Land at Downlands Farm

PINS Ref: APP/C1435/W/23/3321978

Appellants' Closing Submissions

Introduction

1. These Closing Submissions should be read together with the Appellants' Opening Statement **[ID3]** and the Statements of Common Ground **[CD1/9-12]** to avoid unnecessary repetition. They focus on the main issues that have been identified by the Inspector and agreed by the parties. They address each of the issues in relation to which the Council has defended the appeal, before addressing any wider issues that third parties have raised.

2. The Appellants' overarching submission is that the evidence demonstrates that that by carefully locating, designing and constructing each element of the Appeal Scheme, there will be neither loss nor deterioration to the ancient woodland. On the contrary, with proper management, the ancient woodland will be improved. There is thus no clear reason for refusal. Further, the Council has failed to demonstrate that the adverse impacts significantly and demonstrably outweigh the substantial benefits of the proposed development.

The Scheme

3. The Appeal Scheme is a hybrid application for:

   (1) outline permission with all matters reserved (other than access) for up to 424 dwellings (including 35% affordable housing) with the creation of public open space, including a children's play area; and

   (2) a full application for a SANG and the proposed boardwalk through Fir Tree Grove.

4. For clarity, the plans for approval are set out at **[CD1/15]**.

Some context

5. The context includes the following:-

(1) although the Council disputes the *extent* of its housing land supply shortfall, it is agreed that (1) the Council is unable to demonstrate a 5-year supply of deliverable housing land; and (2) paragraph 11(d) of the NPPF is engaged. That means permission should be granted unless the tilted balance is disengaged because there are clear reasons for refusal relating to the impact on ancient woodland or any adverse impacts of allowing the development doing so would *significantly and demonstrably* outweigh the benefits, when assessed against the policies in the NPPF taken as a whole;

(2) the Council has failed to deliver the houses it is required to deliver by the Local Plan and the shortfall is likely to get worse by the end of the relevant 5-year period in 2027;

(3) the Council's failure to deliver sufficient affordable housing is even worse and particularly acute in an area where affordability ratios have increased 150% in the period 1997 – 2002 - paras 5.8 - 5.10 Veasey PoE **[CD1/29]**. The result is that there are over 550 households on the Council's priority housing waiting list (para 5.7 **[CD1/29]**);

(4) the Wealden Local Plan **[CD6/3]** is almost 20 years out of date. Added to that, the Wealden Core Strategy Local Plan **[CD6/4]** was adopted back in 2013 and was required to be reviewed within 5 years in order to be sound. That has not happened. To add salt to the wound, the emerging Local Plan - which was intended to replace the Core Strategy ("CS") - was withdrawn in 2019. According to the Council's most recent update, an optimistic estimate is that a Local Plan *may* be adopted by the end of 2026 although there is no updated Local Development Scheme and the Council has not yet resolved to re-start its Local Plan process;

(5) the Appeal Site is located to the north-west of Uckfield and east of the A22. Uckfield is in an area identified in the CS as one of three district centres in which growth should be concentrated. There are no higher order settlements. It plainly is a sustainable location for further development and is identified as such.

The 2009 Appeal

6. The Council seeks to draw a parallel with the application which was the subject of the 2009 Appeal decision and the 2009 Inspector's comments the proposed development would appear as a separate and self-contained new settlement and says that the same remains the case today (see LPA Closing paras. 15 & 16). That is so obviously not the case. The Appeal Proposals seek permission for almost less than half the number of dwellings. Mr Mellor's PoE sets out how the Appeal Proposals are materially different from those previously considered and how the Appellants' team has reflected on and considered those previous proposals through the design evolution of these proposals – paras 3.4 – 3.13 **[CD1/50]**. In particular, the Appeal Proposals have now fully addressed any landscape, traffic and protected species concerns. Further, the context surrounding the 2006 application was also markedly different. In 2009 the Council had a relatively recent up to date local plan and could demonstrate a 5YHLS, neither of which it now has.

Issue 1 – Spatial Strategy

7. The Appeal Site is located outside Uckfield's settlement boundary **[CD6/23]**. However, as Mr Robins accepted in XX:

(1) the 1998 Local Plan set settlement boundaries for settlement in the District on the basis of a housing requirement assessed over 25 years ago;

(2) the CS seeks to concentrate growth at the urban areas, but especially at Hailsham and Uckfield (para 5.5 CS **[CD6/4]**) and that amount of growth is a fraction of the current housing requirement;

(3) there is currently no alternative strategy directing that additional identified growth to places other than the three district centres in which Uckfield is the one with the fewest constraints;

(4) in a rural area such as Wealden where there is a limited supply of brownfield land, it is inevitable that there will have to be a substantial use of greenfield land outside of settlement boundaries to meet existing and future housing needs (para 5.5 CS **[CD6/4]**; see also para. 6.8 Planning SoCG **[CD1/10]**).

8. In circumstances where there is no up-to-date plan led strategy before the Inquiry to deal with current housing need, the Appellants' submit that the Appeal Scheme is in accordance with the spatial strategy for new housing development in the District. The Council's predicament is not solved by an emerging local plan, which is yet to even reach the reg. 18 stage. Despite Mr Robins' optimism, Mr Mellor's evidence in this regard is to be preferred. Any replacement plan is unlikely to materialise before the end of 2026 at the earliest (para 2.36 Mellor PoE **[CD1/50]**) and 2027 is more likely.

9. In light of this, Mr Robins accepted that because policies GD2 and DC17 – which seek to restrict development to within defined development boundaries – are predicated on out-of-date housing figures, they should be regarded as out of date and any conflict with them should be afforded only limited weight (see the Inspector's approach in BiE (at DL53) **[DL4/36]**). There is also the additional layer that the Council cannot demonstrate a 5YHLS, which means footnote 8 of paragraph 11(d) is engaged and those policies are deemed to be out of date.

10. In the BiE appeal [**CD4/36**] the Inspector said (at DL49):

> "[t]he town of Uckfield is located to the west of the appeal site and offers a good choice of shops, restaurants, a train and bus station and other services. The distances to key facilities within the town at c. 1mile/20mins walk are 'walkable' but not within 'easy' walking distance, particularly as the site occupies an elevated position above the town. It follows that Uckfield is also within cycling distance of the development."

11. This is relevant because the Site is approx. 1.2km from the BiE site. The Appeal Site is located to the north-west of Uckfield and east of the A22 and as in the BiE appeal, key facilities within the town are walkable (p. 6 and 7, Transport SoCG **[CD1/9]**; para 4.4.1 Manual for Streets **[CD8/1]**) and cyclable. In addition, the Appellants are putting in place a suite of enhancements to improve the position. As Mr Bell explained in his XX, it is unusual to see an application for a site with this many dwellings so close to such a complete range of shops, facilities and services.

12. However, for the purposes of the assessment the Inspector is required to carry out when considering the sustainability of the location, the starting point is paragraph 105 NPPF which requires significant development to be focused on locations which are or can be made sustainable, through offering a genuine choice of transport modes, and noting that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

13. Further, paragraph 110(a) NPPF requires decision makers to ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.

14. These are not one size fits all policy prescriptions. They require careful judgment as to the nature of the site and its location, and the nature of the relevant scheme. In the end, national policy seeks a genuine choice of opportunities which are appropriate to the site and the scheme. That does not

import a requirement for every service or facility to be accessible to every user by every mode of transport.

15. In terms of the Site's accessibility, the issue between the Appellants and the Council is whether the proposed improvements to pedestrian and cycle provision between the Appeal Site and Uckfield town centre will provide suitable access arrangements and encourage residents of the proposed development to walk/cycle to the town centre. This leads into Issue 2 – Highways.

Issue 2 – Highways

16. There are two aspects to the Highways issue – convenience and safety. The Council's case is that the proposed pedestrian and cycle routes to the town centre are not sufficiently attractive for residents to want to use them. And in relation to safety, they argue that (1) the proximity of the exit from the Main Access roundabout is too close to the entry taper of the northbound layby on the A22 to be safe for motorists; (2) the Rocks Road crossing as part of the Fir Tree Grove (FTG) pedestrian/cycle link is unsafe for pedestrians; and (3) other proposed highway works to improve the pedestrian routes to the town centre would be unsafe.

17. The Appellants make some background points first before addressing the convenience of the pedestrian/cycle routes and then the specific safety issues raised by East Sussex County Council (ESCC).

Background

18. Throughout the application process, the Appellants have sought to work with ESCC, in its capacity as local highway authority, to resolve any concerns: see for example, Bell Apps. PABB **[CD1/26]** (pdf 7-26). This did not, however, prevent Mr New from introducing additional issues in oral evidence that were

not raised in his written evidence or even foreshadowed in ESCC's Statement of Case **[CD1/7; CD1/22]**.

19. As part of this application, the Appellants provided a Transport Statement **[CD2/27-8]** in which:

    (1) the traffic impacts of the Appeal Proposals have been assessed (sections 6 and 7);

    (2) the site access and offsite highways improvements (including the Church Street buildout) have all been submitted for an independent stage 1 Road Safety Audit – Appendix F **[CD2/28]** (pdf 89 - 103);

    (3) a road safety review was carried out which, contrary to third party representations, found no evidence that Snatts Road (and in particular the junctions with London Road and Rocks Rd) is dangerous – paras 3.16 – 3.34 **[CD2/27]**. Although Cllr Love made a specific issue of safety on Snatts Road and produced her own crash data **[ID6]**, as Mr Bell explained in his EiC, that data focuses on a particularly wide area and unsurprisingly flags up a number of incidents. In contrast, Mr Bell's approach is consistent with the PPG and considers the most recent 5-year period for the relevant area and flagged only two relevant incidents, both of which arose because of driver error.

20. There is no real parallel between the Appeal Proposals and the 2009 appeal scheme. Mr New acknowledged in para. 1.6 PoE [**CD1/22**] that the current application differs in a number of respects from the previously refused application and accepted in XX that the only similarity between the two schemes is in relation to the A22 cycle access.

21. The Council make great play of ESCC being the "*independent expert statutory consultee on highways*" who have objected to the Scheme Proposals (see LPA

Closing para. 18). That is correct but is no better than saying 'trust me I'm a doctor'. It certainly does not mean ESCC's objections are well-founded.

22. Whether ESCC's objections have any substance is dependent on an assessment of the evidence given by Mr New on its behalf in support of those objections. If the Inspector is satisfied that Mr New's evidence does not support ESCC's case at the Inquiry, then the fact that ESCC objected is irrelevant.

23. Nor is there any merit in the suggestion (see LPA Closing para. 19) that Mr Bell lacks independence. He is an experienced and qualified engineer and highway consultant who has given his professional and independent view as to the safety of the scheme in accordance with his professional obligations to the Inquiry. The fact that he designed the highway scheme is wholly irrelevant.

24. The following matters are agreed between ESCC and the Appellants [**CD1/9**]:

    (1) the proposals for emergency access are acceptable;

    (2) the proposals will not lead to an unacceptable traffic impact on the A22 corridor;

    (3) the Appellants' financial contribution of £100k towards the installation of an enhanced control system, plus 10% of the equipment cost per annum for 20 years towards maintenance of the system will mitigate any residual traffic impact on the town centre junctions;

    (4) the proposed A22 pedestrian/cycle route is segregated from vehicular traffic and is generally compliant with the design requirements of LTN 1/20;

    (5) daily two-way traffic flows at the Rocks Road end of Snatts Road are in the order of 1,300 vehicles and are therefore low; and

    (6) Snatts Road connects to and provides access to existing routes along residential streets and footpaths to the town centre (including Uckfield

College and the Leisure Centre) and traffic volumes are conducive to cycling.

A22 Route

25. ESCC's concerns are that the route is indirect and, given the volume of fast-moving traffic on the A22, potential users would not consider it safe, comfortable or attractive to use, particularly in inclement weather or when lighting is reduced. The Appellants' response is set out in Mr Bell's PoE – paras 7.11 – 7.27 **[CD1/25]**.

26. The starting point – as accepted by Mr New in XX - is that the cycle route is generally/technically compliant with LTN 1/20 - pg. 3 Transport SoCG **[CD1/9]**. When considering directness, it is important to remember that this route represents just one of a number of routes that will be available to future residents, with the FTG link providing a more direct route for the majority of journeys.

27. The Council has no concerns about the safety of the A22 route which is completely segregated from vehicle traffic and continuous along the A22 section before connecting to Bell Farm Road and Bell Lane and the existing pedestrian/cycle way before reaching the High Street in close proximity to the railway station. This is a 2.3 km long segregated cycle route into a town centre. As Mr Bell says in his PoE, that is unusual and is safe – para 7.18 Bell PoE [**CD1/25**]. His conclusion is supported by the updated independent stage 1 RSA (Bell Apps **PAB-B [CD1/26]** (pdf 27)) which did not identify any safety issue with the A22 route.

28. Part of ESCC's complaint relates to the fact that the separation between the carriageway and the shared route reduces to 1.5m in places (e.g. where the A22 passes under the Rocks Road bridge) where the desirable minimum is 2.5m and Mr New alleges an absolute minimum is 2m, according to LTN 1/20 - pg. 54

[CD8/4]. However, Mr Bell was clear that along the majority of the route, that separation will be at or above the "desirable" level.

29. As to cycling next to the major roads with fast-moving traffic, Mr Bell's Rebuttal PoE provides examples of where pedestrian routes and cycleways are next to such roads – para. 2.29 – 2.31 **[CD1/62]**. Further, this factor has also been taken into consideration in the design. The Appellants can achieve substantial separation from the A22 along the vast majority of the route, with a verge width of up to around 5 metres being achieved between the cycleway and carriageway – para 7.23 Bell PoE **[CD1/25]**.

30. When it comes to dark and inclement weather, the Appellants accept that the cycleway will become less attractive. However, that point can be made about most cycleway provision - cyclists are generally less inclined to cycle during inclement weather and more likely to use alternative modes of travel. That does not mean the A22 route is unattractive or unlikely to be used and it is submitted it provides a choice for those wishing to cycle to the town centre or to the station.

31. As Mr Bell made clear in his oral evidence, the A22 route provides just one option available to future residents of the Site. It is a quick and convenient route between the Appeal Site and the town centre. It is relatively flat and almost entirely uninterrupted by side roads and accesses, making it an attractive route, including for those who wish to commute. In support of that, it conveniently ends a very short distance from the main train station – para 7.9 Bell PoE **[CD1/25]**.

32. As a further objection to the A22 route, Mr New suggested that the proposed cycleway would prejudice the proposed dualling of the A22. However, in response to the Inspector's questions it became clear that these plans are at an "embryonic stage" and there is no certainty of them coming forward.

Snatts Road Route

33. The parties are agreed that (pg. 3 Transport SoCG **[CD1/9]**):

    (1) the proposed footway on the south side of Snatts Road and associated informal (dropped kerb) crossing point is acceptable;

    (2) there are limitations in what can be achieved on footpath 3a/3b in terms of widening and lighting; and

    (3) improvement works to footpath 3a/3b can be agreed as part of a Section 278 agreement.

34. The Council's concern, however, is that the existing off-road footways leading from Snatts Road to Pudding Cake Lane are narrow, unlit, not overlooked and involve negotiating steps and significant gradients in places. The Appellants' response is set out in Mr Bell's PoE - paras 7.58-70 **[CD1/25]**.

35. Mr Bell has acknowledged that the route is unlikely to be attractive to everyone and that the steps on the public footpath would preclude its use by some - para 7.60 Bell PoE **[CD1/25]**. However, as his evidence shows, it is an existing route where the footpaths are already well used by pedestrians and considered fit for purpose for the majority of users. Indeed, residents who spoke at the Inquiry referred to using it. For those unable to navigate the steps, there is an alternative route via the FTG link. Further, the RSA (Appendix **PAB-B** to Bell) **[CD1/26]** (pdf 27) identified no problems with the proposals that could not be readily addressed at the detailed design stage.

36. As to the proposed improvements it is submitted that:

    (1) this is an existing and not a new route and there are limitations to the extent it can be improved due to existing land constraints; but

    (2) any improvements will benefit existing users as well as future residents of the proposed development.

37. The proposed improvements are consistent with paragraph 100 of the NPPF, which states that planning decisions should take opportunities to enhance public rights of way and provide better facilities for users.

Fir Tree Grove Route

38. ESCC has identified this as the most important route for active travel modes to and from the Appeal Site. However, they contend pedestrians/cyclists would be deterred from using it because:

    (1) it entails an unattractive, lengthy, convoluted climb from Rocks Road with no proposed mechanism to connect to Rocks Road in a safe manner;

    (2) the pedestrian route along Rocks Road and Church Street is inadequate, even with the significant improvements proposed; and

    (3) there is a lack of specific provision for cyclists between Rocks Park and Bell Farm Road.

39. The Appellants' response is set out at Mr Bell's PoE at paras 7.28 – 7.57 [**CD1/25**].

40. As to the first of ESCC's point, it is agreed that the proposed pedestrian/cycle route through FTG between the Site and Rocks Road is traffic-free and has suitable width (3m) and gradient (max. 8%) – pg. 3 Transport SoCG **[CD1/9]**. Mr New accepted in XX that the proposed gradient does not conflict with the recommendation of LTN 1/20 but introduced in his oral evidence that there was no agreement as to the acceptability of the <u>length</u> of the gradient. However, as Mr Bell has pointed out, an 8% max gradient is by not unusual in the context of Uckfield – para 7.36 Bell PoE **[CD1/25]**. To illustrate what an 8% gradient is, he pointed to the mobility ramp at the entrance to the Inquiry venue in the first week which is 8%. In any event, the proposed route alongside the A22 provides an alternative option for those active travel users who prefer to use an alternative, ramp free route.

41. Further, while the Appellants acknowledge that certain parts of the existing footway (including along sections of Church Street) are below the recommended minimum width, they are existing routes used by the public without any evidence that they are unsafe or inconvenient. The Appellants' proposals improve the existing pedestrian facilities consistent with the recommendations of the Non-motorised User (NMU) Audit provided as part of Section 3 of the Transport Assessment **[CD2/27]**.

42. Finally, there is a complaint about the lack of segregated facilities for cyclists. Mr Bell's evidence is that this is an area that is lightly trafficked and the route is low speed. Nonetheless, for those cyclists with safety concerns, there is an alternative route via the A22 and Bell Farm Rd which is completely segregated from vehicular traffic and will provide a genuine alternative route – para 7.57 **[CD1/25]**.

Public Transport

43. It is agreed that public transport accessibility (bus and rail) is acceptable, subject to a public transport service contribution and the provision of public transport infrastructure including a bus service through the Site – p. 4 Transport SoCG [**CD1/9**]. The Council's CIL compliance statement states this is necessary to provide a choice of sustainable travel routes for incoming residents before they establish more car-oriented choice patterns founded on lower less attractive initial bus services – para 2.43. ESCC's justification for the contribution is also inconsistent with Mr New's concern that the frequency, cost of the bus service entering the Site and availability of parking in Uckfield will not encourage residents to use the bus to access the town centre. That service goes to many more destinations than just the town centre and, if the County Council is genuinely concerned about discouraging private vehicle trips, then the solution lies in its own hands through the introduction of car parking restrictions and/or charging for town centre parking.

44. What is clear from all this is that the various options to access the town centre from the Appeal Site provide a genuine choice for cycling, walking and public transport to a full range of shops, services and facilities for future residents such that the requirements of paragraph 105 of the NPPF are met. Further, the Appellants have produced a residential Framework Travel Plan [**CD2/29**] to encourage sustainable travel choices. The sustainability of the Appeal Site cannot sensibly be questioned and does not provide a reason for refusal.

Safety of the A22 access

45. The following preliminary points are relevant to this issue. First, ESCC's initial consultation response to the application was dated 18th October 2022 – see App 1 to Mr New's PoE **[CD1/22]**. Nb. The document at (pdf 31) is ESCC's combined responses of 10th October 2022 and its later response of 23rd March 2023 is shown in blue text - as was established in XX of Mr New.

46. In response to ESCC's comments, the main access and roundabout were revised by the Appellants. ESCC's consultation later response dated 23rd March 2023 to the revised access was only received on 21st April 2023 (the day the application was refused) and the Delegated Report **[CD5/2]** only reflects ESCC's initial 10th October 2023 consultation response. ESCC's later response stated in relation to the revised main access as follows (emphasis added):-

> "Site Access (A22) – this has been reconfigured and requires further RSA. Lighting concerns are raised."

47. That is it and hardly the strong objection asserted by the Council. The Appellants' highways consultants responded to ESCC's 23rd March consultation response on 24th July 2023 (Bell Apps PAB-B **[CD1/26]** (pdf 7)). Item 7 expressly addressed the concerns raised by ESCC and referred to an updated Stage 1 RSA dated 19th July 2023 which was attached at Appendix A to the response (pdf 27). This is the "*further RSA*" required by ESCC in its 23rd March 2023 in relation to the revised access arrangements.

48. As is apparent from the document itself, and accepted by Mr New in XX, the July RSA, expressly considered "*the new site access from A22*" (pdf 31). And, as Mr New also accepted in XX, the items considered by the safety auditors included (1) the Site Access drawing 2001061-101 Rev. C and all the drwgs. relating to the footway/cycleway through Fir Tree Grove (pdf 41); and (2) both of ESCC's consultation responses dated 18th October 2022 and 23rd March 2023 (pdf 42). No safety issues related to the safety of the proximity of the exit from the main access roundabout and the A22 northbound layby were identified in the updated RSA by the safety auditors.

49. ESCC had the updated RSA from July 2023 but at no point did it express any concerns about it. There is nothing in Mr New's PoE questioning the updated RSA (as he accepted in XX); nor did he question it in his EiC. There is no evidence from ESCC's Traffic and Safety Team expressing concern or seeking to qualify the updated RSA. Indeed, it was only in XX that Mr New first expressed any reservations about the updated RSA. Mr New also accepted in XX that the only RSA of the revised access arrangements is the updated July 2023 RSA and that the Council has not sought any independent RSA of its own. He also agreed that there were no safety concerns about vehicles currently on the A22 (a 60 mph road) decelerating to use the layby. Indeed, the Council has not produced any evidence (such as accident data) that the layby is in any way unsafe.

50. As Mr Bell made clear in his oral evidence, there is no doubt that the RSA auditors were aware of this key issue. It is the only independent RSA and as a matter of undisputed fact did not raise any concerns about the proximity of the exit from the proposed new roundabout and the taper to the northbound layby.

51. The Council says that the Appellants have not provided the briefing note that was sent to the auditors (see LPA Closing para. 33) but at no point has the Council ever asked for it. It also submits that the relevance of the RSA is

misunderstood in this case and that there was nothing for ESCC to disagree with (LPA Closing paras. 33 & 34). ESCC could have said to the Inquiry that they should have questioned the updated the RSA and made an error in not doing so but at no point has it taken that approach. Instead, the Council belatedly seeks to rely on a perverse interpretation of para. 1.6 of the updated RSA and submits that the RSA is not relevant to this case. That is astonishing for a body that claims to be independent. ESCC expressly required an updated RSA of the revised access arrangement, and an updated RSA was provided which did not identify any safety issue with the proximity between the roundabout and the layby. If, notwithstanding that RSA, ESCC considered there to be a safety issue then one might reasonably have expected them to identify that concern either at the time or subsequently instead of arguing that the updated RSA is irrelevant and/or that there was nothing for them to comment on (as the Council now submits).

52. The Appellants submit that ESCC's absence of concern is unsurprising because although the Council put much emphasis on the separation distance being less than the DMRB 'standard' it did not present any evidence to the Inquiry that the arrangement would be unsafe – preferring instead to rely on the fact that ESCC object on safety grounds 'so it must be unsafe' – the 'trust me I'm a doctor' approach.

53. The Appellants submit that there is no merit in ESCC's position. As Mr Bell has consistently made clear, and Mr New accepts, DMRB is applicable to motorways and all-purpose trunk road and the A22 is neither of those. DMRB does not therefore contain mandatory "standards" with which roads such as the A22 have to comply. It is at best guidance and the issue is not, therefore, whether the 20m separation is a departure from standard but whether the proposed arrangement is likely to be safe (as the Appellants submit it would

be) or whether, as the Council contends, it is likely to cause two types of accidents (1) rear end shunts, and (2) side swipes.

54. It is relevant to note why Mr New said in his PoE such accidents could occur. At para. 2.6 of his PoE, he said (emphasis added):-

> "ESCC considers that the sub-standard separation distance in the principal site access junction proposals would therefore result in an unacceptable safety risk of potential conflict between vehicles leaving & accelerating away from the roundabout with vehicles decelerating to enter the layby. This could result in rear-end shunt collisions & sideswipe collisions as drivers in the inside lane either execute rapid braking or seek to change lanes abruptly with little notice possible to following drivers…"

55. The premise of Mr New's argument in his PoE was that a vehicle exiting the proposed roundabout and decelerating to enter the layby could cause a vehicle following behind to either (1) drive into the back of the decelerating car, or (2) pull out into the outside lane and collide with another vehicle in the outside lane.

56. However, in XX Mr New accepted:-

(1) vehicles currently using the layby would be travelling substantially faster than they would exiting the proposed roundabout and would currently have to decelerate to do so;

(2) the effect of the roundabout would be to slow traffic down exiting the roundabout;

(3) vehicles exiting the proposed roundabout would be going slower (circa. 20 mph) than vehicles currently wishing to use the layby; and

(4) with the proposed roundabout and vehicles exiting it at circa. 20 mph there would be no need for a vehicle to decelerate to use the layby.

57. As vehicles on the A22 currently decelerate from 60 mph to use the layby without incident and it is accepted that with the proposed roundabout those

vehicles would be travelling at circa. 20 mph and would be able to join the layby taper without having to decelerate, it is hard to understand why there would be any risk of rear end shunts or side swipes as Mr New claims. Indeed, Mr New's concession in XX that vehicles exiting from the proposed roundabout would not have to decelerate to use the layby completely addresses the concern in his written evidence that it is "*vehicles decelerating to enter the layby*" (see above) that "*could result in rear-end shunts & sideswipe collisions*".

58. It is no doubt for this reason that Mr New sought to explain in XX that "*the vehicle in the inside lane would be expecting the vehicle in front of them to accelerate*". This, he said, would cause the following vehicle "*to avoid that potential conflict or, just because of the inconvenience, choosing inappropriately to move out into the outside lane without paying due care and attention*". This is the argument that the Council now ask the Inspector to accept (see LPA Closing para. 28) and should be rejected. It is diametrically opposite to the argument Mr New advanced in his PoE. Further, in answering the questions put to him in the way that he did, it is submitted that Mr New has accepted that the possibility of a rear-shunt is not likely to occur and that a side-swipe accident is only likely to occur if the following driver moves into the outside lane "*without paying due care and attention*".

59. The Appellants submit that Mr New's oral evidence fundamentally undermines his written evidence and demonstrates that there is no support for ESCC's concern that the separation distance of 20m creates a risk of causing rear-end shunts or side swipe accidents unless the following driver is not driving with due care and attention.

60. Mr Bell agrees with Mr New's concession that a vehicle exiting the roundabout and entering the layby will not have to decelerate and said that if all drivers are paying due care and attention, there is an "*extremely minimal risk*" that any such incident would ever occur. Mr Bell also said that it is unlikely that the following vehicle would wish to overtake a vehicle ahead of it wishing to use the layby

because the lead vehicle would not be decelerating and, in the rare circumstances where it might do so, the vehicles would be in a slow speed environment having just negotiated the roundabout. Therefore, there was no reason to think that a following vehicle could not overtake carefully if it wished to do so.

61. Further, the proposed arrangement of a diverge off the A22 close to the exit from a roundabout is not unusual on the A22. As Mr New accepted in XX, a similar arrangement exists at Blackdown Roundabout to the north of the proposed access where the exit from the roundabout is less than 55m from the diverge to the Shell service station (which incorporates a Little Waitrose foodstore and McDonalds fast food restaurant). Moreover, as Mr Bell explained in his EiC, there is no evidence of any accidents at the Blackdown Roundabout which has many more diverge movements than would be likely at the layby. The Council criticises Mr Bell from referring to the Blackdown Roundabout in his oral evidence. That is surprising because the relationship between a roundabout and taper within a short distance of each other was well-known to ESCC who are responsible for the A22. It is plainly relevant and if they really are acting independently they should have drawn that arrangement to the Inspector's attention.

62. A further new point raised by Mr New in his oral evidence was an alleged concern about vehicles exiting the layby but he was unable to give any coherent reason, other than a "*strict application of DMRB*", why there would be a safety risk. The Council now submits that this may cause a vehicle exiting the layby not to see what is in the outside lane (see LPA Closing para. 31). Again, the Council invites the Inspector simply to apply DMRB as if it is mandatory and appears to ignore the fact that the dual lanes merge 120m south of the layby exit. There is no outside lane and vehicles will re-join the A22 as they do now

without incident and there is no evidence that there would be any greater safety risk than exists at present.

63. Seeking to defend this new point being raised so late in the day, the Council says that Mr New was simply responding to Mr Bell's evidence (see LPA Closing para. 32). That is no answer, the dual lanes were part of the revised access arrangement before the Council many months before the Inquiry and on which it commented. As Mr New accepted, ESCC had never previously expressed any safety concerns about vehicles leaving the layby and rejoining the A22. Further, as Mr Bell said in EiC, if this had been a safety issue, the July 2023 RSA would have picked this up. It did not do so and this is a further example of Mr New raising new concerns in his oral evidence that are unsupported by ESCC or indeed any evidence.

Safety of the Fir Tree Grove (FTG) access

64. ESCC's concern here relates to the proposed informal crossing of Rocks Road. Mr New's evidence is that currently, visibility to the west from the north side of the Rocks Road at the position of the proposed crossing is extremely limited – para 2.17 New PoE **[CD1/22]**. Although, in his PoE Mr New suggested that the 85% might be higher than the Appellants' speed survey had recorded, the Council produced no alternative speed survey. Based on the 85% it is agreed than an appropriate visibility splay would be 59m – see Transport SoCG **[CD1/9]** (pdf 4).

65. The extent of the concerns in relation to the FTG link and Rocks Road crossing in Mr New's PoE was set out at para. 2.20 **[CD1/22]** where he stated (<u>emphasis</u> added):-

> "The Appellant argues that the resultant visibility to the west for a pedestrian or cyclist waiting on the northern side of Rocks Road would be consistent with the recorded vehicle approach speed. However, <u>to achieve that the visibility splay is largely contained within the path itself and would therefore be subject to blocking due to associated guard railing and other pedestrians and cyclists using</u>

> the footway / cycleway. ESCC consider that the visibility splay should be measured from the position of a waiting pedestrian / cyclist to the nearside edge of the carriageway, as would be the case for a new vehicle access. Measured in that way, the available visibility to the west would be only about 32m, substantially lower than that required by both DMRB CD109 or MfS for the recorded 85%ile speed of 31.4mph."

66. Two things should be noted. First, ESCC's Statement of Case **[CD1/7]** did not express any concern that the guardrail and/or users of the pedestrian/cycle link would interfere with or 'block' visibility along the splay. All it said was that "*in the current application, access from the site to Rocks Road is proposed to be via a new connection in the south east corner of the site. This connection entails an unattractive lengthy, convoluted climb from the site to Rocks Road with no proposed mechanism to connect to Rocks Road in a safe manner*" – see para. 3.10 **[CD1/7]**. Second, para. 2.20 of Mr New's PoE was the full extent of ESCC's concerns relating to the safety of the crossing.

67. However, in his EiC and XX it became clear that Mr New's key concern was not that it would be difficult to see through the short section of guardrail alongside the ramped section of the FTG link, but that looking through it would 'confuse' drivers coming from the west who would see the guard rail halfway down the visibility splay and not immediately adjacent to the crossing. He then said that a driver would have to take a decision which would cause a safety issue. He also asserted in his EiC that a rock and vegetation in the visibility splay would 'block' a pedestrian wishing to use the crossing from seeing a vehicle approaching from the west.

68. None of these concerns or criticisms are of any substance. First, the provision of the guardrail was a recommendation made in the original RSA dated 27th April 2022 attached at Appendix F to the Appellants' Transport Assessment **[CD2/28]** (pdf 89) and the designer's response was that a note would be added to drawings showing that a guardrail was to be installed **[CD2/28]** (pdf 119).

69. Second, it was only in Mr New's PoE that ESCC raised the issue of the guardrail and/or users of the FTG link itself "blocking" the visibility splay; and only then in the most general terms having not been identified in ESCC's SoC – see above. At no time before Mr New's PoE was served has ESCC expressed a concern that users of the pedestrian/cycle way and/or the guardrail would restrict visibility within the proposed splay.

70. Third, Mr Bell rejected the notion of driver confusion raised for the first time in Mr New's oral evidence and explained how proprietary makes of guardrail such as that shown in [**ID12**] allow 90% is clear visibility. The issue about 'driver confusion', quite apart from being entirely new and unsupported by any actual evidence, is completely over-stated and unsupported by ESCC. As Mr Bell explained, what is important is the visibility of a car to a pedestrian waiting to cross Rocks Road and a pedestrian would be able to see through the guardrail and any vehicle approaching from the west.

71. Fourth, Mr Bell further explained in his EiC that this is a <u>pedestrian</u> crossing (not a new vehicular access) and that very many pedestrian crossings have visibility splays that pass over pavements and footways (a point accepted by Mr New in XX) with street trees and/or street furniture (including guardrails) in them without causing any safety issues for pedestrians crossing those roads. They also obviously have pedestrians in those splays and this would be no different.

72. Fifth, no issue was raised in Mr New's PoE in relation to the vegetation or rock alleged to affect visibility which only arose in Mr New's EiC. His concern self-evidently is <u>not</u> shared by the safety auditors because it would have been flagged up in the updated RSA. It was not and Mr New's new points were patently an afterthought. There is nothing in the Council's submission that Mr New was not cross-examined on the impact of the rock on visibility (see LPA Closing para. 41). The point was only first made in Mr New's oral evidence and he was

asked to clarify what point he was making so that Mr Bell could respond, which Mr Bell then did so.

73. As regards his concern about vegetation, that was picked up in the original RSA and the designer's response (which has never been questioned by ESCC) was that foliage would be cut back and clearance drawings prepared as part of detailed design – see para. 5.11 of the original RSA **[CD2/28]** (pdf 89) and the designer's response at (pdf 119). Thus, not only was the issue identified at an early stage but it has been addressed by the Appellants to the satisfaction of ESCC and either Mr New was unaware of this or he introduced it as a new point in his oral evidence as a red-herring.

74. Sixth, the updated RSA (Bell Apps **PAB-B [CD1/26]** (pdf 27)) considered the safety of the FTG access and expressly referred to all the drawings relating to the FTG link (pdf 41). The updated July RSA did not identify any safety concerns relating to the FTG link or crossing of Rocks Road. This has not been questioned by ESCC or by Mr New in his oral evidence.

75. As with the main access onto the A22, ESCC's case in relation to the FTG link and Rocks Road crossing has comprised new points being raised in Mr New's oral evidence which have no support from ESCC or the updated RSA and are without substance.

76. If, contrary to the Appellants' case, the provision of the splay required engineering works outside of the present application then a further application for those works would need to be made.

Residual safety concerns

77. These relate to the proposed carriageway narrowing and alternate one-way working on Rocks Road and Church Street.

78. The Appellants assess that the development proposals will lead to circa. 115 additional pedestrian movements on the Fir Tree Grove Route during both the morning and evening peak hours – para 7.41 **[CD1/25]**. While this is not considered to be significant, the Appellants have proposed improvements to the section of Church Street between Rocks Park and the High Street as illustrated on drawings 2001061-132A, 133C and 134C – Bell App PAB-H **[CD1/26]** (pdf 127). During XX, Mr New accepted that widening the footway is a desirable thing but continued to oppose the introduction of the one-way working.

79. The safety concern raised by Mr New is dealt with by Mr Bell in his Rebuttal Proof – paras 2.17 – 2.22 **[CD1/62]**. Further, ESCC's concerns are not supported by the updated July 2023 RSA which did not identify the problem now alleged by Mr New. Moreover, the proposed works are consistent with ESCC's own LCWIP **[CD8/5]**.

80. Consequently, the Appellants submit that ESCC's concerns are unfounded. However, as the Appellants have also made clear, the highway works to provide the Church Street priority working arrangement is not relied upon to make the scheme safe and can be omitted from the scheme if necessary – para 2.13 Response to ESCC Comments **[CD2/102]**.

Issue 3 – Ancient Woodland

81. Some general points need to be made about ancient woodland. First, ancient woodland is defined area that has been wooded continuously since at least 1600 AD – see NPPF Glossary. It includes ancient semi-natural woodland and plantations on woodland sites (PAWS).

82. Second, the ancient woodland on the Appeal Site is ancient <u>semi-natural</u> woodland.

83. Third, the only government policy document in relation to ancient woodland is the Keepers of Time **[CD9/6]**. That document recognises that there are societal benefits from having access to, and recreational use of habitats such as ancient woodland but that access has to be managed - see p. 17. The benefits of woodland access are reinforced by the Woodland Trust – see Baxter App. AB10 **[CD1/60]** – which aspires to everyone having a wood of at least 2ha within 500m of their home and of at least 20ha within 4km of their home.

84. Fourth, ancient woodland and its biodiversity are the product of centuries of human intervention and the management of those woodlands for economic reasons. See for example, Keepers of Time at p.15:-

> "Many woodland species are dependent on the structure created by traditional management practices such as coppicing. This plays a fundamental role in maintaining diversity of structure and habitat within ancient woodland.
>
> Economically, this traditional management has not been self-sustaining. This has led to a decline in active woodland management or conversion to other more economically viable forms of management such as single age and single species stands. These management types do not provide rich habitats for biodiversity and species."

85. However, the economic drivers for woodland management no longer exist – see XX of Mr Massheder who accepted that as the economic importance of woodland has declined, the management practices central to that have also disappeared and it is those management practices which make ancient woodland so special.

86. Fifth, ancient woodlands are dynamic and resilient habitats. They are not the product of 'benign neglect'.

87. Sixth, as Mr Massheder confirmed in XX (1) the Government's policy is to encourage public access to woodland including ancient woodland; and (2) it is not the fact of public access per se that damages ancient woodland but where that access is not managed appropriately.

88. Seventh, Mr Massheder accepted in XX that the act of felling one or more trees in ancient woodland does not automatically mean that there is loss of or deterioration to the ancient woodland. He rightly did so because it is woodland management practices and silviculture that creates the mosaic and diversity important to ancient woodland. Tree felling is an inherent and inseparable part of the sylviculture process and since 1600 woodlands may have been felled, or clear felled, a number of times. Thereafter they regrow and provide the next timber crop. Felling does not therefore equate to 'deterioration' let alone 'loss'.

Para 180(c) NPPF

89. In respect of ancient woodland, the issue for the Inspector is whether the proposed development will result in the loss of or deterioration to an irreplaceable habitat (including ancient woodland and ancient or veteran trees) such that the appeal should be refused unless there is a wholly exceptional reason and a suitable compensation strategy exists – para 180(c) NPPF. Much time was spent in the Inquiry as to the proper interpretation of "loss and/or deterioration", which ultimately is a matter of law and fact. However, the definition of irreplaceable habitat in Annex 2 NPPF describes loss as "destruction". This conveys the sense of where the threshold should be set for the engagement of 180(c), whilst also indicating that "deterioration" should be more than *de minimis* if it, too, is to act as a policy trigger.

90. While the parties are agreed that para 180(c) is relevant, there remains a dispute as to whether it is engaged. This is partly driven by conflicting views as to whether the guidance set out in the Forestry Commission and Natural England's Standing Advice ("the Standing Advice") **[CD9/3]** should be followed rigidly, as indicated by the PPG – p. 25 **[CD9/19]**. For the purposes of determining whether there has been loss or deterioration, the Appellants submit there are two material parts to the guidance:

(1) the prohibition on the decision maker taking into account the existing condition of a woodland when considering whether development proposals would result in its loss or deterioration – p. 7[1]; and

(2) the exclusion of woodland management from the list of possible *mitigation* measures and inclusion of woodland management within the list of possible *compensation* measures – p. 8[2].

91. The Council invites the Inspector to apply a 'strict' approach to the Standing Advice. On its interpretation of paragraph 180(c) - a tree is part of a habitat, the loss of a tree means the loss of habitat and, therefore, a loss of ancient woodland. That is regardless of the nature or quality of the tree and/or any assessment of the actual impact of that loss. Notably, that position is <u>not</u> supported by Mr Massheder who accepted that the loss of one or more trees does <u>not</u> automatically mean that there is loss or deterioration to the ancient woodland. Nor did Mr Forbes-Lair accept trees in ancient woodland were irreplaceable habitat only that they were a component of the habitat.

92. In the same vein, Ms Graham argued in XX that inserting a single 3-inch diameter screw pile in ancient woodland would result in the loss of ancient woodland. Indeed, when asked whether the 'loss' from inserting a single screw pile in ancient woodland would trigger the requirement for wholly exceptional reasons to be shown, Ms Graham said that the "*NPPF says any loss, so the answer would be yes*". Ms Graham later affirmed that position in response to a question from the Inspector, saying that there was no concept of a *de minimis* loss or deterioration of ancient woodland and that any impact would result in loss or deterioration.

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1 In the previous 2018 version of the Standing Advice, this recommendation more sensibly only applied to proposals involving the <u>loss</u> of ancient woodland.

2 The 2018 version of the Standing Advice correctly placed woodland management of an impacted woodland under the heading of 'mitigation' whereas the current Standing Advice places all woodland management under the heading of 'compensation'.

93. The Council now seeks to argue that the Council's case is not that the loss of one tree is a loss of ancient woodland (see LPA Closing para. 156). It is wholly understandable why the Council now wishes to distance itself from that position, but its submission is wholly inconsistent with the evidence given by Ms Graham and Mr Robins and the way it was put in XX to the Appellants' witnesses. However, the attempt by the Council to change its position in Closing self-evidently undermines its entire case and simply reinforces the Council's wholly unreasonable approach to the ancient woodland issues.

94. The Appellants submit that the Council's binary approach is wrong for multiple reasons.

95. First, it would mean that the removal of invasive species would be a loss of ancient woodland.

96. Second, it means the felling of trees as part of normal woodland management would necessarily constitute a loss of ancient woodland. Ms Graham sought to argue that the purpose of the intervention (e.g. why a tree is felled or a screw pile is inserted) was relevant to whether there would be loss or deterioration but that is wholly inconsistent with her binary approach.

97. Third, it flies in the face of the Standing Advice which recognises that woodland fluctuates as part of the normal process of woodland management – bottom of pdf 2 **[CD9/3]**.

98. Fourth, it suggests that an applicant would need to demonstrate wholly exceptional reasons even to undertake normal woodland management operations, which runs contrary to the widely accepted view that improving the biodiversity of ancient woodland is best achieved by managing it.

99. Fifth, the 2018 version of the Standing Advice categorised woodland management as 'mitigation' and re-categorised it as 'compensation' in the current Standing Advice. It is therefore clear that NE consider it can be either.

100. Sixth, although the Council frequently referred to the Standing Advice and the PPG as policy, both those documents only contain guidance. The Council appears to be unaware of that distinction, notwithstanding that the Court in ***Solo Retail Ltd v Torridge DC*** [2019] EWHC 489 made this clear. In that case, Lieven J (emphasis added) said:-

> "Therefore, Mr Neill has to fall back under Ground One, on the NPPG and in particular the detailed steps for an impact assessment set out in para 017 referred to above. In my view the NPPG has to be treated with considerable caution when the Court is asked to find that there has been a misinterpretation of planning policy set out therein, under para 18 of *Tesco v Dundee*. As is well known the NPPG is not consulted upon, unlike the NPPF and Development Plan policies. It is subject to no external scrutiny, again unlike the NPPF, let alone a Development Plan. It can, and sometimes does, change without any forewarning. The NPPG is not drafted for or by lawyers, and there is no public system for checking for inconsistencies or tensions between paragraphs. It is intended, as its name suggests, to be guidance not policy and it must therefore be considered by the Courts in that light. It will thus, in my view, rarely be amenable to the type of legal analysis by the Courts which the Supreme Court in *Tesco v Dundee* applied to the Development Policy there in issue."

101. Those observations have subsequently been applied by Lang J in ***White Waltham Airfield Ltd v RB Windsor & Maidenhead*** **[2021] EWHC 3408** at [78].

102. Not only is the Standing Advice guidance and not policy but it is NE/FC's guidance and not the Government's. It has not been consulted on or been subject to external scrutiny. Neither has the PPG setting out the Government's guidance.

103. Seventh, whether proposed development results in the loss or deterioration of ancient woodland has to be determined on the facts each case, as the BiE Inspector recognised – see DL15-30 **[CD4/36]**. However, on the Council's

binary approach to the Standing Advice and interpretation of loss/deterioration, there is no room for judgment because any non-natural intervention in an ancient woodland would result in loss or deterioration. Perversely, that would include forestry operations themselves (see below).

104. Indeed, on Ms Graham's analysis (as she accepted in XX), the logic that a single screw pile results in loss of ancient woodland because it disturbs the soil of the ancient woodland, would mean that excavating soil to plant a tree or to erect a fence post, or simply banging a fence post in, e.g. for deer proof fencing would result in the loss of ancient woodland no matter how beneficial protecting the trees from deer (an identified threat to ancient woodland) would be and would require wholly exceptional reasons to be demonstrated. Nor on the Council's approach to the Standing Advice is there any room for the impact of proposed development being *de minimis* – see above and, for example, para 7.1.8 Forbes-Laird PoE **[CD1/56]**.

105. The Council's position is so evidently wrong and absurd that it should not need to be explained and yet its 'strict' interpretation and application has entirely coloured its approach in this appeal on the impact on ancient woodland. However, it is instructive that the Council has taken this approach to the impacts on the ancient woodland as it suggests that because the details of the design and mitigation have been so thoroughly thought through and well worked out that the Council has been forced to take a 'strict' approach in defending its case.

106. The Appellants submit that the interpretation of the Standing Advice is more nuanced and in relation to whether current condition should be disregarded is simply wrong for the compelling reasons explained by Mr Forbes-Laird (paras 7.1.4 – 5 PoE **[CD1/56]**).

107. It is submitted that the Council's approach to disregarding current condition is nonsensical when considering whether proposed development will result in the deterioration of ancient woodland. As accepted by Ms Graham in XX, to determine whether something will deteriorate it is necessary to have a benchmark or baseline against which to assess the impact of what is proposed and the current condition of the ancient woodland provides that benchmark or baseline. The current condition cannot therefore be ignored in determining whether proposed development would result in its deterioration.

108. Further, it is well-established that the purpose of mitigation measures is to avoid or reduce adverse effects that would otherwise occur. In other words, the correct approach is to test for deterioration by asking whether there is an adverse impact on the receptor after mitigation – see the approach of Inspector Woodward in Clear View Farm at DL38 **[CD4/12]**. Properly understood and applied, if the condition of the ancient woodland after the proposed development (including any mitigation) would be no worse off or in a better condition than it was before the development it cannot sensibly be concluded that there is loss of or deterioration to the ancient woodland.

109. A further demonstration of the Council's 'strict', and the Appellants say wrong interpretation of the NPPF is its interpretation of fn 63 to the NPPF. This applies where loss or deterioration of ancient woodland occurs, and it is then necessary to demonstrate wholly exceptional reasons why permission should be granted.

110. Despite fn 63 starting with the words (emphasis added) "*For example, infrastructure projects...*", the Council's interpretation is that the only type of development which can satisfy the wholly exceptional reasons test are infrastructure projects such as roads or railway lines because these have to be in fixed locations and went so far as to say that they had to be national infrastructure projects. That misreading of the fn led Mr Stacey in XX to agree

that a new school for say 1500 children in an authority area where there was a clear and urgent need would not be development within fn 63 because it was not an infrastructure project and wholly exceptional reasons could, therefore, never be demonstrated such as to justify permission being granted.

111. Unsurprisingly, the Council has not tried to support Mr Robins' perverse interpretation of fn 63 (see LPA Closing paras. 201 – 204) preferring instead to argue that if housing development could meet the test of wholly exceptional reasons then the NPPF could and would have made that clear. However, the Council cannot ignore Mr Robins' evidence and his perverse and untenable position is indicative of the unreasonable approach that he and the Council's witnesses generally adopted.

112. Mr Robins in XX also sided with Ms Graham's 'strict' approach that a single screw pile in ancient woodland would result in the loss of ancient woodland. That led him to agree that the logic of his position meant that development which required a single screw pile in ancient woodland (or the loss of a single tree) would result in the loss of ancient woodland and trigger the requirement to demonstrate wholly exceptional reason (plus a compensation strategy) which could not then be met unless the proposed development was an infrastructure project! That is so obviously bad it does him no credit and again demonstrates the unreasonable approach the Council has adopted to the impact on the ancient woodland in this case. It should be rejected.

113. Premised on its 'strict' interpretation and unquestioning reliance on the Standing Advice, the Council argues that the Appeal Proposals will result in loss or deterioration to ancient woodland and/or veteran trees (see RfR1, 2 and 4) in the following ways:

    (1) the depth of buffer zones;

    (2) the inclusion of SuDS features in buffer zones;

(3) the impact of horizontal directional drilling;

(4) hydrological change;

(5) the construction and use of boardwalks;

(6) recreational pressure from new residents; and

(7) other ecological impacts.

114. Each of these are addressed in turn below before the benefits of woodland management are considered.

Depth of buffer zone to ancient woodland

115. The Standing Advice advises that proposals close to ancient woodland should have a buffer zone of at least 15 metres from the boundary of the ancient woodland. This, as the Standing Advice states and Mr Massheder accepts, is primarily to prevent root damage to trees in the ancient woodland – p. 7 Standing Advice **[CD9/3]**. It is in effect a precautionary distance to ensure that development is kept outside of the root protection area (RPA) of trees in the ancient woodland.

116. However, as Mr Forbes-Laird explained in his evidence, this is in the context of where there is a lack of detailed arboriculture information and is not the case here. With this application, the Appellants have undertaken an extensive and detailed tree survey which Mr Massheder accepted in XX complies with BS 5837:2012 **[CD9/8]** – see p. 38 Forbes-Laird PoE **[CD1/57]**. As Mr Forbes-Laird explained in his evidence (App. JFL 3), in his EiC by reference to tree data survey tables in the Tree Survey **[CD2/31]** (pdf 15-30) and in ReX, the RPA for all trees and groups of trees have been surveyed and there are no trees or groups of trees with an RPA greater than 15m.

117. In any event, save in two locations, the proposed ancient woodland buffers are in excess of 15m (often greatly in excess of 15m) as shown on Mr Baxter's Ancient Woodland Buffers Plan – App. AB2 **[CD1/60]**.

118. It is therefore submitted that there is no substance in Mr Massheder's criticism of the Appellants in not providing buffers of more than 15m to the ancient woodland on the Appeal Site – para 6.6 Massheder PoE **[CD1/47]**.

SuDS features in AW buffer zones

119. The Standing Advice does not advise against SuDS being located in buffer zones. Instead, it advises that SuDS should only be approved if the SuDS do not affect RPAs or any change to the water table does not negatively affect ancient woodland or ancient/veteran trees (at p. 8). The Council has <u>not</u> argued that the SuDS would result in any change to the water table and, therefore, locating SuDS within the ancient woodland buffer zones is acceptable provided they do not affect RPAs.

120. As submitted above, the comprehensive and detailed Tree Survey undertaken by the Appellants' arboriculture consultant means that the location of trees and the extent of their RPAs is fully known and the SuDS, although within the buffer zones, are outside the RPAs of individual trees and tree groups in the ancient woodland. Consequently, the SuDS will have no impact on any RPA of trees in or on the edge of the ancient woodland and their location in the buffer zones is entirely consistent with the Standing Advice.

121. Mr Massheder sought to argue that the SuDS basin to the east of Longwood Ghyll would encroach on the RPA of Tree No. 7053 (a non-native Coast Redwood) in the north-eastern corner of Longwood Ghyll and/or that this tree had the potential to become a veteran tree which would require, if it attained that status, a greater RPA than shown. It is submitted that are four reasons why Mr Massheder's concern is misplaced. First, as Mr Forbes-Laird explained, the

outer line of the SuDS pond is a mown working strip and is not excavated. It therefore has no impact on tree roots.

122. Second, tree 7053 is located within the Ghyll below the level of the proposed SuDS pond and its roots are not therefore impacted by the SuDS pond (Mr Forbes-Laird EiC).

123. Third, there is no certainty that tree 7053 will ever achieve veteran status and in any event is unlikely to do so for circa. 80 – 100 years (if at all) (Mr Forbes-Laird EiC). Moreover, Mr Forbes-Laird in his EiC made clear that the proposed SuDS basin would have no effect on the tree achieving veteran status.

124. Fourth, as Mr Jenkin said in his oral evidence, there is scope at the detailed design stage to adjust the location and/or shape of the SuDS ponds to ensure that they are located outside the RPAs of trees if there is any uncertainty (although the Appellants submit there is none). The Council's concern that it could not refuse an application of up 425 units (see LPA Closing para. 164) is a misunderstanding of the law (which is surprising given that the Village Concerns case relied on was a challenge to a Wealden District Council decision to grant planning permission in which Mr Robins' advice to the planning committee was relied on). As Dove J held at [47] (emphasis added):-

> "… in granting outline permission for "up to" a given number of dwellings it has been accepted by the local planning authority that the number of dwellings specified in this formula is an acceptable quantum of development. As a matter of interpretation of such an outline planning permission firstly, any application for the specified number of dwellings would be within the scope of the outline but, secondly, it is open to the applicant for reserved matters to provide details for a smaller number of dwellings. What is not available to the local planning authority is to refuse an application for the specified number of dwellings on the basis that the site is not capable of accommodating that number in principle. By the same token it is open to the local planning authority to refuse a reserved matters application for the specified number of dwellings on the basis that it does not amount to the best means of achieving the delivery of the specified number of dwellings on the site of the outline planning permission."

125. The Appellants are confident that the SuDS will not impact on RPAs because of the extensive survey work that has been undertaken but if they do then the lay out at the reserved matters stage can be revised to accommodate any adjustment to the SuDS.

126. For any or all of these reasons, Mr Massheder is wrong to suggest that because some of the SuDS ponds are located in the ancient woodland buffer zones they will have an adverse impact on the ancient woodland.

127. Mr Massheder also objected to the removal of trees for the SuDS basins – para 6.8 Massheder PoE [**CD1/47**]. However, Mr Forbes-Laird confirmed in his evidence that these trees (tree group TG7024 in the FLAC tree survey, per Mr Forbes-Laird's Appendix JFL6) were not in an area of ancient woodland [**ID19**] and the Council's reason for refusal relates to ancient woodland only.

128. As Mr Massheder accepted in XX, if the Inspector is satisfied that the proposed SuDS will not affect the RPAs then the fact that there are SuDS within the buffer zones would not be a reason for refusal.

Horizontal Direct Drilling (HDD)

129. As a preliminary point, it should be noted that the drainage solution forms part of the outline application with the full details to be provided at a later stage if permission is granted. However, in order to be satisfied that the proposed development can be drained without adversely affecting the ancient woodland, considerable thought and work has been done at this stage.

130. For example, Mr Jenkin has provided at App PJ5 **[CD1/54]** (pdf 29 – 55) a method statement from A E Yates explaining in detail how the pipe runs would be drilled to avoid any impact on tree roots in the ancient woodland through the use of horizontal directional drilling (HDD), a technique that the contractor has great experience of, including in ancient woodland.

131. Mr Kean for the Council did not seriously dispute that evidence and his primary concern was the possibility that the drill head might encounter something sufficiently hard to make it impossible to continue along that pipe run.

132. The Appellants' response is set out at paras 7.15 – 7.21 of Mr Jenkin's PoE **[CD1/53]** and section 6.3 of Mr Forbes-Laird's PoE **[CD1/56]**. In summary, the Appellants rely on four points. First, directional drilling is a tried and tested solution – including within ancient woodland (App. JFL16 **[CD1/57]**) – for forming trenchless drainage connections and can core through solid mass rock. It is a technique that has previously been endorsed by NE in similar circumstances – App. JFL17 **[CD1/57]**. Moreover, the only known rock underlying the surface layer of clay is sandstone, a relatively soft rock, and there is little to no risk of the drill encountering impenetrable obstacles.

133. In this regard, the decision maker must act on the evidence before them and there is no requirement that the Appellants must prove certainty. All that is required is that it is more likely than not that the ancient woodland will be protected. Although not necessary to do so, it is submitted that the Appellants' drainage evidence in fact provides a high degree of confidence that the ancient woodland will not be harmed by the drainage strategy including the use of HDD into the ancient woodland.

134. Second, the Appellants have engaged a specialist drilling contractor throughout the process with relevant experience of forming trenchless connections and who has visited the Site. Both Mr Forbes-Laird and A E Yates confirmed that they do not expect this to cause damage to the ancient woodland – see also A E Yates' Method Statement at Appendix PJ5 **[CD1/53]**.

135. Third, no machinery is required within the ancient woodland. The launch pit will be located outside of the ancient woodland and HDD does not require a receiving pit in the ancient woodland. Any machinery working within the buffer

zone will run on temporary ground protection in accordance with BS5837:2012 – see also the summary to the Construction Methodology set out at para 7.21 Jenkin PoE [**CD1/53**].

136. Fourth, Mr Forbes-Laird confirmed that the drill runs will be at least 1m below the soil surface to avoid root damage. This is more than adequate. As Mr Forbes-Laird explained, the majority of tree roots are in the upper 600mm of the clay soil which overlies sandstone and there is unlikely to be any real depth for rooting.

137. Mr Massheder sought to cast doubt on the Appellants' confidence that the drainage connections would not impact on tree roots by reference to a study at his App. 9 **[CD1/47]**. However, as he accepted in XX, that study relates to the root system of a veteran tree and not ancient woodland. He further accepted that there were no veteran trees in the ancient woodland that would be affected by HDD. His App. 9 is therefore of no assistance and does not support the Council's position that there is a risk to the ancient woodland from the drainage strategy.

138. Further, the Council's concerns about the potential impact of HDD have been recently dismissed on appeal at Clear View Farm **[CD4/12]**. Mr Massheder appeared at that appeal hearing and accepted in XX that the concerns expressed in the Council's evidence at that appeal were substantially the same as those expressed in this appeal and rejected by the Clear View Farm Inspector.

139. It is therefore submitted that the combination of the extensive work done to accurately map trees and involvement of a specialist contractor at an early stage provides greater confidence than is required that the drainage connections from the SuDS basins into the existing watercourses in the ancient woodland will not have any adverse impact on the ancient woodland, including any material impact tree roots. Indeed, Mr Massheder fairly accepted that if the

drainage connections can be drilled as described by Mr Jenkin (and there is no reasonable doubt that they cannot be) then it would overcome his concerns in relation to their impact on the ancient woodland.

140. The Council also argued that the installation of a prefabricated headwall would lead to the loss of the ancient woodland – para 4.17 Massheder PoE **[CD1/47]**; para 3.7 Graham PoE **[CD1/67]**. Mr Jenkin explained why with boreholes of 130mm and a pipe diameter of 100mm, headwalls will not be required. Any erosion risk would be mitigated by hand-installing a geotextile mat which would allow plants etc to grow through it – paras 7.23-4 Jenkin PoE and App. PJ9 **[CD1/53]**. Whilst Ms Graham sought to cast doubt on whether *all* plants could grow through such a mat, the evidence presented by Mr Jenkin was that suitable geotextiles are plant-friendly. Her view was not shared by Mr Massheder and the Council presented no evidence to the contrary.

141. A separate issue raised by Dr Hall relates to foul sewage. This is unrelated to the Council's concerns about HDD but it is convenient to address it here. Dr Hall's concern was that there was a risk that the machinery required to pump foul water flows from the Site to the mains sewage system would fail and result in sewage spillage. However, Mr Jenkin made it clear during the RTS that the use of pumps in sewage pumping stations is very common, that with routine maintenance there is no reason to think that the pump would fail, there will be a back-up pump and, in any event, the pump sits in a wet-well with storage capacity to accommodate a temporary failure (or more likely a power outage). Therefore, there is little or no risk of sewage spillage from the Site.

Adverse impacts from hydrological change

142. The drainage scheme has been designed in close cooperation with Mr Baxter and Mr Forbes-Laird to ensure that it has no adverse effect on the ancient woodland and is designed to mimic exiting conditions as far as possible. Mr Jenkin's evidence demonstrates that the drainage pipes from the SuDS basins

will connect to existing issues and fissures in the ancient woodland to maintain the existing regime. Controlling the runoff rate to Q-Bar will avoid the worst high intensity rain events (flash floods) currently causing rainwater to run-off the Appeal Site into the ancient woodland in an uncontrolled manner and which with climate change is likely to increase.

143. Controlling the rate of run-off in this way will reduce the risk of scouring and erosion of the existing watercourses and will benefit the ancient woodland. As Mr Jenkin explained in the RTS, the drainage system has been designed to accommodate storms up to the 1 in 100 year + s 45% climate change allowance. In a post-development flood exceedance event, the proposed SuDS basin would capture surface water and only when they exceeded their capacity would surface water overflow the crest of the basins and flow overland to the watercourses within the ancient woodland and mimic existing flooding which currently flows overland in an uncontrolled way along existing flow routes and into the ancient woodland – paras. 7.36 – 7.37 Jenkin PoE **[CD1/53]**.

144. Nor will the quality of the water discharged into the ancient woodland watercourses be changed. Mr Jenkin gave extensive and unchallenged evidence in his PoE and at the RTS as to the 'treatment train' and pollution control measures that can be incorporated into the drainage system to ensure that there is no adverse impact from the development on water quality in the ancient woodland or ultimately the Shortbridge stream.

145. An issue pursued by DAG, but not the Council, is that development on the Appeal Site will adversely impact on the ancient woodland in Lake Wood to the south by altering the hydrological and hydrogeological regime.

146. In his PoE, Dr Thompson asserts that his evidence demonstrates *"hydrological and (surface water) and hydrogeological (groundwater) links between Downlands Farm and sensitive ecological receptors"* **[CD1/32]**. It does no such thing. As he confirmed in

XX, his evidence does not set out to prove that those links exist. Dr Thompson further accepted that the only receptor his evidence was directed at was Lake Wood and in fact, the highest he could put it is that there is a "likelihood" of such a link.

147. As regards a hydrogeological link, Dr Thompson's evidence was that (1) the Grinstead Clay overlying the Appeal Site is incorrectly described by the British Geological Survey (BGS) as an 'aquiclude' when it is more accurately described as an 'aquitard'; and (2) there is an hydraulic gradient between the Appeal Site and Lake Wood.

148. Whether the Grinstead Clay is an aquiclude or an aquitard is to dance on the head of a pin. The Appellants' borehole surveys (which Dr Thompson does not criticise) demonstrate that the Site's permeability is so low that infiltration is not a surface water drainage option. Indeed, it is for exactly this reason that the drainage strategy uses SuDS basins and discharge into the existing watercourses.

149. It is also clear that infiltration from the Appeal Site through the Grinstead Clay into the underlying Ardingly sandstone aquifer is unlikely to be significant. As Dr Thompson accepted in XX, what is more likely to be a greater contributor to recharging the sandstone aquifer is rain falling on the exposed sandstone where it outcrops which then permeates through the sandstone. Moreover, where the sandstone outcrops from the Grinstead Clay is most obviously in Lake Wood itself – see para. 6 and Fig.2 of Dr Thompson's PoE **[CD1/32]**.

150. The *possible* existence of a hydrological gradient does not assist DAG. Whether one exists and, if so, its extent could only be determined by drilling boreholes on the Appeal Site and Lake Wood which, at no point until Dr Thompson gave his oral evidence, has been suggested. Nb. Dr Thompson's hydrological gradient point was first raised when he gave his evidence at the Inquiry despite

having looked at the ES and the FRA. Even if it is assumed that the a material hydrological gradient exists, its existence tells us nothing about whether the water in the aquifer has come from the Appeal Site (or if so how much) taking into account that the aquifer extends over a very much larger area than the Appeal Site and will be recharged over an extensive area and at many different points.

151. Nor does the presence of moisture liking plants (liverworts etc.) seen on the sandstone outcrops in Lake Wood and relied on by Dr Thompson provide any evidence that water in and travelling through the sandstone has come from the Appeal Site (well over 100m away). He could not say in XX that the water in the sandstone outcrop in Lake Wood and demonstrated by the mosses originated from the Site and that it was no more than a possibility that it did so. As Mr Forbes-Laird said, given the extent to which the sandstone outcrops within Lake Wood, the moisture is more likely to come from rain falling onto that sandstone.

152. The reality is that neither DAG, Dr Thompson nor anyone else can remotely demonstrate that rain falling on the Appeal Site makes any or any significant contribution to the recharge of the sandstone aquifer underlying the Grinstead Clay that covers the great majority of the Site or that developing the Site will have any impact on Lake Wood.

153. So far as hydrological flows are concerned Dr Thompson confirmed that only one of the photographs (not taken by him) and which is within Lake Wood itself shows a flow path to the lake – see plate 5, p. 10 **[CD1/32]**. He also confirmed in XX that this was not something he had seen for himself. There is no evidence, including from this photograph, that water flows from the Appeal Site into Lake Wood or, even if it does, that it makes any material contribution to the water in the lake. Indeed, Dr Thompson accepted in XX that he was not able to assist the Inspector as to how much water flowed overland into Lake

Wood but acknowledged that it was a relatively small proportion of the catchment. He also accepted that there were no surface pathways other than his plate 5 and that it was "*mostly an issue for groundwater*". That is entirely consistent with the consensus, including by DAG, that the lake is spring fed.

154. The upshot is that DAG has wholly failed to substantiate its concerns that there is any likelihood of hydrological and/or hydrogeological links between the Appeal Site and Lake Wood or, if there are, that they make any meaningful contribution to Lake Wood or that developing the site would adversely impact on Lake Wood and its ancient woodland.

Boardwalk (Fir Tree Grove)

155. The proposed access through the Fir Tree Grove takes the form of a 3m wide screw-pile supported boardwalk **[CD2/17-22]**. The crux of the Council's complaint is that the installation of the boardwalk will result in the loss of ancient woodland through the loss of trees and impact on the soil and thereafter the boardwalk itself will *"sterilise"* the soil underneath it – para 6.10 Massheder PoE **[CD1/47]**; para 7.2.9 Graham PoE **[CD1/44]**.

156. As submitted above, the Council's entire case on the impact on ancient woodland is underpinned by its 'strict' interpretation of para. 180(c) of the NPPF. The Appellants' submissions as to the absurdity of that position are not repeated here although it is important to note that Mr Massheder rightly and sensibly does not share Ms Graham or Mr Robins' extreme views that the loss of a single tree or the insertion of a single screw pile would necessarily result in the loss of or deterioration to ancient woodland.

157. The Appellants' evidence on the construction and use of boardwalks is comprehensively set out in section 6.5 of Forbes-Laird's PoE **[CD1/56]** and paras 4.5.3 - 14 Mr Baxter's PoE **[CD1/59]** and in their oral evidence. Further, the Appellants make the following submissions.

158. First, the use of boardwalks within ancient woodland is a well-established response to access management and examples are given of their use in ecologically sensitive areas by Mr Baxter at paras. 4.5.6 PoE **[CD1/59]** with further examples identified in Appendix 5719/4 to TN09 **[CD2/101]** (pdf 37 – 39).

159. Second, as submitted below, NE has <u>required</u> the use of boardwalks in the ancient woodland part of the SANG in full knowledge of the appeal proposals – Section 1 of NE Appeal Statement 13 July 2023 **[CD12/1]**; para 4.5.6 Baxter PoE **[CD1/59]** and as accepted by Ms Graham accepted in XX. Indeed, this is confirmed in their latest consultation response dated 31st October 2023 which was provided after they had been sent details of the proposed boardwalk construction, including the use of screw piles. It plainly accepts the use of boardwalks in ancient woodland.

160. Third, the alignment of the boardwalk in FTG has been carefully selected to avoid the loss or impact on any important trees. Although 62 trees will be removed to construct the boardwalk they have all been fully surveyed and all are of low or moderate quality (50 of the 62 i.e. 80% are of low quality trees, 80%) – Tree Retention/Removal Plan JFL6 **[CD1/57]**. As Mr Forbes-Laird made clear in his evidence, there is a distinction between the loss of trees and loss of woodland and that tree removal is a normal part of sylviculture and indeed a normal and essential element of woodland management. None of the trees to be removed contribute to the integrity of the ancient woodland. Mr Baxter said that the trees lost are younger trees or non-native trees which include a number of coniferous trees whose needle drop is causing localised deterioration.

161. Fourth, the ground flora along the route of the boardwalk has been mapped and, of the 24 woodland indicator species identified in FTG as a whole, the construction of the boardwalk would require the relocation of six common

woodland species none of which are vulnerable to disturbance. As Mr Forbes-Laird described prosaically said they are "*tough as old boots*". Relocation would comprise hand digging the plants up and replanting them a distance of 2 or 3 metres to the side of the proposed boardwalk.

162. Fifth, the relocation of habitat known as "translocation" is not required and the examples given by Ms Graham in her evidence relating to the mechanical stripping of large areas of ancient woodland soil and their relocation to other sites are misleading. There is no translocation of ancient woodland soil in FTG.

163. Sixth, the ground screws do not require excavation and any significant tree roots can be identified and avoided using ground imaging radar. Examples of the proven techniques are provided at App. AB11 **[CD1/60]** and Mr Forbes-Laird's Fig. 5 at p.36 PoE **[CD1/56]**. As Mr Forbes-Laird said, minor impacts on tree roots have no measurable effect as more than 50% of a tree's root system by mass regrows every year. Further, any necessary additional investigation to determine the optimal location of any ground screw to avoid damage to tree roots will be undertaken and the Appellants retain flexibility to adjust further where there may go – para 7.5.2 **[CD9/8]**. In addition, Mr Baxter said in EiC that screw piles "*would not cause soil loss, it is simply screwed into woodland soils and inserts directly downwards*" and that the use of screw piles to support the boardwalk off the ground is a "Rolls-Royce" solution. The Appellants submit that Ms Graham is again simply wrong that the insertion of the screw piles would result in a loss of soil or soil function or that there would be an adverse impact on tree roots from the screw piles.

164. Seventh, the soil beneath the boardwalks will be retained intact and continue to function as part of the ancient woodland providing habitat for fungi, mosses, bryophytes, insects, worms and other small nematodes – see Forbes-Laird EiC. There would be no change to the soil processes, and it would continue to provide a medium for tree roots. As Mr Forbes-Laird said, the only effect of

the boardwalk would be on photosynthesising plants (an effect mitigated by relocating them to bare ground receptor sites nearby) and there would be no material impact on the functionality of the soil below the boardwalks. Mr Baxter confirmed that the soil beneath the boardwalks would remain available for woodland function including invertebrates and fungal connections. Mammals would be able to pass beneath the boardwalk.

165. It is submitted that Ms Graham is wrong that the boardwalk would impact on the soil structure and prevent 'natural processes' occurring. Indeed, when asked in XX what 'natural processes' would be prevented by the boardwalk she said "*leaves falling on the ground*". Seriously? In any event, leaves would not be prevented from blowing under the boardwalk where they would collect and continue to contribute to the natural soil processes.

166. The ancient woodland comprises a mosaic and the boardwalk footprint is 1.2% of the total area of FTG (2.5ha) – see para 7.1.8 Forbes-Laird PoE **[CD1/56]**. With the area below the boardwalk continuing to function as ancient woodland soil and provide ancient woodland soil functions there would be no loss or deterioration to the ancient woodland.

167. A further issue which arose during the Inquiry was the impact of lighting along the boardwalk to ensure it is accessible at all times – p. 123 Bell Apps **[CD1/26]**. There is no substance in that concern, detailed lighting analysis has been undertaken which demonstrates that the lighting can be contained to 0.4 lux – see Illustration of Lighting of Boardwalk through Fir Tree Grove AB5 Li-FTG **[CD1/60]**. In this regard, as Mr Baxter explained, the lighting scheme has been designed to accommodate (i.e. to not cause disturbance to) the most light-sensitive bat species (horseshoe bats) which is not even present in FTG. Thus, the boardwalk has been further design to a standard that goes beyond what would be acceptable to ensure that there will be no impact. This, together with a continuous tree canopy over the boardwalk, will ensure that there is no

negative ecological impact, particularly on the most light-sensitive species such as bats and dormice – paras 4.6.8-9 Baxter PoE **[CD1/59]**.

Boardwalk in ancient woodland in the SANG

168. The Appellants' submissions above as regards the impact of constructing a boardwalk are not repeated here but just as relevant. The Appellants make the following additional submissions relating to the boardwalk in the ancient woodland comprising part of the SANG.

169. First, the use of boardwalks is required by NE. This is clear from its consultation responses, in particular its responses dated 13th July 2023 **[CD12/1]** and 31st October 2023 **[ID19]**. Those letters speak for themselves - no matter how hard the Council seeks to distance itself from them as it seeks to do in its Closing Submissions by barely mentioning them (see LPA Closing para. 136). Moreover, NE's advice was given in full knowledge of the original and revised proposals together with the information supporting them and that the SANG included using ancient woodland (as Mr Robins agreed in XX).

170. In XX, Mr Massheder eventually accepted that it would be *'surprising'* if NE were requiring the use of boardwalks if it thought that they would cause damage to an irreplaceable habitat. It would not only be 'surprising' but astonishing if the effect of them would be to result in loss or deterioration to ancient woodland. That would indeed make no sense. It was because of this concession that Mr Massheder was forced to say that "*the Council's position is we disagree with them*". No reason was given, just that the Council disagreed with NE. Mr Robins was no more forthcoming. His reason for disagreeing with NE at para. 4.42 of his PoE **[CD1/41]** was that "*NE's approach to the SANG proposals, simply makes no practical nor common sense*" and in XX he said that "*[t]heir* [NE's] *advice doesn't make any common sense*" and "*NE makes no sense to encourage one thing* [i.e. the provision of boardwalks] *and then point to Standing Advice*".

171. The Council's difficulties with NE's clear requirement to use boardwalks, and its acceptance that the use of boardwalks avoids the loss or deterioration of ancient woodland in this case, are compounded by Mr Robins' revelation in XX that he had spoken with and challenged the author of NE's 13th July consultation response before it further responded on 31st October 2023 **[ID19]** saying that its requirements had been met. Therefore, not only is NE's position and advice one which was taken on a fully informed basis but the Council expressly raised its concerns about NE's approach and advice in this case and NE nonetheless confirmed on 31st October 2023 that its requirements had all been met (including the provision of boardwalks in the ancient woodland).

172. The Appellants submit that the reality is that the Council disagrees with NE because NE's advice does not suit its case that the inclusion of ancient woodland as part of the SANG will cause loss or deterioration to the ancient woodland.

173. Given the Council's criticism of the Appellants' disagreement with the Standing Advice, its assertion that the Council disagrees with NE's specific and informed consultation response to the SANG proposals demonstrates breath-taking hypocrisy.

174. Moreover, unlike the Appellants' *reasoned* argument for disagreeing with the Standing Advice, the Council's only argument is a bald assertion that NE's advice is wrong. It has been unable to advance any sensible reason for its position and it is apparent that the Council has approached this case on the basis of its 'strict' interpretation of the Standing Advice which has resulted in it taking an extreme (and it is submitted an unreasonable) position and/or because it has an in-principle objection to SANGs including ancient woodland and/or the use of boardwalks in ancient woodland.

175. Second, Mr Baxter's App. AB9 **[CD1/60]** (replaced at the Inquiry by **[ID22]**) contains 10 Case Studies of where SANGs managed by local planning authorities and wildlife trusts have included ancient woodland. In answer to the Inspector's question, Mr Baxter explained that many of the examples he gave of SANGs contained large areas of ancient woodland.

176. Mr Robins' response in XX to this evidence was that he did not think any of these examples were contemporaneous to the current Standing Advice. This is a complete red herring for two good reasons. The first reason is that the purpose of SANGs is to mitigate the impacts that development would otherwise have on European Sites (SPAs and SACs) and NE are necessarily consulted on such proposals and nonetheless has accepted the use of ancient woodland as part of SANGs. The second reason is that NE in this case has specifically accepted the use of ancient woodland as part of the proposed SANG after it published the current Standing Advice.

177. It is submitted that the real reason why Mr Robins responded as he did is because he is opposed in principle to SANGs including ancient woodland (no doubt because of his 'strict' interpretation of the Standing Advice). Thus, when asked in XX whether a SANG should ever include irreplaceable habitat or ancient woodland his answer was that "*A new SANG in an ancient woodland is going to be a problem in my view*". That answer demonstrates his in-principle opposition and it is submitted that his position is wholly at odds with and is unsupported by NE or any evidence before this Inquiry.

178. In particular, it is at odds with NE's Guidelines for the creation of SANG **[CD9/5]** which does not prohibit the inclusion of ancient woodland within SANGs and only advises that they should avoid sites of high nature conservation value. Because of the potential for damage to such sites it advises that they "*may require an ecological discount of their proposed SANG area*" – see p.1. In this case an ecological discount has been applied providing a further

safeguard against loss or deterioration to the ancient woodland.The boardwalk in the SANG will follow existing paths created by uncontrolled use by members of the public. These are in large part well-trodden, muddy and damaging to the ancient woodland – see Plan 5179/AB4 SEPC, Baxter's Existing Path Condition Plan **[CD1/60]** (pdf 13). No doubt the Council will ask the Inspector to ignore this as part of the ancient woodland's existing condition but it cannot sensibly be ignored for the reasons explained above.

179. Third, taking the existing condition into account, as it logically should be, Mr Forbes-Laird said that the boardwalks will confer an immediate benefit by preventing further ground damage. As he further explained, excessive footwear compacts the soil to below a level where natural processes can continue whilst the crushing effect physically damages tree roots in the upper soil horizons. This, he said, leads to water-logging and adversely inverts the fungi to bacteria ratio of the woodland soil so that bacteria have the ascendency and outcompete fungi. This has a further direct adverse impact on the health of trees because of the relationship between trees and beneficial, symbiotic, mycorrhizal fungi. Mr. Baxter confirmed this in his EiC.

180. Mr Forbes-Laird went on to explain that the proposed boardwalk in the SANG would allow natural processes to return "*led by the earthworm*" (as he put it "*the heroes of the soil*") which would result in the soil de-compacting and aerobic conditions and tree roots to return. Boardwalks are, as he said, "*very widely used in sensitive environments, including ancient woodland, and have an effect which is anywhere from protective to beneficial*".

181. Fourth, construction of the boardwalk (which would be narrower than the 3.0m wide FTG boardwalk) does <u>not</u> require the relocation of ground flora because it follows the routes of the existing (and often damaged) footpaths and are at least of a similar width to the proposed boardwalk. It <u>may</u> result in the loss of up to 20 trees but as Mr Forbes-Lair and Mr Baxter explained it will be

possible to adjust the width of the board walk around pinch points and this therefore is a worst-case maximum number. The 20 coppice tree stools along the route which also may require relocation are young and resilient and can be relocated successfully (if necessary). As Mr Forbes-Laird made clear, these figures are precautionary and hence intentionally worst-case.

182. The SANG boardwalk will be 1.5m wide (half the width of the 3.0m wide FTG boardwalk) which will be wide enough for people to pass without stepping off the boardwalk as alleged by the Council. If necessary, brash piles and other access-deterrent measures can be created to further deter access. The SANG boardwalk will not be lit.

183. Fifth, importantly, and as required by NE, the SANG will be subject to a Visitor Access Management Plan to facilitate and mange visitors. Such plans are entirely commonplace and required by NE to accompany all SANGs to ensure that they are fit for purpose and function in perpetuity – see Baxter EiC. Moreover, NE was fully aware of the measures in the proposed plan for this SANG when it confirmed that the SANG requirements had been met.

184. Further, the management will be in the hands of the Land Trust, an organisation that has great experience of managing SANGs, and who NE expressly referred to in its letter as an appropriate body to manage this SANG. As Mr Baxter said in EiC "*the Land Trust is a national charity specialising in long term land management and has had a lot of success in managing SANG. NE trusts them*". The Land Trust is fully aware of the management proposals, has fully costed them and signed them off at board level. That has not been challenged by the Council and there is no good reason to doubt that the SANG can and will be managed effectively in such way to ensure that the use of the SANG does not result in loss or deterioration to the ancient woodland. In this regard and given the nature and purpose of the SANG there is no reason to think that there will be

increased disturbance or incidence of fires or erosion – see p.1 of the SANG Guidelines **[CD9/5]**.

185. Nor is there any reason to think that there will be an increased input of nutrients from dog faeces. SANGs are intended to divert visitors, a very large proportion of which are used dog-walkers, from using European Sites. As the SANG Guidelines **[CD9/5]** record "*A very large proportion of the SPA visitors are dog walkers, many of whom visit the particular site on a regular (more or less daily) basis and spend less than an hour there, walking on average about 2.5km*" – see p.2. It subsequently advises that it is imperative that "*SANG allow for pet owners to let dogs run freely over a significant part of the walk*" – see p.3.

186. The proposed SANG meets all of NE's requirements for an effective SANG and, as Mr Baxter said in ReX there is ample open grassland outside of the ancient woodland and close to the car-park for dogs to roam freely. This, as he explained, is important because dogs defecate as they leave the house or the car and typically within 10 mins of a walk. Dog walkers are now much more responsible and the provision of convenient bins will encourage owners to pick up their dog's faeces. The proposed SANG allows for that. Plainly a dog defecating in the ancient woodland cannot be ruled out completely but there is no evidence before the Inquiry that this would result in deterioration to the ancient woodland. All this is well-known to NE who have agreed that the SANG and its proposed management meets its requirements.

187. This is the most appropriate place to deal with the objection of Mr Daines, who confusingly appeared before this Inquiry giving evidence under the banner of DAG, but apparently also on behalf of CPRE. In XX, he confirmed that his primary issue was that the Habitats Regulations Assessment, on which the Inspector is asked to place reliance as the competent authority, is defective by reason of a lack of an evidence base to support the conclusion that SANGs and SAMMs are effective. In support of his claim, he provided no direct

evidence but placed reliance on the thesis of the PhD thesis of Elizabeth Allinson - para 12 Daines PoE **[CD1/39].**

188. However, his evidence should be given no weight because (as he accepted in XX):

(1) he/CPRE failed to provide a copy of the thesis which is not in evidence in this Inquiry;

(2) the extract which he did provide showed the opposite of what he sought to argue. Ms Allinson is at least equivocal about the effectiveness of SANGs and her thesis provides at least some support that they may be effective - para 13 Daines PoE **[CD1/39]**;

(3) despite attempts by Mr Daines/CPRE to engage in dialogue related to this concern, the relevant Government expert - NE - does not agree with this view on the effectiveness of SANGs[3] but who have agreed that, its relevant conditions having been met, it is satisfied that the SANG will provide sufficient mitigation to ensure Ashdown Forest is not affected - pg. 2 NE Rep **[CD12/1]**;

(4) no other organisation supports Mr Daines' objection. Nonetheless, CPRE/Mr Daines have submitted near identical representations in respect of similar schemes where HRAs have been provided - DL29-38 **[CD4/29]**; and

(5) it appears Mr Daines is off on a frolic of his own with this issue. Despite purporting to appear on behalf of CPRE, he admitted in XX that he does not have the authority to attribute his personal views to CPRE in this public manner.

[3] Mr Daines' view that the Inspector should not give any weight to the NE advice because he describes it as "erroneous" flies in the face of clear authority on weight to be given the to the view of statutory bodies.

Recreational pressure from new residents

189. In addition to the recreational pressure from visitors to the SANG, the Council asserts that new residents will put pressure on ancient woodland adjacent to residential areas and/or Lake Wood.

190. As Mr Baxter explained the depth of the buffer zones and orientation of dwellings avoids their gardens backing onto ancient woodland. This is relevant because the greatest risk is owners extending their gardens into ancient woodland and/or dumping garden waste in ancient woodland and introducing invasive species.

191. The nature of Longwood Ghyll does not lend itself to public access and the Council has produced no evidence that children are likely to set fires. Even if some more adventurous children do go into the ancient woodland, there is no evidence that this will result in the deterioration of the ancient woodland. Fears that dog proof fencing (in the SANG or elsewhere) would prevent the movement of mammals is wholly unfounded. When put to Mr Baxter in XX that if a fence is dog proof then it will be badger and hedgehog proof too, he said "*not at all, badgers are digging machines*" and "*hedgehogs are also pretty good at getting under things too*". And, when it was put to him that if a badger can dig under a fence then a dog can too, he said that was not quite right and that "*large dogs will struggle*". He made the further point that dogs out on a walk will generally follow their owner and be deterred by fencing.

192. The Council's concerns about cats are no more substantiated. The Council has not produced any evidence to support its claims of mass predation and in response to the proposition put to him by the Council in XX that "*this development will introduce 100 new predators immediately adjacent to the ancient woodland*", Mr Baxter explained that cats are territorial, have no impact on dormice and if they went into the woodland any birds or small mammals they predated on were likely to be the old and sick.

193. A concern, particularly by DAG, was expressed about increased pressure being put on Lake Wood from new residents of the proposed development. The Appellants submit that there is no real substance to those fears.

194. Entirely consistently with its Position Statement on Access to woodland (Baxter App. AB10 **[CD1/60]** (pdf 211-213), the Woodland Trust's Lake Wood Management Plan **[CD11/5]** encourages public access. As it states on p.11 in the section headed "Connecting People with woods & trees" under the heading of "Significance":-

> "Access to woodland provides an improved quality of life with benefits to both mental and physical health. Lake Wood provides the local community with a visually impressive site with an interesting history and very good wildlife habitat. Increasing the public's enjoyment and understanding of woodland is one of the main aims of the Trust and allowing open access to its sites is a crucial part of achieving this."

195. A concern of DAG, apparently shared by the Council, and identified in the Management Plan is that Lake Wood is subject to anti-social behaviour such as camping, fires, swimming, litter and vandalism – see p. 6 **[CD11/5]**. However, as Dr Stenning (a voluntary warden in Lake Wood) explained, these anti-social behaviours largely occurred during COVID because of inaccurate social media publicity. Mr Massheder in XX agreed. Mr Massheder also agreed in XX that there had been no decline in the ancient woodland in Lake Wood notwithstanding public access or in the ancient woodland's biodiversity.

196. There is no evidence before the Inquiry that the proposed development will result in a significant increase in visitors to Lake Wood or that even if it does that it will result in any deterioration to Lake Wood. Moreover, any concern that the proposed development will cause residents to have uncontrolled access to Lake Wood can be addressed by a fence along the boundary.

Other ecological impacts

197. It is important to note that between 2019 and 2022, the Appellants' consultants caried out a range of survey work and that the full picture of the Appeal Site's biodiversity is known – section 3.2 Baxter PoE **[CD1/59]**. For example, Mr Forbes-Laird alone has spent 11 days on the site, compared to Ms Graham's half a day; per Mr Forbes-Laird EiC), The detail of this work is set out in the baseline Ecological Appraisal **[CD2/79]** and the Biodiversity Chapter of the ES **[CD2/40]**. It involved a particular focus on bats (paras 3.4.8-9), dormice (paras 3.4.10-11), badgers (para 3.4.7), breeding birds (paras 3.4.14-15), great crested newts (para 3.4.12) and reptiles (para 3.4.13).

198. Dr Stenning's criticism that invertebrate surveys had not been undertaken is of no significance because the semi-improved grassland does not contain any special habitat that is likely to result in any unusual invertebrate species and neither Dr Stenning, DAG or anyone else has provided any evidence to the Inquiry that there are particularly rare or unusual invertebrates on the Site. On the contrary, as Mr Baxter explained, the survey work was (quite properly) focused on habitats of potential for invertebrates. The relevant assessment is set out in table 7.8 of the ES (following para 7.64 **[CD1/14]**) (pdf 39)) which states that there is *"[n]o evidence for the presence of any protected, rare or other notable invertebrate species"* within the Site. Having identified this was a species poor grassland, this was scoped out as requiring further survey work.

199. Nor has the species list Dr Stenning has kept (and which are largely concerned with Lake Wood) revealed anything that was not already known to the Appellants.

200. The Council asserts, but has provided no evidence, that noise or lighting from the proposed development will have an adverse impact of the ecology in the ancient (and other) woodland. As Mr Baxter explained in XX, residential development is quiet. Domestic lighting is not an issue and car headlights will

not generally shine into the ancient woodland. Where there is a risk, such as at a roundabout, reservation planting will stop this.

201. Nor is there any substance in the Council's concerns relating to the impact on bats and dormice using the woodland corridor along the A22. The emergency access is proposed where there is a gap in the woodland at ground level (with a closed canopy above, which would remain), which is secondary woodland and not ancient woodland which, by definition, would only use it in the event of… an emergency. Its use will be restricted to emergency vehicles. It will be constructed using a no-dig structure with minimally invasive supports – JFL23 **[CD/57]**. This is in accordance with the principles set out in BS5837:2012 (para. 7.4 **[CD9/8]**) and prevents the need for excavation down into the soil - section 6.6 of Forbes-Laird's PoE **[CD1/56]**.

202. As Mr Forbes-Laird made clear in his EiC, its construction does not result in the loss of woodland and a tree canopy will be maintained over the access.

203. Similarly, Mr Baxter explained at length how connectivity will be maintained across the main access (also at a point where the woodland is secondary) both at ground level and through the use of heavy standard trees and tried and tested temporary dormice cross-overs (readily licenced by NE). None of which is substantially disputed.

204. Ms Graham raised a new concern in her evidence about the adequacy of the bat surveys undertaken by the Appellants but there is nothing in this. Until she gave her evidence at the Inquiry the Council has never raised any issue with the bat surveys which Mr Baxter explained in EiC have been comprehensive and the scheme designed to ensure that there are dark corridors allowing even the most light-sensitive bats to commute and forage.

205. A particular complaint raised by Ms Graham is that the Appellants have failed to conduct an appropriate bat survey within the woodland – para 7.3.21 – 7.3.22 Graham PoE **[CD1/44]**.

206. Mr Baxter's evidence on this was clear. The survey work includes manual activity surveys which appropriately surveyed the woodland area – see (pg. 234 ES Addendum Letter **[CD1/14]** (pdf 235-240). The listening points included Budlets Common Woodland in the north, the bracken clearing (point 11), the SANG woodland (point 3) with the other listening points located along woodland edges and along the hedgerows and scrub to the north. The south was less accessible, which meant the surveyors walked a transect route along the edge of the woodland. These bat surveys were scoped with the Council who raised no concerns.

207. Despite the Council making a big fuss of the August and September bat data when it was provided to it, the reality is that this data are entirely consistent with the Appellants' earlier surveys – see the Bat Addendum **[ID30]** together with Mr Baxter's response **[ID42]** to Ms Graham's note **[ID39]** on the Bat Addendum.

208. Like so much of the Council's case, its criticism of the extensive work undertaken by the Appellants to understand exactly the Site's ecology is made at a belated stage and relies on assertions that the Appellants could have done more or done it differently. The Council has not produced any evidence to substantiate its fears that harm may be caused to the ancient and other woodland and their ecology which is well-understood by the Appellants and the scheme designed to accommodate it without any significant adverse impact.

209. Notwithstanding the fact that mandatory BNG requirements do not apply to this appeal, the proposals are nonetheless subject to a voluntary BNG assessment, which shows a significant BNG would be achieved on the Site – para 8.5.3 Baxter PoE **[CD1/59]**; Updated BNG Assessment Appendix

5719/AB5 **[CD1/60]** (pdf 115-137). Ms Graham's view is that the woodland management measures proposed are unlikely to achieve the outcomes necessary to achieve the BNG scores relied on by the Appellants – para 7.4.6 Graham PoE **[CD1/44]**.

210. In her oral evidence Ms Graham raised for the first time a further concern about an alleged failure to demonstrate 'additionality' where the Appellants were relying on an inter-relationship between BNG and SANG. However, she eventually agreed in XX that although she was aware of the point before she wrote her evidence she deliberately chose not to say anything until she gave her evidence. That suggests one of two things. Either the point is not one of any significance or she was hoping to ambush the Appellants. It is submitted there is nothing in the point.

Benefits of woodland management

211. To be clear, woodland management is not necessary to mitigate any impact on the ancient woodland. That is achieved variously through extensive buffer zones, the use of supported boardwalks using screw piles (which in the SANG also provides an immediate benefit to the degraded paths), the relocation of woodland flora along the route of the FTG boardwalk, the use of sensitive lighting and the management of visitors to the SANG through the SANG Visitor Management Plan. The woodland management is intended is to improve the condition of the ancient woodland and thereby increase its biodiversity.

212. As Mr Massheder accepted in XX, extensive arboriculture surveys have been undertaken by the Appellants of all the woodland (including the ancient woodland) on the Appeal Site. He further agreed that:-

(1) none of the woodland has been manged for many years;

(2) all of the woodland would benefit from management;

(3) FTG has not been identified as priority habitat because of its mixed nature (containing coniferous and broad leaf tree species) and it is "*not the best quality woodland*" and would particularly benefit from management.

213. There is in reality no doubt that all of the woodland would benefit from management which would increase biodiversity in line with the Government's aspirations to improve ancient woodland and the only reason why the Council discounts the benefits of management is because in relation to the ancient woodland it relies on its 'strict' interpretation of the Standing Advice to (1) disregard its existing condition, and (2) suggest that management could occur anyway, without development-related funding. The latter is an approach that Mr Forbes-Laird describes as "Micawber-esque" (his Proof at 3.2.9).

214. As to the first point, the Appellants repeat their submissions as to the interpretation above. As regards the second point, Ms Graham suggested that there were schemes and grants available to improve the woodland. Her difficulty is that she provided no evidence of these. There are no economic incentives to manage the woodland and no evidence that the landowners will incur substantial sums of money in the future if planning permission is refused. By contrast the appeal proposals will serve to restore the ancient woodland, just has been the case for the ancient woodland SANG examples cited by Mr Baxter **[ID22]**, in line with government policy targets (Keepers of Time **[CD9/6]**) and provide an in-perpetuity funding source to ensure that this benefit is maintained for the long term.

215. The Appellants make two final point on this topic. First, they accept that various elements of the Appeal Scheme will interface with ancient woodland. However, the design and mitigation process reduces the impacts – for example, from screw piles – to zero. In answer to the Inspector's question as to whether a number of minor impacts can add up to a major or a significant impact, Mr Forbes-Laird said that zero multiplied by any number sums to zero.

216. Second, the test is not one of certainty that there would be no loss or deterioration, or beyond all reasonable scientific doubt (per European protected sites), but instead the balance of probability. In other words, is it more likely than not that harm (loss or deterioration) would arise if the Appeal were to be allowed? It is the Appellants' submission that the evidence overwhelmingly demonstrates that it is unlikely that the Appeal Scheme will result in either loss or deterioration to the ancient woodland.

Issue 4 – Heritage Assets

217. The planning application was informed by historic environment assessments to both identify and assess potential impacts arising from the Appeal Proposals on heritage assets. The Archaeological and Heritage Assessment is set out at **[CD2/83].** In addition, the Appellants have worked actively with the Council to resolve a number of issues, including most notably with the acknowledgement of additional information and assessment in the form of the Heritage Addendum **[CD2/103]** supplied by the Appellants and responded to by the Heritage Officer on 13th February 2023 **[CD1/1]**. Further, Mr Stratford made clear in his XX that his evidence is informed by a site visit and walkover of the relevant heritage assets and their surroundings – see also para 3.6 Stratford PoE **[CD1/23]**.

218. Nonetheless, Issue 4 is focused on the matters raised in RfR3 regarding the impact on designated and alleged non-designated heritage assets ("NDHAs") through physical impacts or through changes to their setting. The location of the relevant assets in relation to the Appeal Site is depicted on Appendix ES 1 **[CD2/68-9]**.

219. Starting with the key agreed points – para 1.6 Heritage SoCG **[CD1/12]**:

(1) there are three grade II listed buildings of relevance Oast Cottage, Swallow Barn (formerly known as Barn at Downlands Farm) and Buckswood Grange;

(2) none of these listed buildings are on the Appeal Site and it is only their setting that may potentially be impacted by the development;

(3) there will be less than substantial harm at the lower end of the scale to the Maresfield Conservation Area; and

(4) Chicory Cottage is within the Appeal Site and the Appeal Proposals will result in its total loss.

220. However, the parties are not agreed in a number of respects, including:

(1) the effect of the Appeal Proposals on the setting of three listed buildings;

(2) the designation of a number of assets as non-designated heritage assets; and

(3) the extent the non-designated assets will be affected by the Appeal Proposals.

The Listed Buildings

221. The issue for determination is whether there will be any impact on the setting of the three listed buildings. Despite the parties agreeing that:

(1) the NPPF (2023) defines setting as *"the surroundings in which a heritage asset is experienced"*: Annex 2 (pdf 72); and

(2) the most up to date guidance on the methodology for assessing setting is set out in Historic England's GPA 3 2017 **[CD11/2]** (on which much time was spent in this Inquiry),

Ms Hall's evidence as to the general approach to assessment of the impact on setting was largely incomprehensible.

222. In the circumstances, it is Mr Stratford's evidence from which the Inspector is to gain the most assistance. As a preliminary point, the Council, in its closing, skirts around the suggestion that Mr Stratford does not possess the relevant specialist expertise. Any such suggestion is plainly wrong – paras 1.1 – 1.6 Stratford PoE **[CD1/23]**. In any event, both witnesses rightly referred to the Annex 2 definition, which makes it clear that given the focus on setting, the issue is not simply whether this setting would be affected but whether there is any harm – and if so, how much – to the *significance* of those assets based on their *'heritage interest'*. In this regard, Ms Hall and Mr Stratford's approaches differed in at least four respects.

223. First, Mr Stratford clearly showed his working. GPA 3 sets out an approach to setting and development management based on a five-step procedure, of which the first three are relevant for present purposes (pg. 8 **[CD11/2]**). The headings and structure of his PoE clarified his stepped approach allowing the Inspector to properly scrutinise it - para 3.21; see for example paras 3.30 – 3.59 for the Oast Cottage assessment **[CD1/23]**.

224. However, it is not at all clear from Ms Halls' PoE that she has followed that stepped approach. There are headings for each of the assets, with a separate section covering the *"significance of"* and then the *"impact on"* each of those, but she accepted in XX that there is no such heading for step 2 of the process, namely the assessment of the degree to which an asset's setting makes a contribution to its significance or allows its significance to be appreciated. In her words, she *"in effect" "runs…experience and the impacts together"* - those being steps 2 and 3.

225. The problem, however, is that it is only by going through the staged approach that the assessor can be confident that she has properly understood and assessed the effect of the development on that asset's setting. In running steps together, Ms Hall is putting the cart before the horse. Despite her assertion

during XX that she took the steps in turn, this is not apparent from her written evidence. The Appellants and the Inspector have thus been left trying to decipher how Ms Hall reached the conclusions that she did.

226. Second, Mr Stratford has had particular regard to the attributes in the Assessment Step 2 Checklist (pg. 11 GPA 3 **[CD11/2]**) which includes consideration of the implications of change over time and the way in which a relevant attribute contributes to the present (pg. 10, GPA 3 **[CD11/2]**; see also para 3.12 Stratford PoE **[CD1/23]**). Particularly with regard to historical associations, he properly applied GPA3 in assessing those connections as meaningful in the consideration of setting if there is also some form of an *"experience of the significance"* of the asset within that place - see pg. 2 (top right) GPA3 **[CD11.2]**.

227. Contrary to Ms Hall's criticism, this is not to limit the definition of setting to visual considerations (para 3.14 Stratford PoE **[CD1/23]**) but recognises that the relevant *"experience"* of any heritage asset will be of that asset in that physical place alongside the influence of other environmental factors - paras 3.15, 3.20 Stratford PoE **[CD1/23]**; see also ***Kedleston Hall*** below; and page 2, box 1, paragraph 5 of GPA 3 **[CD11/2]**. Further, as he explained in his oral evidence, where the asset is a listed building, it is entirely appropriate to place importance on the visual impact as this is overwhelmingly how the setting of these buildings is experienced.

228. Ms Hall's definition of setting, however, is derived not from the surroundings of which a heritage asset is experienced, but overwhelmingly with recourse to historical associations between various assets compared with ownership factors. At no point does she attempt to define how the experience of those assets informs an understanding that one is within their setting. As Mr Stratford explained in his oral evidence, the problem with this approach is that the amount of change to these settings means many of those historical associations

are just that – *"associations in the past"* – and no longer factors which determine the present setting.

229. Third, Mr Stratford's approach has been endorsed by the Court of Appeal in ***Catesby Estates v Steer*** **[2018] EWCA Civ 1697**, per Lindblom LJ ("***Kedleston Hall***") **[CD4/11]**:

> "[t]he way in which a heritage asset can be "experienced" is not limited only to the sense of sight. The "surroundings" of the heritage asset are its physical surroundings, and the relevant "experience", whatever it is, will be of the heritage asset itself in that physical place": at [29].

230. While he has been conscious of the *"historic, social and economic connection"* between the designated heritage assets and elements of the wider landscape, including the Appeal Site, his conclusion is that it is not appropriate in this instance for those relationships to define the assets' settings given key matters of context including the extent of the wider landscape, and features within it, which share these relationships with the heritage assets in question – ***Kedleston Hall*** at [38]; para 3.18 Stratford PoE **[CD1/23]**.

231. On the contrary, the argument run by Ms Hall has clear parallels to the argument (in ***Kedleston Hall*** at [34]):

> "put forward by the council, Kedleston Voice and Historic England, that Kedleston Hall and its park were an integral whole, with the same setting, and, specifically, the assertion that "the historical, social and economic connection – the appeal site being part of the estate of which the Hall and park were the hub – brought the appeal site within the setting of the Hall".

232. In attempting to bring the Appeal Site within the setting of various assets, Ms Hall is running the same argument. As the Court of Appeal made clear in ***Kedleston Hall,*** the Inspector is entitled to look for a *"physical or visual connection"* of some kind as a means of establishing the extent of the setting of this listed building: at [36]. Where that does not exist (see further below) – as is the case here – the Appellants invite the Inspector to reject this approach again.

233. Given these different approaches, it is thus unsurprising that Ms Hall's view in XX was that the setting of – to give an example - Buckswood Grange included the whole of the Appeal Site to the north, all of the Downlands Farm buildings, the buildings at Downlands Cottage and goes as far north as Budlets Common. This is despite the fact the only real *"experience"* one has of Buckswood Grange is at the southern end of Rocks Road. Once on the Appeal Site, it is impossible to see how anybody can claim to experience the asset because one is wholly unaware of Buckswood Grange.

234. Finally, Ms Hall's reliance on a *"kinetic experience"* or impact of *"setting on setting"* is no answer. As Mr Stratford explained in EiC, there are no such concepts in GPA 3. The term used is that of *"kinetic views"* – para 25 GPA 3 **[CD11/2].** One such example is the changing views of the Tower of London from the south bank of the River Thames in London. The point is that an asset can be experienced, *"kinetically,"* from different places as one moves between them. When applied to Buckswood Grange, what Ms Hall is describing as her *"kinetic experience"* is the experience of moving through the Appeal Site through to Lake Wood. But that does not provide any kinetic "experience" of Buckswood Grange as the designated asset. To find that it does makes no sense.

235. Moreover, the basis on which she argued that the Appeal Site form part of the setting of Buckswood Grange is flawed. She relied on the existence of a carriage drive shown on the historical maps and of which there is now little evidence on the ground and that it was intended to provide views on the farmland as part of a designed setting. The difficulty is that there is no evidence that the track was a carriage drive intended to be driven as part of a designed landscape. The carriage drive is one of many tracks shown on the maps and Ms Hall accepted in XX that there is nothing about the farmland to show that it was intended to be seen as part of a designed landscape or view.

236. Nonetheless, relying on this unsupported assumption she explained that the Appeal Site would have provided a setting for Lake Wood which in turn provides a setting for Buckswood Grange. She is in effect arguing that the development would be in the setting of the setting of Buckswood Grange, a construct that has no support in any guidance.

Oast Cottage

237. Oast Cottage is located to the east of the Appeal Site where if forms the most northerly historic building of the former Downlands Farm complex, located north of the converted oast house, Partridges Oast - para 3.30 Stratford PoE **[CD1/23]**.

238. The most notable change to its setting was the establishment of a substantial garden curtilage to the newly converted Partridges Oast to the immediate south. The western extents of this newly established garden were planted as dense woodland, effectively enclosing the surviving historic buildings of the farmstead (i.e. Oast Cottage to the north and Partridges Oast and the listed barn to the south) from the agricultural land within the Appeal Site to the west – para 3.40 Stratford PoE **[CD1/23]**.

239. The Council's case is that the Appeal Site forms part of the setting of all the buildings in the Downlands Farm Group. However, Mr Stratford's evidence was that while the agricultural land within the Site is acknowledged to have a past, historical association with Oast Cottage as a component of its wider associated agricultural landholding, this can only be appreciated through reference to documentary sources and it does not form part of the surroundings in which the building is experienced – 3.51 Stratford PoE **[CD1/23]**.

240. Further, his assessment was that the core significance of the Cottage lies in the architectural and historic interest of its fabric as a vernacular cottage of 17th

century origins and its setting no longer retains notable historic integrity nor contributes strongly to its significance – para 3.52 Stratford PoE **[CD1/23]**.

241. As to the impact of the Appeal Proposals on the asset's heritage significance, they would result in no change to the physical form or fabric of the building, from which it principally derives that significance - para 3.53 Stratford PoE **[CD1/23]**. Nor would there be any change to the elements of the former farmstead and the limited contribution these elements of the setting make to the significance of the asset - para 3.55 Stratford PoE **[CD1/23]**. As such, it is submitted that the impact of the Appeal Proposals on the significance of Oast Cottage is neutral meaning no harm and the heritage significance would be preserved – paras 3.53-59 Stratford PoE **[CD1/23].**

Swallow Barn

242. Swallow Barn is located to the east of the Appeal Site, south of Oast Cottage and immediately south of the Partridges Oast converted oast house - para 3.60 Stratford PoE **[CD1/23].** This is an enclosed building of a modest scale, which means it does not possess any landmark qualities in the local landscape.

243. Again, this is an asset which has seen significant change to its setting following the post-war break-up of the Rocks Estate owned by the Streatfield family and separation of the buildings of Downlands Farm into separate ownership (para 3.71 Stratford PoE **[CD1/23]**). Mr Stratford's evidence was that its setting is now defined by its own private gardens, the immediately adjacent buildings and spaces of the former farmstead, as well as newly constructed dwellings to the east – paras 3.76 – 3.77 Stratford PoE **[CD1/23].**

244. As with Oast Cottage, while the Barn and the Appeal Site have a historical association, given their shared ownership and tenancy as part of the Downlands Farm, the Barn's relationship with the agricultural land to the west has never

been a key contributor to its setting or significance - para 3.81 Stratford PoE **[CD1/23]**.

245. Contrary to Ms Hall's evidence, there is no kinetic experience of the building as one moves across the surrounding landscape, even during winter when the effects of vegetation screening are reduced (para 3.80 Stratford PoE **[CD1/23]**). In fact, the only experience of the Barn from the Appeal Site is along the informal track that runs through the finger of the site south of the Barn's modern domestic curtilage – para 3.82 Stratford PoE **[CD1/23]**.

246. While historic association can form part of experience, that is not the case here. This is a limited experience, which makes no material contribution to the asset's significance, which Mr Stratford concluded is derived from the architectural and historic interest of its fabric as a vernacular barn of 16th century origins – para 3.84 Stratford PoE **[CD1/23].** Contrary to the Council's case, the Appeal Proposals are not removing the asset's tangible relationship with the historic farmland. The Council is putting it far too high.

247. Even so, the Appeal Proposals have responded to the proximity of the informal track to the former Downlands Farm complex and its surviving historic buildings (para 3.90). The sensitive design ensures there would be no adverse change to the current experience of the Barn from within its historical farmstead setting, preserving the character and experience of the building without any adverse impact on any elements of its setting that have historic integrity or contribute to the Barn's significance. It is thus submitted that the Appeal Proposals will result in another neutral impact on the significance of the listed building – paras 3.69 – 3.93 Stratford PoE **[CD1/23].**

Buckswood Grange

248. Buckswood Grange (formerly The Rocks) is located south of Rocks Road and south of the southern tip of the Appeal Site which borders the northern edge

of Rocks Road at its junction with Snatts Road – para 3.94 Stratford PoE **[CD1/23]**. According to its listing description, which is clearly indicative, and Mr Stratford's PoE, its core significance lies in the architectural and historic interest of its fabric as a 19th century mansion house - para 3.97 Stratford PoE **[CD1/23]**.

249. However, the house itself is now subdivided into around 20 properties. The Council's case is its setting includes: the rural character of the historic access, Lake Wood, FTG, Chicory Cottage and the Appeal Site (para 102 of Council's closing). However:

    (1) since the mid-20th century, the wider parkland formerly extending around Buckswood Grange has for the most part been developed for residential housing and as a school site and, aside from the band of scrub and woodland extending to the west of the house surviving as West Park Nature Reserve, the setting of the house is now defined by this modern development; and

    (2) while this an asset with which the Appeal Site shares a historical association, that association alone is not considered sufficient to determine that the Site forms part of its setting.

250. As the Inspector will have seen on her site visit, the woodland and farmland that forms the Appeal Site forms no part of the surroundings in which the listed building is experienced – para 3.119 Stratford PoE **[CD1/23]**. Equally there is nothing on the Site which indicates any such historical ownership link.

251. As to impact on significance, the starting point is the Appeal Proposals would result in no change at all to the physical form or fabric of Buckswood Grange, from which it principally derives its heritage significance – para 3.116 Stratford PoE **[CD1/23]**. Further, in light of the above, any change across the agricultural land in the Appeal Site will not result in any change to the setting

of Buckswood Grange or loss of its heritage significance – para 3.119 Stratford PoE **[CD1/23]**.

252. Overall, it is submitted this is another neutral impact and thus no harm arising from any change to the setting of the asset with its heritage significance being preserved – paras 3.98-3.122 Stratford PoE **[CD1/23]**.

Policy considerations

253. To conclude this section, the Appellants' case is that the Appeal Proposals would not result in any harm to the significance of the three listed buildings. However, the Council maintains its case that they would experience harm at the *"moderate to higher end"* of less than substantial harm – para 1.7 Heritage SoCG **[CD1/12]**. It is submitted that where (1) the Council is relying on impact to the setting of asset; (2) it is only the significance that the asset derives from its setting that is affected; and (3) all the significance embodied in the assets themselves would remain intact, findings of such a high level of harm in this context is incompatible with the NPPF and the PPG (**[CD11/3]** (pdf 11)) – paras 3.224-228; see also analysis of ***Edith Summerskill*** Decision at paras 3.24 – 3.27 Stratford PoE **[CD1/23]**.

254. However, even if the Council's position is correct, paragraph 202 of the NPPF makes it clear that even harmful development can be acceptable if the public benefits that it would bring forward are of sufficient weight to outweigh the harm caused by its implementation. It is submitted that there are numerous and significant benefits arising from the Appeal Proposals (dealt with further below), which would convincingly outweigh this harm – para 5.22 Mellor PoE **[CD1/50]**. Now moving on to the effect of the Proposals on the alleged non-designated heritage assets.

Non-designated Heritage Assets

255. It is relevant context that the Council did not object to the 2006 proposals on the basis of heritage assets, let alone NDHA – para 792 IR to SoS **[CD4/3]**. The Appellants' case is that no formally identified NDHAs would be harmed through the implementation of the Appeal Proposals such that paragraph 203 of the NPPF is not engaged. However, this position is not agreed. Thus, taking each alleged NDHA in turn.

Chicory Cottage

256. Chicory Cottage is located in the southern portion of the Appeal Site, south of the wooded Fir Tree Grove, where the Appeal Proposals propose to install a new pedestrian and cycle route – para 3.126 Stratford PoE **[CD1/23]**.

257. As already stated, the starting point is that the Appellants do not accept this is an NDHA for at least four reasons – paras 3.127 – 3.132 Stratford PoE **[CD1/23]**. First, it is not formally identified as such by the East Sussex Historic Environment Record, nor is it identified on any local list by the Council.

258. Second, the Council's heritage officers did not identify the Cottage as an NDHA during their scoping response to the planning application. The potential of such only arose at the determination stage.

259. Third, the Council finally provided its rationale for determining Chicory Cottage was an NDHA on the basis of the building's historical association with Buckswood Grange, in a response email in December 2022 **[CD1/1]**. However, it is submitted this rationale is inconsistent with the PPG **[CD11/3]** (pdf 22) which requires:

(1) decisions to identify NDHAs be based on sound evidence;

(2) plan-making bodies to make information in this area – including the criteria for selection – accessible to the public to provide greater certainty to parties such as the Appellants and decision makers;

(3) up to date information about NDHAs to be included in the local historic environment record.

260. Fourth, the building has been the subject of numerous planning applications for alterations and extensions in recent years without any previous suggestion by the Council that any heritage interest it possesses was sufficient to represent a material consideration. At no point until now has the Council considered it to be an NDA. The suggestion that the butler for Buckswood Grange may have lived there in the dim and distant past is at best anecdotal and only top be found in a sales agent's particulars. That hardly demonstrates an historical connection.

261. Nonetheless, Mr Stratford has carried out a GPA 3 compliant heritage impact assessment on Chicory Cottage. It is of note that the original building has experienced substantial extension, refurbishment and alteration to its original fabric in the 20th and 21st centuries, such that any heritage interest it may once have possessed is now negligible (para 3.147 Stratford PoE **[CD1/23]**; see images at pdf 48). A review of the considerable recent planning history of the Cottage shows that the Council had no problem consenting to these changes – even where they resulted in alterations to the building's earliest fabric.

262. As such, the Appellants submit that the building's loss – in terms of heritage policy – is not a material consideration in this appeal – paras 3.133 – 3.155 Stratford PoE **[CD1/23]**. However, if the Inspector finds to the contrary, then the total loss of the Cottage, and accordingly its very limited heritage interest, will need to be considered in accordance with paragraph 203 of the NPPF.

Lake Wood

263. Next, Lake Wood, which is located to the south of the Appeal Site, where its northern wooded boundary addresses the southern boundary of the agricultural land within the Site. It was only through the agreement of the Heritage SoCG that the Council identified this as an NDHA - **[CD1/12]** (pdf 3). Again, the Appellants do not accept this for the reasons already mentioned – see also paras 3,190 – 3.193 Stratford PoE **[CD1/23]**.

264. Nonetheless, as the Inspector will have seen on her site visit, Lake Wood's limited heritage significance is derived from the survival of the landscaped lake and rock outcrops set within a wooded enclave, with trackways which allow appreciation of its picturesque landscape within the wood; and to a lesser degree from its historical association with the Buckswood Grange mansion to the south – para 3.204 Stratford PoE **[CD1/23]**.

265. Ms Hall's evidence that the whole of the Appeal Site to the north forms this asset's setting cannot be maintained. Mr Stratford's evidence is that as one moves through Lake Wood, the Site does not form a part of the experience of any of Lake Wood's component features that might be considered to possess heritage interest (such as the lake, tracks, rock outcrops and former tunnel connections to The Rocks to the south) – para 3.207 Stratford PoE **[CD1/23]**; images in the Heritage Addendum **[CD2/103]**.

266. While the Appellants acknowledge an historical connection between the Appeal Site and Lake Wood, through their association as part of a wider estate landholding and by virtue of their former connection by a track, the position now is such that they are no longer in the same ownership and the historical route between them has long since been defunct and is now indistinguishable on the ground – para 3.210 Stratford PoE **[CD1/23]**.

267. Mr Stratford's evidence is that the Appeal proposals would not result in any change to the experience of Lake Wood or its heritage significance as one moves through the woodland. It is thus submitted that there would be no harm arising from any change to the fabric and physical form of the components of Lake Wood itself, nor would there be any appreciable change to the setting of the asset that would materially affect the heritage significance of Lake Wood as derived from the components of its 'designed' landscape – paras 3.189 – 212 Stratford PoE **[CD1/23]**. The introduction of visible built form together with lighting noise and activity immediately adjacent to the Wood will cause no harm given the screening of the Site by rising topography and woodland – para 3.205 Stratford PoE.

Partridges Oast

268. Partridges Oast is located to the east of the Appeal Site in between the listed buildings at Downlands Farm, south of Oast Cottage and north of the Barn at Downlands Farm. Again, there is no record of this being an NDHA – paras 3.157 Stratford PoE **[CD1/23].** However, the Council did identify the Cottage as an NDHA in the scoping response to the application (dated 18 November 2020).

269. In terms of its heritage significance, Mr Stratford's evidence is that Partridges Oast is not of special architectural or historic interest, but nonetheless, despite its conversion to residential use, retains some historic and architectural interest at a local level in its 19th century form and fabric. It represents a characteristic vernacular agricultural building, specifically an example of the more common and recognisable conical oast house buildings of East Sussex. – para 3.164 Stratford PoE **[CD1/23]**.

270. This is another asset that has seen a radical change in its setting, which Mr Stratford has determined is now defined by its own private residential gardens, including terraced lawns and a swimming pool to the rear with the robust

woodland planting belt beyond - para 3.170 Stratford PoE **[CD1/23]**. This latter point and the fact it is enclosed (described as "protection") to the west were points made by the current owner (supported by the owners of other assets) before the Inquiry.

271. With reference to the Appeal Site, the experience of this asset is limited again to the finger of the site that forms the informal trackway south of the former Downlands Farm complex. Contrary to Ms Hall's evidence, the *"kinetic experience"* across Partridges Oast and a number of other assets is not how they are experienced. Mr Stratford's evidence is that there is an incidental glimpse from a location lacking historic integrity. The agricultural land within the Appeal Site is therefore considered to make no material contribution to the understanding or appreciation of the significance of Partridges Oast – para 3.176 Stratford PoE **[CD1/23]**.

272. Again, the Appeal Proposals would result in no change at all to the physical form or fabric of the building, from which it principally derives its heritage significance nor to the key elements of the former farmstead, and the limited contribution that these elements of the setting make to its significance. The change to the formerly associated agricultural land west of the building (the Site) would not affect the surroundings in which Partridges Oast is experienced or materially diminish the ability to appreciate its historic interest. As with Swallow Barn, the Appeal Proposals have been responsive to the proximity of the informal track to the former Downlands Farm complex and its surviving historic buildings. – para 3.185 Stratford PoE **[CD1/23]**.

273. In light of this, it is submitted there would be no harm arising from any change to the setting of the asset and its heritage significance would be preserved – paras 3.156 – 3.188 Stratford PoE **[CD1/23]**.

274. For completeness, there was some suggestion in Ms Hall's evidence that the Appeal Site is a designed landscape intended to be viewed as part of a greater land hold. However, Ms Hall has not put forward any actual evidence that the Site is anything more than undistinguished agricultural land, as Mr Stratford made clear in his oral evidence.

Third Party Matters

275. There were a number of third parties who took part in this Inquiry in order to oppose the appeal. Many of their concerns have been dealt with throughout this closing. There are a few that remain outstanding. First, the Downlands Action Group. In addition to their concerns about the impact of the Appeal Proposals on the Ancient Woodland and Lake Wood in particular (dealt with above), DAG has objected to the Appeal Scheme because of the impact on the historic landscape and on pollution (air, light and noise).

276. As to landscape, despite the fact this is not an issue relied on by the Council, the Appellants have nonetheless put forward evidence on this issue - Mylchreest PoE **[CD1/28]**. At no point during the application process was the validity or the completeness of the work submitted questioned by the Council.

277. To start with the obvious, impacts one way or another on landscape character are an inevitable consequence of development on an open greenfield. As already explained, such development is the only choice the District has to meet its needs. Which is why, what really matters is not whether there will be any impact at all (of course there will be – at least on the Site itself and its immediate surroundings) but whether those impacts are or can be made acceptable.

278. In response to DAG's objection, the key points from Mr Mylchreest's evidence are:

(1) the landscape within the Appeal Site does not form a prominent, or important, constituent of the landscape as perceived from areas outside

of the Appeal Site. This is not to say it has no value, only that its contribution to the wider landscape resource is limited – para 3.14(2) Mylchreest PoE **[CD1/28]**;

(2) there is no dispute that the LVIA accompanying the application is compliant with the appropriate methodology in GLVIA 3 (see Section 4 of the LVIA baseline, and specifically so at paragraphs 4.62 to 4.63, and Table EDP 4.3);

(3) it is clear from the DAS that the proposals have taken a different landscape-led design approach to that taken in the 2006 application, which has led to a much more restrained, respectful and ultimately successful layout taking into account the prevailing constraints - Figures 16 and 17 of the DAS **[CD2/25]**;

(4) the Proposals also protect and enhance key landscape features;

(5) ultimately there is agreement between the Council and the Appellants that the Proposals result in an acceptable level of landscape and visual harm;

(6) there is no landscape objection from the relevant consultees; and

(7) the landscape- and environmentally-led approach has been successful not only at the local level in addressing the identified constraints, but also in limiting wider impacts on published character areas and designated landscapes.

279. As to the impact on local environment in respect of air pollution, light pollution and noise, the application was supported by a range of technical reports including those relating to these issues. Further detail is provided at paras 7.15 – 7.29 Mellor's PoE **[CD1/50]**. It is thus submitted that there would be no unacceptable light, air quality or noise effects arising from the Appeal Proposals on the local environment.

280. Second, the Town Council. While it accepted that housing desperately needed for the next generation was not coming through, in resisting this application they relied on the oft cited mantra that any proposals had to be *"the right development, in the right place, that will work with Uckfield and its infrastructure."* In light of this, when asked whether there were any housing schemes the Town Council had supported, Councillor Love could not provide an answer. Unsurprisingly, the Appellants also could not find an example in which that had been the case.

281. All other third party issues are dealt with in Mr Mellor's PoE at paragraphs 7.30 – 7.55 **[CD1/50]**.

Issue 4 – Planning Balance

Compliance with the development plan

282. Mr Mellor's evidence is that the Appeal Proposals comply with most of the relevant Development Plan policies – App JM9 **[CD1/51]** (pdf 52); paras 4.18 – 4.114 Mellor PoE **[CD1/50]**. However, the Appeal Site lies outside the settlement boundary of Uckfield and is not allocated for development. As such, the Appellants accept this means there is some conflict with the development plan as a whole. That said, the parties are agreed that the policies most relevant to determining the appeal (GD2 and DC17) are out-of-date such that any conflict should be given limited weight – Planning SoCG **[CD1/10]**. The next question is thus whether material considerations justify the departure from the Development Plan. The Appellants' case is that they do.

Housing Land Supply

283. It is agreed that the Council is unable to demonstrate a 5YHLS – para 4.2 HLS SoCG **[CD1/11]**. The focus of this Inquiry is of course on the extent of the current shortfall and the likelihood of that shortfall being addressed.

Nonetheless, the Council's persistent under-delivery is relevant to the credibility of the Council's current assessment of its supply.

The extent of the Council's shortfall

284. The Council accepts that its housing land supply for the period 2022 to 2027 is no more than 3.8 years (a shortfall of more than 1500 homes) (para. 4.18, Council's Planning PoE **[CD1/41]**). The Appellants' position, having undertaken a detailed analysis of the sites relied on by the Council, is that the supply is 3.36 years (a shortfall of 2,382 homes) (para 5.1 & Table DVr3 Appellants' Housing Supply Rebuttal PoE **[CD1/68]** (pdf 11)). The difference is based on whether a number of the sites forming part of the Council's supply are "deliverable" within the NPPF Glossary meaning. The Appellants rely on the comprehensive and detailed analysis provided by Mr Veasey in his PoE **[CD1/29]** for each of the disputed sites and amplified in the RTS. Consequently, the Appellants do not repeat that evidence here but make three points.

285. First, in determining whether the Council's supply is "deliverable" all the sites must be "*available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years*" (see the Glossary in Annex 2 of the NPPF).

286. Second, the PPG provides guidance as to the type and quality of evidence required to shift the presumption and Mr Veasey gives an example of the "clear evidence" required by a previous Inspector required in the June 2021 appeal decision (APP/Q3115/W/20/3265861) relating to Land at Little Sparrows, Sonning Common, Oxfordshire (Appendix DV6) and criticism of the Council's approach to evidence has faced in other recent appeal decisions such as the Land at Old Nursery House Appeal decision. Mr Veasey noted that the Wealden HLS Statement contains no site-specific detail other than simply the

site name, and the assumed number of annual housing completions - para 4.13 Veasey PoE **[CD1/29]**.

287. Third, the deficiencies in the Council's approach were borne out in the RTS on a number of occasions where the Council quickly conceded on key points. One such example was the Council's use of delivery rates of 75 dpa for housing sites of 200 dwellings or over – para 2.35 WDC 5YHLS Statement **[CD7.2]**. When challenged on these delivery rates in Mr Veasey's PoE (paras 4.15 – 4.21 **CD1/29)**, Mr Robins conceded in the RTS that he was content – on behalf of the Council - to accept a lower figure of 60, closer to the Appellants' position of 54dpa (para 4.20 **[CD1/29]**). He was right to do so given the state of the Council's evidence.

Housing Delivery

288. Whether its 3.8 years or 3.36 years, Mr Robins, at the end of the RTS, was correct – ultimately, the Council does not have a 5YHLS, the shortfall is significant and is a factor that attracts significant weight in the planning balance.

289. The simple point is this: on the Council's *own* figures, it is failing to meet its housing needs. It is clear that the outdated Local Plan's housing strategy has fundamentally failed. That is reflected in the Council's current and historic inability to demonstrate a 5-year supply of housing. The District's annual requirement is 1,454 homes (para 4.1 Housing SoCG **[CD1/11]**) and, on the Council's, current trajectory, its shortfalls are simply expected to increase.

290. The point is made even worse by the fact the Council has no plan to remedy the shortfall. The Wealden Core Strategy Local Plan **[CD6/4]** was adopted back in 2013 and was required to be reviewed within 5 years in order to be sound. That has not happened and the emerging Local Plan which was intended to replace the Core Strategy was withdrawn in 2019, following the Inspector's conclusion that it was *"unsound"*.

291. It is only during this Inquiry that the Council released an update that it anticipated its Reg 18 Plan to be considered at Committee in February 2024[4]. The expectation is that a Reg 19 Plan would come forward 9 – 12 months later with submission to the Secretary of state in mid 2025. On its best case and subject to no further delays, that means potential adoption in mid to late 2026. However, given the history of plan making in the District, that is not something on which the Appellants or those in need of homes now can rely with much confidence.

Affordable Housing

292. A consequence of the Council's failure to deliver housing is that it has also failed to deliver the required levels of affordable housing, which the Wealden Local Housing Needs Assessment **[CD6/10]** describes as an *"important and pressing issue in the District"* (pdf 5). In light of this, the parties are agreed (section 5 HLS SoCG **[CD1/11]**):

(1) there is a need in the District for 519 affordable homes per annum to rent and 335 affordable home ownership per annum over the 2019 to 2039 period;

(2) significant weight should be attached to the delivery of up to 148 affordable homes as part of the planning balance.

293. Based on the respective housing supply positions, Mr Veasey calculated in his PoE (Table DV5.4 Veasey PoE **[CD1/29]**) that Wealden's potential affordable housing delivery over the next 5-years to be, at best, only between 1,480 (the Council's position) and 1,234 (the Appellants' position) affordable homes. That is against the Appellants' calculated need figure of 7,263 homes – para 5.17 Veasey PoE **[CD1/29]**. That means a shortfall of between 5,783 (the Council's position) and 6,029 (the Appellants' position) homes. Regardless of

[4] https://www.wealden.gov.uk/news/wealden-local-plan-update/

the figures, it is clear that affordable housing delivery over the next 5-years will be significantly lower than the Council's identified affordable housing need.

294. In a district where the median affordability ratio is 13.25, compared to 10.75 for the Southeast and 8.28 for England, the result is catastrophic – para 5.8 Veasey PoE **[CD1/29]**. What this means is a housing waiting list with 553 households on it – para 5.7 Veasey PoE **[CD1/29]**. It is these households – real people with real needs - that are being let down by groups such as the Town Council continuing to object to housing schemes coming forward in this area.

Heritage balance

295. As already explained, the Parties are agreed that:

(1) the Appeal Proposals would not lead to substantial harm or total loss of significance of a designated heritage asset;

(2) there will be LTSH at the lower end of the scale to the Maresfield Conservation Area.

296. However, there remains disagreement as the impact of the Appeal Proposals on the three listed buildings. It is submitted, taken together, the numerous and significant benefits arising from the Proposals would clearly outweigh the LTSH to the designated heritage asset(s), even if the Council's position of the harm being at the "higher end" of LTSH to the three listed buildings is correct – para 5.22 Mellor PoE **[CD1/50].**

Para. 11d NPPF

297. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing land and that the presumption in favour of development in paragraph 11(d) of the NPPF is therefore engaged. For the reasons given above, the absence of any harm to the Ancient Woodland and the Council's

acceptance that heritage harm does not provide a clear reason for refusal (Robins XX), the tilted balance is not disapplied by para. 11d)i. and the issue therefore is whether the adverse impacts will significantly and demonstrably outweigh the substantial benefits.

Harms

298. The Appellants accept that the Scheme results in the following limited harm (pg. 62-3 Table 8.1 Mellor PoE **[CD1/50]**):

(1) limited conflict with the development plan (dealt with above);

(2) a low level of LTSH to the Maresfield CA, which when "great weight" is given to the asset's conservation, should be afforded limited weight; and

(3) localised and limited harm to the landscape, which is acceptable to the Council and inevitable given the need to utilise greenfield sites to meet identified needs. This should be given limited weight.

Benefits

299. Against these modest harms, the proposed development would provide a range of important benefits as set out by Mr Mellor's PoE – pg. 62-3 Table 8.1 **[CD1/50].** Most importantly, the proposed development would deliver a mix of up to 424 new homes in a sustainable location – Table 4.1 Planning Statement **[CD2/24]**. Mr Mellor's evidence is that approximately 150 of these could be delivered in the current 5 year period – para 2.94 PoE **[CD1/50]**. In light of the Council's poor delivery of housing, the extent of that housing land supply shortfall, the absence of any plan to remedy the shortfall, the assessment that it will get worse rather than better in the next 5 years, the delivery within the 5-year period of additional housing should be given significant weight, as the Parties agree.

300. The proposed development would also provide up to 148 desperately needed affordable dwellings. Mr Veasey has provided evidence to show that 553

households are the Council's housing register. On any measure this is an appalling position. The Council's failure to deliver much-needed affordable enhances the contribution the proposed development will make in meeting that need. Plainly significant weight should be given to the provision of affordable homes, as the parties again agree, particularly in the context of this being one of the most deprived parts of the District (para 2.48 Mellor PoE **[CD1/50]**).

301. This is in addition to the contribution towards the Council's self and custom housebuilding register of up to 22 (5.2%) self / custom-build housing plots, which should be afforded significant weight in light of current need in the district (para 2.53-57 Mellor PoE **[CD1/50]**). On this final point, paragraph 62 of the NPPF requires consideration of housing needs for different groups, including those who wish to commission or build their own homes within the planning process.

302. Further benefits include economic ones comprising provision of additional employment during the construction phase and increased retail expenditure within the local area.

303. As regards the environmental benefits, there is no policy or legal requirement for the proposed development to deliver a 10% net gain in bio-diversity but it will do so with the commitment secured by condition (Condition 33 **[ID25]** (pdf 13)) – paras 2.76 – 2.83 Mellor PoE **[CD1/50]**. This is a real benefit.

304. Additional environmental benefits include:

    (1) the creation of SANG. The Council's argument that this being mitigation for the adverse effect of the development on the Ashdown Forest SAC/SPA precludes it from being a benefit cannot be maintained in circumstances where (a) this SANG has the beneficial effect of providing mitigation for an additional 44 new homes to that proposed in the Appeal Proposals; (b) reduces the requirement to provide the same elsewhere;

and (c) will clearly be required given the need for housing to come forward to meet the District's needs - paras 2.64 – 2.69 Mellor PoE **[CD1/50]**; Mellor XX;

(2) the overprovision of public open space secured via the Green Infrastructure Parameter Plan **[CD2/9]** (see also the Illustrative Landscape and Ecology Plan **[CD2/54]**; paras 2.59 – 2.63 Mellor PoE **[CD1/50]**). In light of the above, the Council is wrong to suggest the SANG should be removed from this calculation;

(3) the introduction of a woodland management package to reverse the decline of woodlands located on the Site - paras 2.84 – 2.89 Mellor PoE **[CD1/50]**). As already explained (see paragraph **Error! Reference source not found.** above) and contrary to the Council's case, this is not compensation; and

(4) the delivery of a climate resilient development supporting the Council's ambition to be a net zero district by 2050 and responding to its declared climate emergency – paras 2.87 – 2.93 Mellor PoE **[CD1/50].** This is an agreed benefit in the Planning SoCG – para 6.11 **[CD1/10]**.

305. An additional benefit is that the Appellants will be providing a well-designed development (DAS **[CD2/25]**), maximising the opportunities afforded by the landscape of the Appeal Site, through a Design Code (Condition 4 **[ID25]**) - paras 2.70 – 2.75 Mellor PoE **[CD1/50]**. This design approach is to be commended.

306. For completeness, it should be noted that both conditions in respect of BNG and the delivery of a climate resilient development were accepted by Mr Robins during the RTS on conditions. He also provided "reasons" for the conditions which read:

> "BNG - To secure a quantified biodiversity net gain in accordance with the aspirations of Policy WSC12

> Climate resilient development - To promote sustainable building design, having regard to SPO9 and SPO13 and WCS14 to the Wealden Core Strategy Local Plan 2013 and Saved Policy EN1 of the adopted Wealden Local Plan 1998."

307. Having considered them acceptable during the relevant part of the Inquiry, it is not now open for the Council to argue in its closing that they fail to meet the relevant tests. They are quite clearly benefits that will be properly secured and should be given sufficient weight in the balance.

Conclusion

308. The Appeal Site is thoroughly understood in terms of its ecological and environmental sensitivities from the very extensive studies undertaken by the Appellants and which have led to the careful design of the Appeal Proposal. They will deliver much needed housing on a sustainable site in a sustainable location in a manner consistent with the Local Plan's spatial strategy of directing development to the district centres. There is no clear reason to refuse the appeal arising from the impact to the ancient woodland and the limited harm caused by the proposed development does not significantly and demonstrably outweigh the substantial benefits that the proposed development would deliver. The appeal should be allowed and planning permission granted.

Dated 14th December 2023

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