in this location. As has been set out in this proof of evidence and the proofs of evidence of Roger New and Ben Rainbow, the proposals would be in conflict with all the other relevant development plan policies including Policy GD2, DC17, EN1, EN2, EN12, EN13, TR3, TR13, CS1 of the LP and Strategic Planning Objectives SPO3, SPO7, SPO12, SPO13 and SPO15 and Policies WCS7, WCS12 and WCS14 of the CS which promotes sustainable development.
- 5.4 The Council cannot demonstrate a five year supply of deliverable housing land and therefore the restrictive policies Saved Policies GD2 and DC17 that apply to new housing are deemed to be out of date.
- 5.5 Paragraph 11(d) states that where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, that planning permission should be granted unless either of the tests under Parts (i) or (ii) are triggered. With regard to Part (i) I have referred to earlier in my proof of evidence that the appeal proposals will lead to the deterioration and/or loss of ancient woodland, an irreplaceable habitat as defined under Footnote 7 of the Framework, and therefore in accordance with Paragraph 11(d)(i) the appeal proposal should be refused. Again should it be considered that the appeal proposal does not merit refusal on this ground, Paragraph 11(d)(ii) is clear that planning permission should be granted unless any adverse impacts of doing so would demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

- 5.6 I now turn to assess the benefits and harm arising from the appeal proposals and for the purposes of this I have weighted the extent of the benefit or harm by using the categories of Very Substantial, Substantial, Moderate, Limited, and Nil.

THE BENEFITS

- 5.7 Section 4.42 of the Appellant's Statement (For Hearing) (**CDC.2**) sets out the key benefits they consider are delivered by the appeal scheme:

- (i) Provision of up to 290 new dwellings in a sustainable location;
- (ii) Contribution towards the provision of much needed market and affordable housing;
- (iii) Provision of a strategic SANG, with additional headroom capacity of circa 15.6 hectares which could potentially become available for mitigation of future local development of up to 1,072 dwellings or 2,575 new residents;
- (iv) Ecological enhancements and BGN in excess of 10%;
- (v) Appropriate landscaping strategy throughout the site and proposed SANG which will contribute to a sense of place;
- (vi) Provision of new public footpaths; and
- (vii) Creation of new vistas from which to appreciate the unique Oasthouse heritage asset.

- 5.8 In Section 8 of the Appellant's Statement (for Hearing) they set out the Planning Balance which broadly echoes those set out above but also includes:

- (viii) The economic benefits from the construction of the scheme and the range of employment generated as a result;
- (ix) Increased expenditure from the households purchasing and occupying the new homes
- (x) High quality residential development; and
- (xi) Provision of recreational open space.

- 5.9 I address each of these benefits sequentially below:

- (i) **Provision of up to 290 new dwellings in a sustainable location**

- 5.9.1 Spatial objective SPO3 of the Core Strategy states that the majority of new housing should be accommodated within, or as sustainable extensions to existing towns, whilst allowing for limited growth within those villages capable of accommodating development in a sustainable fashion.
- 5.9.2 Spatial Planning Objective SPO7 seeks to reduce the need to travel by car concentrating development closely related to public transport provision and making it easier to travel by more sustainable modes of transport.
- 5.9.3 Paragraph 105 of the Framework states that the planning system should actively manage the patterns of growth through limiting the need to travel and offering a choice of transport modes. The NPPF seeks to make fullest possible use of alternative modes to the private car including cycling, walking and public transport, identifying that such sustainable transport options will vary between rural and urban areas.
- 5.9.4 The appeal site is acknowledged as being outside the development boundary and in a location not allocated for development. As such policies relating to the spatial strategy and future development are important. The appeal site would be largely reliant on the private motor car therefore the site is not in a sustainable location and does not accord with the development plan and the NPPF.
- 5.9.5 The appeal site is unable to deliver an acceptable strategy to ensure accessibility to Uckfield by sustainable transport modes, and therefore does not constitute a sustainable development. I therefore consider that this attracts nil weight as a benefit. Rather, it is a substantial disbenefit of the appeal scheme.
- (ii) **Contribution towards the provision of much needed market and affordable housing;**
- 5.9.6 It is acknowledged that the Government seeks to significantly boost the supply of housing. It is not disputed that the existing housing land supply and delivery position within the district is below five years. If the appeal site was approved, then it would clearly contribute to housing land supply.
- 5.9.7 Table 4 of the Five Year Housing Land Supply Statement (**CDE.16**) sets out Housing Requirement and Supply for the period between 1 April 2022 and 31 March 2027. Paragraph 2.41 highlights that *“the Council does have a total housing land supply of 7,697 (net) dwellings, but can only demonstrate that it*

can deliver 5,693 (net) dwellings over the next five year period between 2022/23 and 2026/27. This stresses the importance of both delivery rates and lead-in times for housing development and the requirement to have a rolling supply of new homes on a yearly basis”.

5.9.8 There is no certainty that the appeal proposals would be able to deliver housing in the first five years having regard to:

- the time required to submit and secure approval of a Reserved Matters application and discharge any pre-commencement conditions that are attached to any permission;
- the need to implement any off-site highway works to mitigate impacts on local highway and ensure that the necessary provision for sustainable transport modes identified are implemented prior to occupation of the development;
- the implementation of the necessary works to mitigate impact on Uckfield Town Centre on the basis that occupation should be restricted pending the completion of these works; and
- the need to ensure that the SANGS is completed and available before first occupation of the development to ensure the impacts of the development on Ashdown Forest SPA are mitigated from the outset.

5.9.9 Table 3 of the Five Year Housing Land Supply Statement sets out the delivery rates and lead in times for large sites within Wealden District for those sites with extant planning permission from 200 dwellings and above. Whilst the table demonstrates that all ten housing sites were able to deliver new homes within the first five years following an outline consent the timescale varied with three sites delivering new homes on the third year, three sites delivering new homes on the fourth year and four sites delivering new homes on the fifth year. The two sites that had SANGS associated with the outline approval: Land West of Uckfield and Land at Walshes Manor Farm, Crowborough only delivered three and five units respectively in the fourth year.

5.9.10 The Council recognises that the provision of housing in all forms can be a benefit which is capable of being given very substantial or very significant weight under normal circumstances, particularly in the context of the Council’s housing land supply deficit for both market and affordable homes. However, in assessing the

weighting to be applied to the benefit of the appeal proposals in providing much needed housing and meeting identified housing needs, I also consider regard should also be given to the likelihood of this appeal scheme contributing to the Council's five year supply. Relevant to that issue is the delivery and uptake of housing within the local housing market of Uckfield.

- 5.9.11 The Land West of Uckfield which was granted outline planning approval in March 2016 has been slow on delivering completions as shown in Table 3 Delivery Rates and Lead in Times for Large Sites within Wealden District as set out in the Five Year Housing Land Supply Statement as of 1st April 2022 (published in December 2022), with only some 133 units completed as of April 2022. Even allowing for the impact of the timeline of the off-site infrastructure works related to this development, the build out rates on this site are significantly lower than the other three major developments of over 200 units. Paragraph 2.35 of the Five Year Housing Land Supply Statement states:

"In terms of housing delivery rates, it is shown that three of the four sites of over 200 dwellings have exhibited delivery rates of 76 dpa and above (the highest rate recorded being 176 dpa at Land East of Park Road, Hellingly in the 2019/20 period). It should be noted that there was a clear downturn for the 2020/21 period, but this was expected given that the Covid-19 pandemic cause closures of construction sites in 2020 specifically."

- 5.9.12 In this context the completions of 50 units in 2019/20, 45 units in 20/21 and 35 units in 21/22 for the West of Uckfield site is below the normal build out rates for large sites in the district. It is also noted that unlike other development sites, there does not appear to have been a bounce back from the closure of sites during Covid in the construction rates on this site for the last year.

- 5.9.13 Therefore, in general terms, the provision of housing in the context of the Council's lack of a five year housing land supply can be given very significant or very substantial weight. However, in this case the weight is tempered having regard to the evidence of the build out rates on the existing large development scheme West of Uckfield of whether there is the demand in the local housing market and the estimated completion dates as set out in the Five Year Housing Land Supply Statement. I also have reservations whether the approval of the appeal scheme would actually meet the test for deliverability where the scheme is in outline, in that there must be 'clear evidence that housing completions will begin on site within five years'

- 5.9.14 Therefore, having regard to the amount of housing proposed (up to 290 units), the mix of market (65%) and affordable housing (35%) and the shortfall of affordable housing supply across the district, I consider the housing benefits may be categorised as “Substantial”
- 5.9.15 Provided there is a legal obligation in place to ensure delivery of the 35% requirement for affordable housing (as set out under Policy AFH1 of the Affordable Housing Delivery Plan) this would be a very substantial benefit in favour of approving the scheme.

(iii) Provision of Strategic SANG

- 5.9.16 Paragraph 4.32 of the Appellant’s Statement (for Hearing) **(CDC.2)** states that the SANGS secures a significant recreational benefit for existing and future residents whilst also securing biodiversity enhancements through additional habitat creation. The SANGS however is an essential mitigation to off-set the potential of development to have an adverse effect upon the integrity of a European Site Ashdown Forest SPA, either individually or in combination with other plans and projects.
- 5.9.17 The qualifying features underpinning the Ashdown Forest SPA designation is the concentration of Dartford warbler and European nightjar. The conservation objectives for the SPA can be summarised as ensuring that the integrity of the site is maintained or restored as appropriate so that it continues to support the population and distribution of its qualifying features.
- 5.9.18 Natural England’s (NE) supplementary advice on conserving and restoring site features for the Ashdown Forest SPA (Planning Practice Guide (PPG) Paragraph: 002 Reference ID: 65-002-20190722) identifies recreational disturbance as one of the principal threats to ground nesting birds. Research and assessment undertaken by the Council supports this by demonstrating that increased recreation can result in damage to the bird’s habitat through trampling and erosion. Moreover, the presence of people can disturb ground nesting birds during their breeding season (Feb - Aug). Dog walking can be particularly problematic in this regard, especially if dogs are let off their lead.
- 5.9.19 The appeal proposal would facilitate a permanent increase in the number of people living within a short drive of the SPA. The Ashdown Forest is an attractive semi-natural area which is close to the application site. It is somewhere future

residents of the home(s) proposed would likely wish to visit for recreation. Evidence in the form of visitor surveys carried out for the Council demonstrates that residents living within 7km of the Ashdown Forest are likely to visit it. This would provide a pathway of effect for recreational disturbance.

5.9.20 For developments where there is no scope to provide on-site mitigation for the impacts on the SPA. It is necessary to secure a financial contribution towards Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) in line with the tariffs in the Council's Ashdown Forest Mitigation Zone Background Paper. This is an approach supported by Natural England (NE).

5.9.21 The proposed on-site SANGS is therefore mitigation that would help support an alternative recreational destination for residents of the scheme to avoid an impact and would assist in mitigating disturbance through behavioural change and other access management measures for Dartford warbler and European nightjar. The mitigation would ensure the appeal proposal would not adversely affect the integrity of the European Site.

5.9.22 Paragraph 4.42 third bullet point of the Appellant's Statement (for Hearing) **(CDC.2)** specifically highlights as one of the key benefits of the scheme the *"provision of a strategic SANG, with additional headroom capacity of circa 15.6 hectares which could potentially become available for mitigation of future local development of up to 1,073 dwellings or 2,575 residents"* There are a number of issues regarding this as set out below:

- The offer of a potential strategic SANG assumes that future development sites proposed in the new Local Plan will be allocated around Uckfield, which is not necessarily the case;
- It assumes that the location of the SANGs will be easily accessible to other development sites coming forward and therefore provide a genuine alternative to residents of those developments;
- The location of a strategic SANG in this location would direct unnecessary levels of traffic through the Town Centre, thereby exacerbating highway impacts on the Town Centre which are already a concern to the Highway Authority. As mentioned earlier in my proof Natural England's Guidance advises that most visitors come by car and want the site to be fairly close to home. Unless SANG are provided for the sole use of a local population

living within a 400-metre catchment around the site, the visitors will be using cars;

- The new local plan will be addressing the need for SANGS as an integral part of the strategic housing allocations.

5.9.23 Pertinent to all the above points is the brief consideration of the SHELAA sites that have been submitted for consideration. The Council's online mapping feature shows the SHELAA sites around Uckfield (**CDE.56**), where the clear pattern is that the majority of the sites lie to the south and west of Uckfield and all are directly related to the strategic highway network of the A22. These sites follow the spatial strategy within the Non-Statutory Local Plan 2005 which allocated sites at Sandpits, Lewes Road (constructed and completed) and Harlands Farm at Mallards Drive (currently under construction) to the south-east of Uckfield Town Centre and the Land West of Uckfield (Phase 1 a and b under construction) allocated through the Core Strategy. I do not intend to go through all of these sites individually discussing the various merits and disbenefits, however it is worth noting that these sites do not rely on Framfield Road for all sustainable, as well as vehicular, access to the town centre and other key local destinations, and transit through the town centre to access the strategic highway network. Whilst a number of these do contain some Ancient Woodland, the majority of sites could theoretically be developed that would ensure the Ancient Woodland does not suffer any loss or degradation unlike the appeal site.

5.9.24 The SHELAA sites that have been submitted on the eastern side of Uckfield comprise three sites, namely the appeal site (Ref 002/1410), Bird in Eye North (Ref127/1410) which was also the subject of the dismissed appeal in 2009, Land at Hempstead Lane (Ref 725/1410) and Land north of Mallard Drive (354/1410). The latter site already benefits from planning permission and is currently under construction and although technically lying towards the east, unlike the other three sites it does not access Uckfield Town centre from the east via Framfield Road. Furthermore, the Mallards Drive site has already provided mitigation with a SANGS and SAMMS contribution towards the Uckfield Strategic SANG opposite Land West of Uckfield.

5.9.25 Land at Hempstead Lane (Ref 725/1410) whilst identified in the 2019 SHELAA as being a potentially suitable site, was also stated as not currently deliverable. More importantly apart from the site being bisected by the Uckfield Railway Line and the River Uck in the northern part of the site, there are pockets of Ancient Woodland within the site and the site would also have issues relating to the

deliverability of pedestrian and cycle links to the Town and impact on the town centre.

- 5.9.26 The issues relating to the BIEN have already been rehearsed at the 2009 appeal and I am of the view that the site will (as per the current) appeal site have difficulty in overcoming the previous concerns relating to accessibility and sustainable transport for pedestrians and cyclists.
- 5.9.27 Having regard to the submitted SHELAA sites and their spatial distribution, only two other sites could possibly utilise the strategic SANG in this location as mitigation, namely those along Framfield Road. However, like the appeal site they have the same issues of sustainability and therefore are unlikely to secure planning approval without addressing this fundamental issue. The location of other SHELAA sites around Uckfield, are not well related to the provision of a strategic SANG as proposed on the appeal site and they would rely on accessing the SANG via the Town Centre/Framfield Road.
- 5.9.28 Therefore, having regard to the above I do not consider the additional headroom capacity in the proposed SANG as providing a material benefit. Even if releasing additional development were a material benefit then it has not been demonstrated that this SANG will serve that purpose. Further, whether or not this SANG is serving the appeal site alone or the appeal site together with other sites it remains mitigation to avoid an adverse impact to the integrity of the SPA. It is neutral in the planning balance.

(iv) Ecological enhancements and BGN in excess of 10%

- 5.9.29 The environmental benefits and biodiversity net gain resulting from the appeal scheme can effectively be separated into two constituent parts: (i) those directly related to the developable area as an integral part of the 290 dwellings; and (ii) those arising from the provision of SANG.
- 5.9.30 With regard to (i) informal open space, SUDs basins with associated marginal planting, swales, structural tree planting, thicket planting, LEAP and vegetated gardens are nothing over and beyond the benefits that would be secured from any development of this size in any location. With regard to (ii) there will be biodiversity net gains inevitably from modified grassland to provide the enhanced habitats and recreational environment necessary for a suitable SANG. However, the provision of a SANG is a mitigation measure to offset the impact on the Ashdown Forest SPA. The detrimental impact that would arise

from the need to provide a footpath through the ancient woodland and the protective buffer of a veteran tree is important in the consideration of the overall planning balance. The Biodiversity Net Gain calculations do not factor in the loss and deterioration that would occur to the ancient woodland and the impact on the veteran tree. I therefore give this benefit no weight.

(v) **Appropriate landscaping strategy throughout the site and proposed SANG which will contribute to a sense of place;**

5.9.31 Details of landscaping are matters reserved for future consideration and any development would be required to provide appropriate landscaping in accordance with development plan policies in producing the detailed design at Reserved Matters. I therefore give this benefit no weight.

5.9.32 With regard to the provision of the SANG and by virtue of the impacts arising from its provision on the Ancient Woodland, I give this alleged benefit no weight and indeed consider it as a harm in relation to the direct impact on the ancient woodland and the likelihood that it will also increase recreational pressure on the Ancient Woodland.

(vi) **Provision of new public footpaths; and**

5.9.33 This is directly related to the urbanisation of site by the appeal scheme and is primarily to serve the future occupants of the scheme. I give this benefit no weight.

(vii) **Creation of new vistas from which to appreciate the unique Oast house heritage asset**

5.9.34 The Grade II listed Oasthouse would be in close proximity to the proposed housing development. The design response included as part of the application documentation indicated that a key feature of the scheme would be a green corridor to frame views of the Oasthouse. The Appellant considers that the opening up of views of the Oasthouse will enhance its setting and significance. Details of layout and landscaping are matters reserved for future consideration and any development would be required to respect the setting of an adjacent listed building in the development of a detailed design.

5.9.35 Paragraphs 7.61 – 7.64 of the Appellant's Statement (for Hearing) (CDC.2) specifically refer to the Oasthouse. I note the reason for the importance of the Oast is set out in Para 7.62 *"The building is listed because of what it tells us*

about the development of hop production at this time, not because of its age or its architectural qualities". Paragraph 7.63 explains that the Oast is not considered important because of the way it is seen within the landscape but as set out in Paragraph 7.64, "The special interest of the building lies in its technical innovation, not the age of the building or its relationship to the landscape"

5.9.36 The appellant states that the appeal scheme provides an opportunity for the building to be seen and experienced within the landscape in a way that is not possible at present. (Paragraph 7.64: **CDC.2**). However, one could argue that the site remaining undeveloped as grazing land for horses provides an equally valuable opportunity for appreciating views of the Oasthouse. I query there is any advantage to the appreciation of the Oast with housing development in the foreground and a landscaped corridor to allow views from the west/south of the site.

5.9.37 Having regard to the above points, I give this benefit no weight.

(viii) Job opportunities and increased economic activity.

5.9.38 It is acknowledged that during construction there are the opportunities for employment but these are only temporary and there is no guarantee that these jobs will be available to the local communities. Wealden has no policy basis for requiring that a proportion of the jobs generated by the construction phase be set aside for local labour, or that a certain number of apprenticeships be provided. Having regard to this I consider that the weight to be afforded to job creation must take account of the fact that there is no direct correlation that these jobs will be available to local residents and the fact that the construction jobs are only temporary. Furthermore the economic benefits derived from the appeal proposal would be forthcoming from any development of this scale. I therefore give this benefit very limited weight in favour of the proposal.

(ix) Increased local expenditure to support local services

5.9.39 Uckfield is classified as a District Centre which is an accessible settlement by road and public transport containing a range of shops, employment opportunities and facilities including secondary school. Uckfield is not reliant upon other centres within the district to meet day to day needs, but it does require support from other secondary (East Grinstead, Lewes and Haywards Heath) and primary centres (Tunbridge Wells/Tonbridge and Eastbourne), all of

which are outside the district. As a District settlement Uckfield has a wide draw of visitors from the rural hinterland to use the centre and for employment.

5.9.40 Appendix C of the Settlement Hierarchy Background Paper January 2019 states that:

“Uckfield is probably the most popular shopping destination in the District and has the largest amount of retail floorspace. Uckfield offers parking facilities and both bus and train services are well located to the town centre. Tesco's dominates Uckfield's convenience shopping, attracting a large number of residents from Uckfield and its surrounding settlements including Mayfield to the far east and shoppers from settlements located to the South. However, although Uckfield is a popular and attractive food shopping destination, its town centre role is limited due to Uckfield being surrounded by a number of larger attractive shopping destinations including Tunbridge Wells, Eastbourne and Brighton and Hove to the south-west. As a result only a limited number of residents within Uckfield's large catchment area use the town for non-food shopping despite its strong service offer and wide range of shops, including the largest representation of national multiple non-food retailers of all the Wealden towns.

In terms of population Uckfield is the third smallest of Wealden's towns. A high percentage of the population are economically active. Uckfield is a significant employment location, offering employment in a wide range of sectors, both within the town centre and within its two industrial areas. However, there is still significant out-commuting from Uckfield residents for employment to other locations including Crawley, Gatwick, Tunbridge Wells, Brighton and Lewes. Similarly, Uckfield also attracts a reasonable number of workers from elsewhere in the District and beyond including Crowborough, Heathfield and Brighton and Hove.”

5.9.41 Having regard to the above, I consider that the argument put forward by the appellant relating to the level of benefits to Uckfield arising from increased local expenditure to sustain and support local services in the town is very over-rated. I afford this benefit as being of limited weight.

(x) High Quality Development

5.9.42 The application is solely to establish the principle of development and access with all other matters reserved for future consideration if the appeal is granted. Whilst an illustrative layout has been submitted to demonstrate that the quantum

of development can be accommodated, this by no way guarantees the delivery on-site of a high quality development that:

- provides an acceptable layout that meets all the necessary spatial requirements (which is very much dependent on the proposed mix and sizes of dwellings) and has careful regard to what is a rather challenging topography on parts of the site;
- provides acceptable building designs with regard to scale, appearance and materials; and
- provides appropriate landscaping and biodiversity enhancements.

5.9.43 I consider it premature to ascertain the appeal proposal will deliver a high quality development at this stage. I therefore give this benefit no weight.

(xi) Open amenity space (excluding SANGS)

5.9.44 The development includes provision of open space including equipped play areas for future residents of the application site. However all large housing developments have to provide commensurate levels of open space, recreation and play facilities in accordance with local planning policies (Policies LR1, LR3 and LR5 of the WLP, Draft SPG Outdoor Playing Space). The actual level of amenity space provided can only be ascertained once a reserved matters application has been submitted and the competing spatial requirements addressed in an acceptable layout and design, but the provision is directly proportional to the number and size of dwellings proposed. Furthermore unless the actual provision is secured through an appropriately worded legal agreement, there is no assurance that the level of open space will be delivered, managed and retained in perpetuity.

5.9.45 I am of the opinion that no weight should be given to this benefit as it is a benefit that is directly related to the development and serves the specific needs of the development. This is in accordance with the recent decision at Mornings Mill (CDK.17 paragraph 51) whereby the Inspector in considering the benefits of public open space was of the view that *“such commitments are to be expected of a scheme of the scale proposed and they thus represent neutral factors”*.

THE HARM

- 5.10 To complete the balancing exercising, I will address the adverse impacts arising from the development proposals as already set out earlier in my proof of evidence and amplified in the proofs of evidence by Mr Roger New and Mr Ben Rainbow.
- 5.11 The Council's reasons for refusal as set out in the Statement of Case **(CDC.4)** and further clarified through the Statement of Common Ground **(CDD.1)** and evidence indicates that the appeal proposal would cause the following harm.

Impact on Ancient Woodland

- 5.12 Contrary to the Appellant's contention in Paragraph 5.8 and 7.75 of their Statement (for Hearing) **(CDC.2)** that Ancient Woodland is not a footnote 7 consideration that provides a clear reason for refusing planning permission, I would point out that footnote 7 clearly sets out that *"The policies referred to are those in this Framework ...relating to.....irreplaceable habitats..."*
- 5.13 Irreplaceable habitats as defined in Annex 2: Glossary to the NPPF are:
- "Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees,...."*
- 5.14 The evidence of Mr Ben Rainbow sets out the full extent of the direct and indirect impacts which will lead to loss and degradation of Ancient Woodland. Paragraph 180(c) of the Framework is clear that development resulting in the loss or deterioration of irreplaceable habitat (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. Mr Ben Rainbow has already commented that the types of project that might qualify as wholly exceptional reasons are not applicable to the appeal scheme.
- 5.15 Even if the Inspector considers that there would be no direct loss of ancient woodland (contrary to the evidence of Mr Ben Rainbow), it is evident that the appeal scheme when viewed as a whole will lead to deterioration of the ancient woodland. There will also be adverse impacts on a veteran tree which the Standing Advice specifically advises against. These impacts only arise as a direct result of the urbanisation of the appeal site and the need to mitigate the cumulative impact of the development on the Ashdown Forest SPA having regard to the Habitat Regulations. As there will be at the very least, deterioration of the ancient woodland and the protected area around a

veteran tree, the appeal scheme cannot comply with paragraph 180(c), the appeal scheme should be refused. The tilted balance in favour of sustainable development does not apply.

5.16 In the event that the Inspector considers that the tilted balance does apply then permission should still be refused as the adverse impacts of the proposals on ancient woodland and veteran tree very significantly and demonstrably outweigh the benefits.

5.17 I give this very significant weight in the planning balance against the scheme.

Suitability of Location and Accessibility

5.18 ESCC's position remains that the site is dependent on Framfield Road for sustainable connectivity between the site and important town centre and other facilities; Framfield Road currently provides very poorly for its necessary use as a major sustainable transport corridor serving the site and that the Appellant's proposals are not sufficient to overcome those deficiencies. ESCC Highways are of the view that considerable further work remains to be done to develop a scheme that could be demonstrated to be effective, feasible, deliverable and acceptable taking all relevant considerations into account.

5.19 I give this very significant weight in the planning balance against the scheme.

Access Not Suitable and Safe for All Users

5.20 Paragraph 110 (b) seeks to ensure that safe and suitable access to the site can be achieved for all users. Paragraph 111 advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Paragraph 112(c) states development should create places that are safe, secure and attractive, minimising scope for conflicts between pedestrians, cyclist and vehicles.

5.21 ESCC Highways have concerns regarding the proposed design of the site access and the junction with the B2102 advising that there are fundamental issues that have potentially significant safety consequences for all users of the junction. They consider that resolution of these issues is not achievable through minor amendments of the submitted access scheme.

5.22 I give this very significant weight in the planning balance against the scheme.

Impact on Local Highway Network and Uckfield Town Centre

- 5.23 Paragraph 110 (d) seeks to ensure that any significant impacts from the development on the transport network (in terms of capacity and congestion) or on highways safety can be cost effectively mitigated to an acceptable degree.
- 5.24 There would be an impact on the safe and efficient operation of junctions within the town centre that would need mitigating and such a scheme would need to cover a more extensive area within the town centre than the junctions assessed by the Appellant. There is no current area wide scheme. It is understood that the costs of implementation of such an area-wide scheme and appropriate financial contributions towards the introduction and on-going maintenance of that system, have been agreed with the Appellant and will be included with the S106 agreement. Provided the necessary improvements are implemented prior to any occupation of the appeal scheme, then the harm arising from the development would be limited. However if occupation of the development is permitted prior to completion of these works, then the harm would be significant.

THE BALANCED APPROACH TO DETERMINATION

- 5.25 In this section I set out the various issues relating to the appeal scheme set against the three strands of sustainability as set out in the NPPF – economic, social and environmental.
- 5.26 With regard to the matters which weigh in favour of the appeal proposal:
- (i) **Housing Land Supply:** The proposed development would bring substantial benefits in terms of contributions to housing supply and the provision of market and affordable housing (assuming a legally compliant s106 agreement is forthcoming) in the context of the Council's shortfall in housing land supply and the Government imperative to boost the supply of housing. This carries **significant social weight** and is a **positive impact** in the balancing exercise;
 - (ii) **Affordable Housing:** The provision of affordable housing is also of **very significant social weight** towards meeting affordable housing needs within the district and therefore again is a **positive impact** in the balancing exercise;
 - (iii) **Construction Jobs:** There would be some contribution to economic growth through the provision of construction jobs which can have acknowledged

economic benefits along the supply chain. At a national level the government is committed to securing economic growth through the planning system and confirms that significant weight should be placed on the need to support economic growth through the planning system. At a local level the Corporate Strategy includes creating a strong local economy which this would assist with. However this is not unique as any similar development site would have associated construction jobs. Furthermore these would be short term benefits during the course of construction and there is no evidence to demonstrate that these will necessarily offer local employment opportunities. I therefore give **limited economic weight** to this benefit and consider this to be a **neutral impact** in the balancing exercise.

- (iv) **Improved Local Spending:** With regard to the weight afforded to the economic benefits of supporting the facilities and services within Uckfield Town Centre, it is agreed that the proposals will increase the population in the area with an associated spending profile. At a local level, the Corporate Strategy includes creating a strong local economy which this would assist with. This is not unique as any similar development site has the potential to generate an increased workforce/trip generation with associated spend. Furthermore for an established District Centre these benefits are not likely to make any difference to the viability of the services within the town. I afford these benefits **limited economic weight** and **neutral impact** in the balancing exercise.
- (v) **Creation of Open Amenity Areas and Public Open Space:** The provision of open amenity space, play areas and landscaping are positive social and environmental benefits but they are directly and proportionately related to the quantum of development proposed in order to meet the spatial needs of the development, which would in any case be expected on any new residential development.. I afford these **social and environmental benefits no weight** and consider this to be a **neutral impact** in the balancing exercise.
- (vi) **Bio-Diversity and Ecological Enhancements:** Biodiversity and ecological enhancements within the development, excluding SANG are no different to the those secured on any new residential development. The biodiversity and ecological enhancements that are proposed within the SANG needs to be assessed against the loss and deterioration of the ancient woodland and impact on the veteran tree. I afford these **environmental benefits limited weight** in the balancing exercise.

- (vii) **Provision of SANGS:** The provision of the SANGS is **mitigation** to prevent unlawful impacts upon the Ashdown Forest SPA and therefore in meeting the **environmental role is of no weight** and is **neutral in the planning balance**.
- (viii) **Views of Oasthouse:** is an identified potential design opportunity that relates to the development of detailed design at Reserved Matters. Indeed one could argue that the site remaining undeveloped as grazing land for horses provides an equally valuable opportunity for appreciating views of the Oasthouse. I consider this **environmental benefit of no weight** and immaterial to the consideration of granting outline planning permission and therefore is **neutral in the planning balance**.

5.27 Turning to the opposite side of the balance:

- (i) **Ancient Woodland and Veteran Tree:** The appeal proposal would result in the loss and deterioration of Ancient Woodland and would have direct impact on a Veteran Tree. This carries **very significant environmental weight against** the scheme and is a **negative impact in the planning balance**;
- (ii) **Location and Accessibility:** The appeal proposal would not encourage the use of sustainable travel modes by residents and those accessing other site uses. The appeal site is in a location which would be reliant on the use of private cars. This is afforded both **very significant social and environmental weight against** the proposal and is a **negative impact in the planning balance**;
- (iii) **Safe Means of Access:** The appeal proposal is unable to demonstrate that it can achieve a safe means of access for all users of the junction, particularly vulnerable users. This carries **very significant social weight against** the proposal and is a **negative impact in the planning balance**;
- (iv) **Impact on Local Highway and Town Centre:** The appeal proposal would impact on the safe and efficient operation of junctions within the town centre that would need mitigating and such a scheme would need to cover a more extensive area within the town centre than the junctions that have been assessed by the Appellant. There is no current area wide scheme. If there is no restriction on the occupation of any part of the development until the Town Centre works have been completed then this would carry **significant environmental weight against** the proposal and is a **negative impact in the planning balance**.

- 5.28 Overall, I consider that the proposed development does not achieve the three objectives of sustainable development set out in paragraph 8 of the NPPF.
- 5.29 In summary, the balancing of competing interests is judgement based. The benefits which would result from the proposed development in particular the housing would be substantial and I have given significant weight in the balancing decision. However, despite the acknowledged benefits of the appeal proposal, the disbenefits either individually or in combination, are of greater weight. In summary, this development is not in a sustainable location having regard to the inability to meet the needs for sustainable modes of transport to reduce reliance on cars; the inability to provide a safe access for all users and the adverse impact on the local highway and the safe and efficient operation of junctions within Uckfield Town Centre; and would result in the loss and deterioration of Ancient Woodland and Veteran Tree. Without sufficient benefits to overcome the very significant harms identified above and the conflict with the development plan (even allowing for the reduced weight to the conflict with Policy GD2 and DC17 as a result of the position of the Council's housing land supply) and having regard to the assessment above, I consider that the adverse impacts of this proposal significantly and demonstrably outweigh the benefits of the proposal and that in the context of the NPPF Paragraph 11, the presumption in favour of sustainable development is not applicable and therefore the appeal should be refused.

6 SUMMARY AND CONCLUSION

- 6.1 The scheme subject of this appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 6.2 The scheme amounts to a breach of the development plan and policies GD2, DC17, EN1, EN2, EN12, EN13, TR3, TR13 and CS1 of the WLP and Strategic Planning Objectives SPO3, SPO7, SPO12, SPO13 and SPO15 and Policies WCS7, WCS12 and WCS14 of the Core Strategy. The balance of material considerations also weigh heavily against a grant of planning permission.
- 6.3 Permission should be refused for any or all of the reasons for refusal as summarised below.
- 6.4 **Reason for Refusal 1 Conflict with Development Plan:** The appeal scheme is not policy compliant in terms of the spatial growth strategy identified in the development plan. It is accepted that the Council cannot demonstrate a five-year supply of deliverable housing sites. This means that policies relating to the supply of housing should not be considered up to date and that the proposals should be considered in the context of the presumption of sustainable development as set out in the NPPF. However, having regard to the effect of the development on the Ancient Woodland, defined in the NPPF as an irreplaceable habitat, and in accordance with footnote 7 of Paragraph 11 and Paragraph 180(c), the tilted balance is disengaged. Even if this were not the case, because of the environmental harm identified, the proposals would not be sustainable development, its environmental impacts significantly and demonstrably outweighing its social and economic benefits when assessed against the policies in the Framework as a whole.
- 6.5 Section 38 (6) of the Planning and Compulsory Purchase Act requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise. The proposal conflicts with the adopted development plan when read as a whole. Given that on the basis of the planning balance it would not be sustainable development, there are no material considerations warranting a decision other than in accordance with the development plan.
- 6.6 **Reason for Refusal 2 Impact on Ancient Woodland and Veteran Tree**
- Ancient Woodland and Veteran Trees are irreplaceable. The Woodland Trust's guidance (**CDG.5** page 12) states "*Since Ancient Woodland covers less than 3% of*

England's land mass, the country's development needs can be fully delivered without negatively impacting on ancient woodland or veteran trees"

- 6.7 The appeal proposal's impact on the ancient woodland and veteran tree would be significantly greater than the appellant recognises or acknowledges. These impacts would not be mitigated through the provision of a wholly inadequate landscape buffer or compensated for by the creation of the proposed SANGS. Apart from the direct loss of some Ancient Woodland through the creation of the footpath through it, there would be many indirect impacts arising from the close proximity of a large residential development. These indirect impacts would result in the inevitable degradation of the woodlands which would suffer significantly more disturbance and incursion than currently happens. The routing of the proposed SANG pathway would also result in direct impacts by encroachment into the protective buffer of the veteran tree.
- 6.8 As the appeal proposal will result in the loss and deterioration of irreplaceable habitats of the ancient woodland and veteran tree, and in the absence of wholly exceptional reasons to justify the development and no compensation strategy, the appeal scheme should be refused, in accordance with Paragraph 180(c) of the Framework. Having regard to Paragraph 11(d)(i) including footnote 7, this disengages the presumption in favour of sustainable development.

Reason for Refusal 4 Suitability of Location and Accessibility

- 6.9 The appeal scheme is in a location that is contrary to the development plan's strategy which seeks to ensure that new developments which generate significant travel movements are located efficiently in relation to public transport and seeks to resist housing development outside development boundaries. The proposal would also conflict with the Framework's aim to manage patterns of growth in order to promote sustainable transport. The site is poorly located for travel by sustainable transport modes.

Reason for Refusal 5: Safe Access, Effect on the Local Road Network and Town Centre

- 6.10 The proposed site access arrangements are unacceptable and inappropriate for the scale of development proposed. ESCC Highways have also raised concerns regarding the impact of the scheme on the local highway network and the safe and efficient operation of junctions within the Town Centre. To date the appellant has not demonstrated that the scheme can provide a safe access for all users and will not have an unacceptable impact on highway safety. Highway safety is an important matter not

only for future occupiers of the development but also for other road users. The harm that would be caused to highway safety would significantly and demonstrably outweigh the benefits in this instance. The tilted balance provided by Paragraph 11 of the Framework is therefore not sufficient to outweigh the conflict with the policies in the development plan and Framework when taken as a whole.

Reason for Refusal 6: No mechanism to secure affordable housing, custom built housing and other key infrastructure mitigation measures.

- 6.11 A draft S106 Unilateral agreement has been circulated but there is no agreed S106 at the time of writing this proof of evidence to secure the delivery of the necessary infrastructure improvements and the provision and maintenance of the SANG in perpetuity. Until this is secured, the reason for refusal remains.