APPEAL BY GLEESON LAND AND JOHN ALISON LAND & RESEARCH LTD

LAND AT DOWNLANDS FARM, UCKFIELD, EAST SUSSEX, TN22 3PU

APP/C1435/W/23/3321978

WD/2022/1637/MEA

COUNCIL'S CLOSING SUBMISSIONS

Introduction

1. This is a proposal which is contrary to the development plan when considered as a whole, breaching a number of key policies. Further, material considerations do not indicate that permission should be granted in this case. As such, permission should be refused.

5yhls and Benefits

2. The Council considered there was little to be gained from a housing round table, given the limited difference between the parties on the level of 5 year housing land supply (5yhls) and remains of the view that it is appropriate for the Inspector's decision to be taken on the basis of a range (3.36-3.86 years)[1].

3. However, if the Inspector does consider it necessary to reach a decision over the correct figure then the Council's figure should be preferred for the reasons set out in Mr Robins' annex to his proof (CD1/42) and explained at the housing round table. Dealing, briefly with the main issues:

    a. There is no basis for the Appellant's assertion that a lapse rate should be applied to the contribution of small sites. The NPPF provides that where a site has planning permission it should be considered deliverable unless evidence demonstrates otherwise (definition of deliverable in NPPF glossary). As explained by Mr Robins, there is no evidence of under delivery in the borough and therefore there is no requirement for a lapse rate to be applied;

[1] The figures argued by the Appellants and the Council at the Housing Round table on Day 3 of the Inquiry, 26 October 2023

b. The Council's delivery rates for major sites should also be preferred. This is because it has been based upon District specific data as opposed to national data in Litchfields 'Start to Finish' report. The trend Data in the 2022 AMR (CD7/2 pp13-16) demonstrates that housebuilders do build quicker in Sussex than nationally. Further, the Council has supported its position with email evidence from the developers of the specific sites (see CD1/42 paras 18-30). Indeed, it can be noted that Mr Mellor claims that this proposal would have a build out rate of 100dpa[2] well in excess of the 54dpa argued for by Mr Veasy for major sites.

c. The Council's evidence with regards to major sites with outline permission or resolution to grant should also be preferred. Mr Robins has provided detailed evidence on each site to demonstrate that it meets the test of deliverability (see paras 34-53 of CD1/42).

4. Whether the Appellants are correct in their 5yhls (3.86) or the Council is correct (3.36)[3] the Council lacks a 5yhls and it is clear that the delivery of housing should be given significant weight. Further, the delivery of affordable housing and custom built housing should also be given significant weight. This much is agreed between the Appellants and the Council.

5. The weight to be given to the SANG is not agreed. The Appellants invite the Inspector to give it substantial weight.[4] The SANG is mitigation for the adverse effect of the development on the Ashdown Forest SAC/SPA. As such, it cannot be seen as a benefit of the proposal. The same is true for the additional 44 houses which the SANG would be able to provide mitigation for.

6. The Appellants claim that its SANG will unlock the further development of 44 houses. However, it has not pointed to any site which cannot come forward currently due to a lack of SANG and Mr Robins confirmed that there is currently a surplus of SANG in the borough[5]. As such, the provision of SANG must be neutral in the planning balance.

7. The Appeal scheme will bring some economic benefits as a result of construction and the spending power of new residents. However, the construction benefits will be temporary and whilst the spending power of new residents may be welcome Uckfield is already a buoyant District Centre (see Robins proof CD1/41 paras 5.35-6). Therefore, these benefits should be given limited weight.

8. The Appellants claim that the delivery of public open space should be given moderate weight. However, once the SANG is removed from Mr Mellor's calculation at his table 2.3 on page 13 of his proof (CD1/50) it can be seen that the delivery of public open space is

[2] Mr Mellor proof table 2.4 p19 CD1/50
[3] Figures confirmed on Day 3 of the Inquiry 26 October 2023 at the Housing Round Table
[4] Mellor proof CD1/52 p.63
[5] 15 November 2023

only just (0.1ha) above the policy requirement. Further, the level of public open space is not being secured at this outline stage (being for reserved matters) and may well change. As such, this can only be given neutral weight in the planning balance.

9. The Appellants claim significant weight as a result of the provision of biodiversity net gain ('BNG'). However, as set out below, the Appellants' BNG calculations are overinflated and unreliable. Further, for a condition to be attached requiring 10% BNG the Inspector would have to decide that it is 'necessary to make the development acceptable in planning terms'. As there is no policy requirement for this BNG it is difficult to see how this provision could meet the test for conditions. The same is true of the Appellants' claim that this will be a 'climate resilient development'. There is no policy basis for the condition which the Appellants are requesting.

10. The Appellants claim that 'significant weight' should be given to woodland management. This is addressed under the discussion of ancient woodland ('AW') below as the management is part of compensation as opposed to a benefit of the proposal. As such, it can only be neutral in the planning balance.

11. Overall, the Appellants have overplayed the benefits of the appeal scheme. Whilst the provision of market, affordable and custom housing should each be given significant weight the other benefits as claimed by the Appellants are much more limited.

Paragraph 11(d) NPPF

12. The lack of a 5yhls means that paragraph 11(d) of the NPPF applies as the Council's policies for the supply of housing are out of date. As set out below, under the discussion of each issue in dispute, the adverse impacts of allowing this appeal significantly and demonstrably outweigh the benefits set out above when assessed against the NPPF taken as a whole (para 11(d)(ii)). Further, the application of policies in the NPPF which protect areas of particular importance provide a clear reason for refusal in this case (para 11(d)(i)). Specifically, this is the loss and/or deterioration of AW which would be the result of the scheme which contravenes paragraph 180(c).

Spatial Strategy

13. The application does not accord with the spatial strategy set out in the Development Plan. As such, on this basis alone, it fails to accord with the development plan as a whole.

14. The Council accepts that settlement boundaries will need to be breached in the borough to deliver housing and it has granted many planning permissions in this regard.

15. Although the Council accepts that the appeal proposal being outside of the settlement is insufficient to warrant a reason for refusal in and of itself (absent any other harm) it is important to note that the breach of the settlement boundary in this case is particularly

harmful. This was noted by the Inspector in relation to the 2009 Appeal decision where he stated:

"Indeed, because of its scale it would appear as a separate and self-contained new settlement which, because of its location and topography, would be ill related - indeed, almost unrelated - to the existing town. This in turn is why it would not be visible from most parts of Uckfield. In my opinion, no amount of tree screening or high quality design would compensate for that" (paragraph 679 of CD4/2).

16. The same remains the case today.

17. I now go on to consider the particular matters in issue as part of the reasons for refusal.

Highway Safety

18. The independent expert statutory consultee on highways, ESCC has strongly objected to this proposal on the grounds of highway safety. Its primary concerns relate to the main site access roundabout and the main pedestrian/cycleway access (Fir Tree Grove (FTG')). Mr Bell, the Appellants' highways witness, accepted that ESCC is an independent expert body whose opinions should be given significant weight.[6] Such are the concerns of ESCC that they have appeared at this inquiry and provided expert evidence. ESCC have statutory authority for safety of the A22, Rocks Road and Church Street which these appeal proposals concern.

19. Mr Bell accepted that it is for the Appellants to demonstrate that its accesses are safe and that if they haven't demonstrated safe access then permission should be refused for the scheme. Mr Bell has designed the highway proposals and confirmed that he was not providing an independent assessment of them.[7]

Main vehicular access from the A22

20. ESCC has continually raised concerns about the configuration of the roundabout onto the A22, mainly as a result of the proximity of the layby, 20 metres from the roundabout's exit away from Uckfield.

21. The only document which contains guidance for the arrangement of roundabouts of this type and also laybys of this type is the Design Manual for Roads and Bridges ('DMRB'). Roundabouts are addressed in CD116[8] and laybys are addressed in CD169[9].

22. Mr Bell argued in his proof of evidence that DMRB does not apply. By that he means that it is not mandatory as it is not a trunk road. That is of course correct. However, as Mr New

[6] XX day 4 31 October 2023
[7] XX day 4 31 October 2023
[8] ID13
[9] CD8/15

for ESCC explained, DMRB is the only document which provides guidance for this type of highway works on this type of highway and it is what ESCC applies on the A22 given that the A22 is a part of the recently defined (2021) national Major Road Network. Mr Bell accepted in cross-examination that all roundabouts would have regard to CD116 and that it was 'absolutely the appropriate guidance in this case'. Indeed, in his own proof he claimed, as a virtue, that the roundabout had been designed 'in accordance with relevant standards outlined in the Design Manual for Roads and Bridges'.[10] Mr Bell accepted that there is no reason why the A22 should be any less safe than a trunk road.[11]

23. Mr Bell further accepted that the purpose of the relevant DMRB documents in this instance is to ensure the safe operation of the highway network.[12]

24. The separation distance between the roundabout and the layby is woefully substandard. The 'solution' claimed by Mr Bell in his proof which is the extension of two northbound exit lanes from the roundabout beyond the entry to the layby[13] is also substandard and leads to even more safety concerns.

25. Paragraph 3.7 of DMRB CD169[14] provides that: 'The separation between a lay-by and an at-grade junction or access (including field accesses) on the same side of the road, both upstream and downstream, shall be at least 3.75V metres where V is the design speed in KPH.' Mr Bell accepted that if applied here that would mean the separation distance between the roundabout and the layby would be at least 350m.

26. Mr New explained that the highway authority was not seeking to apply such a great separation distance in this appeal but sought, instead, the alternative distance which is found in paragraph 3.5 of that same document:

    'For the purpose of this document the immediate approach to a lay-by on a single carriageway road shall be:
    1) on the lane adjacent to the lay-by, the length of the mainline carriageway 1.5 times the desirable minimum stopping sight distance upstream of the start of the lay-by entry taper to a point level with the end of the lay-by (see Figure 3.5)…' (PDF page 15)

27. Mr Bell agreed that 20mph was a reasonable exit speed from a roundabout and therefore applying the above calculation the separation distance would be 55m. The 20m provided is obviously woefully substandard.

28. Mr New explained that the highway authority's' concern was not simply 'not meeting standards' or a 'computer says no' objection. Mr New explained that the result of the

[10] CD1/25 Para 3.18
[11] XX day 4 31 October 2023
[12] XX day 4 31 October 2023
[13] CD1/25 Para 7.3
[14] CD8/15

Appellants' design would lead to a high risk of accident frequency and such accidents could be of a high level of severity. Any driver can understand the point. The concern was that vehicles usually accelerate away from roundabouts. A vehicle exiting the roundabout (northbound) would be signalling left and such a signal would be interpreted by a following vehicle as related to the roundabout exit. If the front car or HGV did not accelerate away from the roundabout (as expected by the following car) but instead turned into the layby there is a clear risk of rear end shunts.

29. In his proof Mr Bell pointed to the dual lanes leading away from the roundabout. However, this simply leads to opportunities for different types of accident. The driver of a car in the inside lane would seek to avoid a rear-end shunt by pulling over sharply into the outside lane. However, a vehicle may well be present and accelerating in the outside lane and this could lead to a sideswipe collision.

30. Further, the element of two lanes leading from the roundabout is also substandard. DMRB CD116[15] provides that differential acceleration lanes ('DALs') should have a minimum length of 250 metres (para 3.32) and at 3.35 'Junctions and accesses shall not be located on DALs, their associated tapers or within 500 metres of the end of the taper.' Mr Bell initially stated under cross examination that he had never heard of differential acceleration lanes (despite there being a whole section on them in the guidance he purported to apply to the design of his roundabout) and sought to argue that they did not apply here as they related to HGVs. This was clearly nonsense. DALs are defined on page 9 of the document as being 'A WS2+1 section of road on which the overtaking lane is provided for traffic accelerating away from a roundabout to cater for the differential acceleration between vehicles.' That is exactly what Mr Bell is proposing, as he later appeared to accept[16]. His DAL is 90m. Clearly well below the minimum length of 250m and there is also an access (the layby) on it.

31. Mr New explained the problems which could be expected from having the short DAL which merges traffic at, or shortly in advance of, the point where traffic is exiting the layby. He explained in cross examination that if vehicles are seeking to exit the layby and cannot see what is in the outside lane of the main road merge the risk is that they will collide with an overtaking vehicle seeking to gain the maximum it can do from the two lane merge or it will cause the vehicles which are merging to slow and take avoiding action whilst at the same time attempting to safely merge. He explained that this adds another conflict into the merge movement which would increase the safety risk.

32. The Appellants' sought, through cross examination, to mount criticism of Mr New for not addressing the issues with regards to the DAL in his proof. But, he was simply responding (quite appropriately) to Mr Bell's assertion in his proof[17] that the two lanes would obviate the

[15] ID13

[16] XX day 4 31 October 2023

[17] Para 7.3 CD1/26

safety concerns at the roundabout. The two lanes do not solve the safety issue, they exacerbate it.

33. The Appellants sought to rely upon the fact that their road safety audit[18]('RSA') did not raise issues with regards to the proximity of the layby to the roundabout. The Appellants have not provided the briefing note which was sent to the road safety auditors and so the Inquiry has no idea what was explicitly brought to the auditors' attention. Paragraph 1.6 of that document states: '[T]he audit team has not been made aware of any Departures from Standard'. Mr Bell accepted under cross examination that, in relation to the roundabout, the only standards which the auditors could have been referring to were those found in the DMRB documents. Given paragraph 1.6 it is hardly surprising that the auditors did not highlight the proximity of the layby. In any event, the auditors were not present at the inquiry.

34. The Appellants argued through cross-examination of Mr New that ESSC had no reservations on the RSA. However, that misunderstands the relevance of the RSA to this case. The RSA was not making any positive case that the main access (or, indeed, the pedestrian access) was safe. To that extent, there was nothing for ESCC to disagree with. To the extent that the Appellants rely upon the fact that the RSA did not pick up certain issues then it is abundantly clear that the fundamental ESCC objection to the appeal scheme on highway safety grounds means that it did not agree with the RSA.

35. Through cross-examination and through the oral evidence of Mr Bell, the Appellants mounted a last ditch attempt to defend the scheme by reference to the nearby 'Blackdown Roundabout' where there is apparently a service station about 25m from the exit of a roundabout. Mr Bell asserted, on the basis of 1 site visit, that this was operating safely and therefore this supported the Appellants' claim that the roundabout is safe. It was an extraordinary assertion to make. It was seeking to place his impression of one roundabout above the established guidance which relates to roundabouts and laybys and seeks to ensure they operate safely.

36. In any event, the inquiry has no plans of that roundabout in front of it. ESCC has not had a full opportunity to consider the Appellants' claims, the point inappropriately being raised for the first time in cross-examination. It is understood that the arrangement has been in place for around 20 years. It provides access to a busy multi-fuel station and a MacDonalds in a service area which is well signed in advance on the approaches to the roundabout and drivers would be well aware of its existence and the likelihood of traffic exiting the roundabout turning into the service area. It has a single exit lane from the roundabout and therefore none of the problems associated with the DAL's in this case. Overall, the comparison with the Blackdown Roundabout can only be given very little weight.

[18] Appendix A to Mr Bell's appendix B

37. Another point raised for the first time by the Appellants in cross examining Mr New was the assertion that cars would currently be entering the layby at 60mph. As Mr New explained, they would in fact be slowing down to enter the layby. Mr Bell accepted he had not produced any evidence of when and where cars would be decelerating.[19] In any event, it doesn't address the problem of the interrelationship between the roundabout and the layby.

38. Overall, the Appellants' roundabout fails to comply with both CD116 and CD169 (even where relaxed standards are applied with regards to the separation distance between the layby and the roundabout). The 20m separation distance is woefully inadequate against the 55m minimum in CD169. Further, the DAL length of 90m is well below the 250m minimum in CD116. There is a clear risk of serious accidents as explained by ESCC, the statutory expert consultee with statutory responsibility for the A22. The Appellants' 'evidence' in response doesn't come close to demonstrating that the arrangement will operate safely. As such, the appeal must fail on this point alone.

Fir Tree Grove

39. Fir Tree Grove is intended to be the main pedestrian and cycle access for the appeal site. Mr Bell estimates that 90% of pedestrians from the appeal site will use this access[20]. The arrangement involves channelling pedestrians and cyclists to the northern side of Rocks Road (just before it meets Snatts Road) into a crossing of that road to continue journeys into Uckfield. Pedestrians and cyclists crossing Rocks Road are vulnerable users. Rocks Road is subject to a 60mph speed limit. It is therefore imperative that the crossing will operate safely. The consequences of not doing so are unconscionable. Mr New explained in his evidence in chief[21] that if a car hits a child at 30mph there is a 50% chance of death or serious injury. Mr Bell did not dispute the statistic.[22]

40. The Appellants and ESCC agree that the appropriate visibility splay is 59m[23]. As Mr New explained, the available visibility splay will be limited to 32m. This is for two reasons: topography and otherwise blocking of the footpath. Before going on to each of these points it is worth highlighting that the Appellants have designed the Fir Tree Grove access so as to be hidden as far as possible from Rocks Road. Therefore, a car approaching the beginning of the visibility splay will have no idea that it is about to happen upon a pedestrian/cycle crossing. The road is de-restricted and rural.

41. First, topography. During his re-examination Mr Bell highlighted that on visiting the site the rocks to the north of Rocks Road are obvious[24]. That is correct, so are the trees which

[19] XX day 4 31 October 2023
[20] Proof CD1/23 para 7.69
[21] Day 3 26 October 2023
[22] XX day 4 31 October 2023
[23] SoCG CD1/9 p.4
[24] Re-exam day 4 31 October 2023

surround them and sit upon them. Given this, it is utterly extraordinary that the Appellants have not provided any plan to demonstrate that the rocks and the trees do not block the visibility splay.[25] Mr New explained in his evidence that the rocks form a crest within the visibility splay. Indeed, that is obvious from a site visit but is also clear from the plans provided by the Appellants. CD2/22 shows the height of the access onto Rocks Road as 39.4m. Within the visibility splay is land which goes up to above 44m[26]. The road behind at the end of the visibility splay is less than 43m[27]. Even if the eye height of a pedestrian is generously considered at 1.5m they cannot see through the rock. It is notable that Mr New was not challenged at all in cross-examination on this point.[28]

42. Even worse for the Appellants is that the splay is further blocked by trees which are to be retained as shown on CD2/23. The second page of those plans (sheet 2 of 3) clearly shows tree stems (small green circles) in the area of the visibility splay. Mr Bell appeared to be unaware that trees were proposed to be retained in the location of his visibility splay and admitted that there 'could be small tree trunks'.[29]

43. Under cross-examination Mr Bell sought to argue that the driver would be towards the middle of the carriageway however he accepted that he had not plotted a visibility splay for a driver in the middle of the carriageway. He also stated that pedestrians would be able to see the offside corner of a car in the middle of the carriageway. This was all 'on the hoof' 'off the cuff' evidence which is simply unacceptable in light of the grave safety concerns which this junction gives rise to. In response to a query about a motorbike, Mr Bell simply asserted that a motorbike would be likely to be towards the centre of the lane.[30] A wholly unjustified assertion.

44. The Council is deeply concerned about the evidence given by Mr Bell on this issue. That the visibility splay will be blocked by topography and trees is simply incontrovertible based upon the Appellants' own plans. The effect of it is the potential for serious highway accidents of the highest order.

45. The second point relates to the blocking of the footway itself. Clearly, visibility splays should be unobstructed. The Appellants propose 'visirail' around the edge of the ramp which would sit roughly half-way between a car approaching from the west and a waiting pedestrian. As Mr New explained, visirail is intended for where the conflicting users are in close proximity to one another (i.e. a pedestrian behind the railing which borders the road). Here, the visirail would be a complicating factor because it would require an oncoming driver to focus on the

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[25] No re-grading or tree loss is proposed in this area – see CD2/22 and CD2/23

[26] Confirmed by Mr Bell XX day 4 31 October 2023

[27] Confirmed by Mr Bell XX day 4 31 October 2023

[28] Mr Litton KC simply clarified what the point was but never challenged the fact that the rock would block the visibility splay.

[29] XX day 4 31 October 2023

[30] XX day 4 31 October 2023

visirail in the foreground and simultaneously a pedestrian c.30m beyond it. The same is true for the pedestrian having to look through the visirail and judge the speed of a car beyond it.

46. Further, because of the bend of the walkway adjacent to the road, and the fact that the visirail would sit around it the visirail would not be perpendicular through the line of site for the driver but would be at an angle which would cause additional obstruction. Mr Bell accepted that the arrangement would represent a 'slight obstruction'.[31]

47. To make matters worse the ramp channels pedestrians and cyclist into the area of the visibility splay and as they walk or cycle along the ramp (immediately adjacent to Rocks Road) they remain within the visibility splay until they get to the crossing point. Similarly, anyone entering the site would walk or cycle up the ramp and remain within the visibility splay for the full c.30m where the visibility splay crosses the path. Mr Bell sought to argue that visibility splays often cross footways. That may or may not be the case but clearly each case will have to be judged on its own merits. Here there is a section of footpath where the blocking of the visibility splay cannot be expected to be 'momentary' but rather continuous.

48. The County Council has continuously raised the issue of visibility at Fir Tree Grove.[32] The Appellants' own RSA raised the issue (it attributed the issue to vegetation).[33] Despite this, across Mr Bell's proof and rebuttal visibility was dealt with in just two paragraphs (7.37 and 7.38 of the main proof). The Appellants' failure to meet the concerns of ESCC and demonstrate that this access together with its main vehicular access is safe is unreasonable and has led to a costs application on behalf of the Council.

49. Overall, whether one considers (a) topography, (b) trees, (c) the railings or (d) blocking by pedestrians and cyclists the visibility splay is limited to just 32m. Around half of that which is required in this case. The consequences of this are clear. A high risk of the most serious accidents. On this basis alone the appeal scheme should be refused.

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[31] XX day 4 31 October 2023

[32] See for example Roger New Appendix 1 (PDF page 33) consultation response dated 18.10.22 and 23.2.23: *'However, on the basis that there is no frontage development, and the road conditions include a sunken carriageway with banked verges, there is no expectation that a footway/cycleway is likely to be present to drivers, especially as the proposed entry point would only be visible when a driver reaches it, and not in advance of it. The prominence of the active travel provision in the carriageway has been raised previously to highlight driver awareness and potentially a means of enclosure to prevent cyclists egressing the site from joining the carriageway at an inappropriate section of the highway where there is limited visibility of oncoming traffic. The pedestrian crossing point has limited visibility and this is not demonstrated should the vegetation be cut back sufficiently. Noted there is a mature highway tree which would be lost as part of the access scheme. Views of the County Landscape Architect is awaited. Tree removal is not supported if this is a healthy tree – being checked.*
The RSA for the Rocks Road/Snatts Road link has highlighted the safety issues relating to a guardrail on the ramped section and cutting back vegetation northwest of the pedestrian crossing point. Pedestrian sightlines are not shown and this element is not agreed, and the removal of the highway tree has not been accepted to date.'

[33] Appendix A to Phil Bell appendix B oara 2.9. NB the RSA authors were not provided with any plan showing contour heights or with the soft landscaping plan, as accepted by Mr Bell XX day 4 31 October 2023.

One-way working

50. The Appellants propose one-way working in two areas (Rocks Road[34] and Church St[35]). As Mr New explained each of these leads to a low risk of additional accidents. Mr Bell stated that there would be a slight risk of accidents. Whichever is correct, this is a risk which arises only as a result of the Appeal scheme[36]. Whilst this may seem minor in comparison to the very significant risks at the roundabout and Fir Tree Grove it nonetheless merits weight against the appeal scheme.

Conclusion on Highway Safety

51. Overall, the Appellants' proposals will have an unacceptable impact upon highway safety. They therefore contravene paragraphs 110(b), 111 and 112(c) of the NPPF toether with local plan policy TR3. This is self-evidently an issue which significantly and demonstrably outweighs the benefits of the appeal scheme and permission should be refused on this ground alone.

Locational Sustainability

52. The proposal for 424 houses is, on any view, a significant development. Paragraph 105 NPPF provides that '…Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health….'.

53. Various local plan policies also direct development to areas which are or can be made sustainable (see GD2, EN1, EN3 and TR3 of the Wealden Local Plan and WCS14 and SPO7 of the Core Strategy).

54. The national and local imperative is therefore to encourage modal shift away from car borne trips.

55. The starting point is that making car journeys from the Appeal Site will be very attractive. The site accesses directly onto the A22 and the car journey into town will be around 5 minutes.[37] Parking is free in Uckfield for up to 10 hours.[38] Mr Bell accepted that car journeys into Uckfield would be convenient.[39] Further, the site includes no community facilities such as a convenience store. The nearest store of that type was said to be Browns Lane or in the

[34] Plan 131G Book of Highways Plans
[35] Plan 134C Book of Highways Plans
[36] Accepted by Mr Bell in XX Day 4 31 October 2023
[37] Accepted by Mr Bell in XX Day 4 31 October 2023
[38] Mr Bell rebuttal proof para 2.24
[39] XX day 4 31 October 2023

Town Centre. Both are a significant distance away from the site. Popping to the shop to collect a pint of milk will involve a long walk there and a long walk back.

56. The Appeal scheme will divert the number 31 bus into the appeal site. This is a maximum hourly service at a cost of £4 for a return ticket. Whilst this may assist those without access to a private car at the time they wish to travel. Clearly, this bus service is not going to be an attractive option over a private car to access the nearest services in Uckfield for someone who has access to a car.

57. The Appellants rely upon three pedestrian/cycle routes into town. They are all long and unattractive in many respects none of them will be at all suitable for the disabled or mobility impaired (a particular consideration under the Equality Act 2010). I address each in turn.

A22 footway/cycleroute

58. This route into town is 2.3km from the nearest dwelling and 2.8km from the furthest dwelling.[40] Even Mr Bell does not predict that any pedestrians would use this route.[41] The maximum number of cyclists he predicts are only 16 two way journeys per day. A paltry number in light of a scheme for 424 houses. The reality is that the cycle way will not be attractive. It runs alongside the A22 which is a very busy road with a 60mph speed limit. Leading to obvious concerns about safety and air quality. In 2009 the Inspector found that:

'748. As for the proposed, 3.1 kms. long cycle route along the A22 etc, that would head away from the town centre before eventually doubling back along the line of the B2102 Bell Farm Road. While there is enough space for it within the highway verge alongside the Uckfield bypass, it would be in close proximity to heavy flows of fast traffic. On a wet day, or after dusk, that would be especially daunting. I therefore agree with the Downlands Action Group and others that for most Downlands residents it would not prove a very tempting or attractive route into the town centre, and, I suspect, would in practice be little used.'[42] (PDF page 92)

59. The greater separation from the carriageway of the now proposed cycle/footway compared to the 2009 proposals does not solve the problems. The plans which have been provided show a separation of a minimum of 2.5m where constraints allow (see e.g. plan 113B, Book of Highway Plans). The reality is that it will not be attractive, will be very indirect, and will not encourage residents to cycle instead of using the private car.

60. A further issue is that the Transport for the South East Strategic Investment Plan (CD8.6) adopted in March 2023 which includes the dualling of the A22 around Uckfield as one of the interventions it envisages in the short terms (i.e. within the remaining years of the

[40] SoCG CD1/9 PDF page 7

[41] Penultimate page of Mr Bell's appendices CD1/26

[42] CD4/3

2020s)[43]. This is at an early stage, the next step being a feasibility study, but so are all highway schemes in that short term programme. There is a real risk that the A22 dualling scheme's economic rate of return, and its competitiveness in securing funding, would be prejudiced by the inclusion as part of the scheme of the Appellants' proposed footway/cycleway, or similar, a proposed provision for which ESCC sees no strategic or other useful purpose other than to provide limited cycle access to the appeal site, as explained by Mr New[44]. The fact that the footway and cycleway would prejudice an A22 dualling scheme was not disputed by the Appellants. This is clearly a factor which needs to be weighed against the appeal scheme's A22 proposals.

Snatts Road

61. In the 2009 Appeal Decision relating to this Site the Inspector noted that this access 'for reasons of land ownership…may not be deliverable' (para 747 CD4/3). That remains the case today. There still remains a portion of unregistered land between the site and the highway which the Appellants do not control. The Appellants have applied to have the land registered in its name however, it is understood that this will be contested by local residents who use that access and the registration application is by no means certain. As such, if the Inspector grants the appeal then the appropriate way to address this issue would be through a Grampian condition which requires the Appellants to demonstrate that the access is deliverable before it can commence development.

62. Even if the Snatts Road access is deliverable, the route into the town centre is woefully unattractive. The nearest house is over 1.3km to the town centre and the furthest house is almost 2km to the town centre.[45] Previous CIHT guidance (CD8/7) table 3.2 sets out suggested acceptable walking distances. It gives 800m as the preferred maximum to the town centre. The Snatts Road route is clearly well in excess of this distance, even for the nearest houses. At this distance, clearly, quality becomes a key factor in encouraging residents to walk.

63. In 2009 the Inspector described the route as follows:

'747. … An existing footpath link from Snatts Road to Pudding Cake Lane (off Church Street) is far from satisfactory, as it follows a rather tortuous route, incorporates steep steps or other obstacles in places, and is frequently too narrow, enclosed and ill-lit. It could not easily be made Disability and Discrimination Act compliant. And, from my own observations, (and probably for those reasons) it seems to be little frequented.' (PDF page 92) CD4/3

[43] CD8.6 PDF page 52 and 135

[44] The issue being that more land would be required through a CPO and this may well make the dualling prohibitively expensive.

[45] CD1/9 PDF page 7

64. That remains the case today and the suggested 'improvements' shown on plan 104B do nothing to address this. First, the Appellants propose a section of 1.5m wide footway on the south of Snatts Road. 1.5m is narrow and the very limit of what might be acceptable. Mr Bell pointed to Manual for Streets (CD8/1) figure 6.8 on page 67 which shows a person pushing a narrow pushchair right on the edge of a 1.5m carriageway and a passing pedestrian. To describe the arrangement as 'tight' is an understatement. The text of the document beneath states:

'6.3.22 There is no maximum width for footways. In lightly used streets (such as those with a purely residential function), the minimum unobstructed width for pedestrians should generally be 2 m. Additional width should be considered between the footway and a heavily used carriageway, or adjacent to gathering places, such as schools and shops. Further guidance on minimum footway widths is given in Inclusive Mobility'

65. Inclusive Mobility (CD8/3) provides, at section 4.2:

'Footways and footpaths should be made as wide as is practicable, but under normal circumstances, a width of 2000mm is the minimum that should be provided, as this allows enough space for two wheelchair users to pass, even if they are using larger electric mobility scooters. If this is not feasible due to physical constraints, then a minimum width of 1500mm could be regarded as the minimum acceptable under most circumstances, as this should enable a wheelchair user and a walker to pass each other. Where there is an obstacle, such as lamp columns, sign posts or electric vehicle charging points, the absolute minimum width should be 1000mm, but the maximum length of such a restricted space should be 6 metres.'

66. The Inclusive Mobility guidance is clearly dealing with the practicalities of who can pass each other in a certain area. It is not addressing what widths of footpath are likely to make a route attractive to pedestrians. On any view, a 1.5m footpath along Snatts Road where the speed limit is de-restricted is unlikely to be attractive.

67. The remainder of the route is extremely unattractive. It involves steep steps through Downlands Copse, narrow unmade footpaths and significant areas which are not overlooked running alongside back gardens.

68. The Appellants have suggested some 'improvements' which are to be 'considered'. It accepted it hadn't assessed the impact of additional lighting on neighbouring residents. It also accepted that lighting would not be appropriate in the area of ancient woodland just below the steps.[46] Further, much of the route is in private ownership and therefore the Appellants don't have the power to either re-surface or widen the existing paths in these areas.

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69. Overall, the Snatts Road route remains as described as the Inspector in 2009 and is unlikely to encourage residents away from the private car. Indeed, even Mr Bell predicts only 20 two way pedestrian movements per day (penultimate page to Mr Bell's appendices). A tiny figure in light of a development of 424 houses.

70. Clearly, the Snatts Road route will not be used by cyclists due to the steep steps. Notably, Mr Bell does not predict any cyclists using this route.

Fir Tree Grove

71. In addition to the serious safety concerns set out above, the Fir Tree Grove route is also unattractive. The distances into the town centre range from 1.1km from the nearest house to 2.2km furthest house (SoCG CD1/9 PDF page 7).

72. The onsite part of the route involves either steps which equate to three flights of an office block or a steep ramp which has an average gradient of 6% and a maximum gradient of 8%.

73. LTN 1/20 addresses cycling infrastructure at para 5.9.7 and table 5-8. Para 5.9.7 states:

'Unlike motor traffic, human physiology means that people can cycle steep gradients that are fairly short but are not capable of maintaining high levels of effort for longer distances. Cycle routes should therefore, where possible, be designed in such a way that the steepness and maximum length of longitudinal gradients meets the requirements of Table 5-8'

74. Table 5-8 provides that the maximum distance of a 5% gradient for cycling should be 30m. It doesn't even provide distances for 6% and 8%. The ramp which is being provided is long. It is clearly not going to be attractive to cyclists to climb it. On this basis alone Mr Bell's estimate of 16 return journeys per day by cycle using this route is clearly optimistic. Further, the part of the route along Rocks Road and Church Street is also likely to put cyclists off. Figure 4.1 of LTN 1/20 (p33) indicates that the existing conditions on Rocks Road and Church St (average 24hour daily traffic flow count on Church Street of 2953 vehicles per day with an 85^{th0}%ile speed of 23.5mph and traffic flow count on Rocks Road of 3299 vehicles per day with an 85^{th0}%ile speed of 31.4mph[47]) mean that the route is 'suitable for few people and will exclude most potential users and/or have safety concerns'. Overall the Fir Tree Grove route is not a realistic alternative for cyclists.

75. Turning to pedestrians, the onsite provision is likely to be equally off putting. Pedestrians will be faced either with steps equating to 3 floors of an office block or a steep and lengthy ramp. Neither is suitable for people with mobility issues. Mr Bell sought to highlight other areas in Uckfield which are steep. However, he accepted that these were either shorter or less steep than the ramp which he has designed.[48] Neither the boardwalk or the steps will be

[47] Figures at 3.46 and 47 of Mr New Proof

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overlooked which is another important factor influencing the attractiveness of any pedestrian / cycle route providing comfort on personal safety / security grounds.

76. On exiting the site, and having negotiated the unsafe crossing, Mr Bell expects that 50% of pedestrians will use Church St to access the town centre. There are lengthy sections of this route where the footway is well below 1.5m and parts below 1m. These are shown in grey on plans 113C and 134C. Again, this is wholly inadequate next to a busy road and are unlikely to encourage people to walk from the appeal site into the town. Mr Bell predicts that the appeal scheme will add 180 daily pedestrian journeys to this part of Church Street[49], current use is said to be 265. This will simply increase the number of conflicts on this narrow footway.

77. In conclusion, none of the routes are at all suitable for anyone with mobility issues. The unattractiveness of the routes due to, variously, length, lack of overlooking, footpath widths and gradients mean that they do not represent a genuine choice for residents wishing to access the town centre particularly compared with a five minute drive into the town centre.

Conclusion on sustainability

78. As set out by Mr Robins (proof para 5.46 CD1/41) the importance of locational sustainability runs right through the NPPF. It goes to the heart of the economic, social and environmental limbs of sustainable development in paragraph 8 and also paragraph 105 NPPF. The appeal scheme will not give a genuine choice of transport modes to residents who will be expected to be heavily reliant upon the private car. This is an issue which breaches paragraph 105 NPPF and saved policies EN1 and EN2 and polices SPO7 and WCS14. It is an issue which significantly and demonstrably outweighs the benefits of the appeal scheme and permission should be refused on the basis of this reason alone.

Heritage Impact

79. The Appellants do not assert that its scheme will lead to any heritage benefit. Both parties agree a low level of less than substantial harm to the Maresfield Conservation Area.[50] The parties dispute whether the setting and significance of a number of other designated and non-designated heritage assets would be affected. These are: Buckswood Grange (grade II), Lake Wood (non-designated), Chicory Cottage (non designated) and Oast Cottage (grade II), Swallow Barn (grade II) and Partridges Oast (non designated).

80. Section 66(1) of the Listed Buildings and Conservation Areas) Act 1990 provides that:

'In considering whether to grant planning permission… for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary

[49] CD1/26, Appendix PABM, PDF page 198
[50] CD1/12, para 1.6

of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'[51]

81. It therefore protects both a listed building and its setting. To the extent that there is harm to the setting of a listed building, then that must be given considerable importance and weight in the planning decision.[52]

82. The NPPF defines the significance of a heritage asset in the glossary. This includes architectural and historic interest. Mr Stratford, the Appellants' heritage witness, accepted that neither the NPPF nor the PPG indicates that any type of interest takes precedence over the other.[53] Historic interest is defined in the PPG as:

'historic interest: An interest in past lives and events (including pre-historic). Heritage assets can illustrate or be associated with them. Heritage assets with historic interest not only provide a material record of our nation's history, but can also provide meaning for communities derived from their collective experience of a place and can symbolise wider values such as faith and cultural identity.' (emphasis added)

83. Notably, there is nothing in the PPG or any other guidance which provides that the historic interest must be immediately apparent from the ground without reference to other documents such as maps and text.[54] Indeed, it is difficult to conceive of any heritage asset where the full historic interest would be 'immediately apparent' without reference to other sources or its context. Further, there is nothing in the PPG which indicates that historic significance must be 'national' and cannot be 'local'. Ultimately, both the Appellants and Council agree that significance is about 'what matters and why'.[55]

84. It is apparent that the Appellants' approach to 'setting' has proceeded on a reductive and narrow basis (reduced almost solely to views). This is contrary to the relevant guidance. The NPPF defines setting as:

'The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.'

85. The PPG further provides:

'The extent and importance of setting is often expressed by reference to the visual relationship between the asset and the proposed development and associated visual/physical considerations. Although views of or from an asset will play an important part in the

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51 CD6/18 page49

52 *ibid*

53 XX day 3 26 October 2023

54 Accepted by Mr Stratford XX day 3, 26 October 2023.

assessment of impacts on setting, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust, smell and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.' (CD11/3 PDF page 8)

86. Importantly, and accepted by Mr Stratford, the PPG expressly states the way in which an asset is 'experienced' is influenced by the understanding of the historic relationship between places.[56] Thus, the extent of an asset's setting does not depend upon where it can be seen and it can be defined by historical association.

87. Further, setting does not depend upon there being an ability to access or experience the setting (see PPG page 8 CD11/3). Setting is generally more extensive than a building's curtilage (GPA3 CD11/2, para 7 first bullet). Quiet and tranquility may be a significant part of a building's setting (GPA3, CD11/2 para 9 PDF page8).

88. GPA 3 sets out key factors which are to be considered when considering setting (p.11 CD11/2) they include the asset's physical surroundings which include other heritage assets, formal design, functional relationships and history and the experience of the assets which include the surrounding landscape, views, tranquility or remoteness, land use and degree of interpretation. Ultimately, the extent of an asset's setting is an open-textured judgment which takes into account a whole range of factors. It is not limited to views.

89. In his proof of evidence Mr Stratford relied heavily on the Inspector's approach in the decision under challenge in *Catesby Estates Ltd vs Peter Steer* [2018] EWCA Civ 1697 (CD4/11). However, in cross-examination he confirmed that he wasn't relying upon the case as demonstrating that a setting can never be determined by historical relationships. Further, he also accepted that each case turns on its own facts. Ms Hall, for the Council explained, that the underlying facts in *Steer* are very different from this appeal where the appeal site was 1.7km from the listed asset (Keldeston Hall) and there were no design features which connected the appeal site and the Hall. In such circumstances it was unsurprising that the Inspector found that something above a simple historic connection was required (see para 32 of the DL cited at para 16 of the judgment).

90. The competing evidence on the assets was given by Ms Hall for the Council and Mr Stratford for the Appellants. Ms Hall has an MSc in Historic Building Conservation and is a full member of the Institute of Historic Building Conservation (IHBC). Mr Stratford is trained as an archeologist.[57] Moreover, and crucially, Ms Hall had visited the assets in issue.

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[55] See Advice Note 12 CD11/14 para.14

[56] XX day 3 26 October 2023

[57] Historic England recognises that specialist expertise may be necessary when considering significance, advice note 12 CD11/14 para 11 page 5

Mr Stratford admitted that he had not visited: Buckswood Grange, Swallow Barn, Partridges Oast or Oast Cottage.[58] It was extraordinary that Mr Stratford felt able to assert that the setting of each of these assets was confined to its curtilage without having even been within those curtilages.

The Buckswood Grange Group – Buckswood Grange

91. In his Historic Impact Assessment Mr Stratford discounted assessment of Buckswood Grange on the basis that it was 'considered to have no significant historical association with the land within the site'.[59] That is demonstrably wrong.

92. The history of Buckswood Grange and the appeal site is set out in Ms Hall's proof (paras 5.5-13) and in appendix 2 to her proof. In very short summary:

    a. The estate was bought in the late 1700s by the Stretfield family;

    b. In 1790 Mr Stretfield applied to have the road leading from Isfield to Uckfield diverted and that became Rocks Road;

    c. There was then the construction of two driveways through the Stretfield estate, these are the carriage drives which are depicted on Figg's maps at Appendix 5 of CD1/21 (and later OS maps at Appendix 7)

    d. These were deliberate design features which were private routes for the benefits of the owners of the estate and their guests (the more direct entrance being on Rocks Road);

    e. At roughly the same time Lake Wood became part of the designed landscape;

    f. One of the carriage drives runs to the west of the appeal site which formed part of the land associated with the estate (the productive part of the estate) through Lake Wood, under Rocks Road and into the parkland of Buckswood Grange. The house was designed by Sydney Smirke in 1838 within the grounds;

    g. Other enhancements included walks through Lake Wood, a pedestrian tunnel under Rocks Road and a pedestrian footbridge into Fir Tree Grove.

93. All of the above features, the house, the carriage drives, the footpaths the tunnels and footbridge can be seen on the 1878 OS map at Ms Hall's appendix 7. All of those features form part of a broadly contemporaneously designed landscape.

94. Mr Stratford, for the Appellants, asserted that the significance of Buckswood Grange was overwhelmingly derived from its fabric.[60] He based this largely on the listing description.

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However, Historic England's guidance is clear that listing descriptions do not describe significance[61] rather their purpose is to simply identify an asset. Given that fact, it will always be the case that a listing description will focus upon the fabric of an asset. Properly understood Buckswood Grange has both architectural and historic significance (Ms Hall para 5.14-22). In terms of its historic value, it was the family seat of the Stretfield family (explicitly noted in the listing description) and the main house for the wider estate which included formal parkland, Lake Wood, Fir Tree Grove, Chicory Cottage and the appeal site, all in proximity to one another. The Streatfields were important local benefactors in Uckfield[62] and this is reflected in a number of the third party representations.[63]

95. Turning now to setting, in his proof Mr Stratford stated that Lake Wood forms part of the designed landscape to Buckswood Grange[64] but went on to state that the routes from the house to Lake Wood are now defunct.[65] That is wrong. Residents of Buckswood Grange, and their guests can walk under Rocks Road out into Lake Wood and encircling the lake, pick up the carriage drive into the appeal site. In short, they can experience the designed landscape in one of the ways in which was intended by the Streatfeild family. Further, portions of the carriageway can still be found in the north west of the appeal site (see VP9 and11 of Ms Hall appendix 1).

96. GPA3 states that:

'Many heritage assets have settings that have been designed to enhance their presence and visual interest or to create experiences of drama or surprise. In these special circumstances, these designed settings may be regarded as heritage assets in their own right, for instance the designed landscape around a country house'

97. That guidance fits this scenario. The landscape surrounding Buckswood Grange which includes the carriage drive past the appeal site, through Lake Wood, through the tunnels under Rocks Road and into the parkland immediately surrounding Buckswood Grange was designed to enhance its presence and to create experiences.

98. Indeed, as Ms Hall higlights (para 5.30) Historic England notes that landscape parks of the mid 18th-early 19th century were meant to be experienced in motion. From the north of Buckswood Grange this would have been 'across open commons, past pastoral fieldscapes and mosaic ancient woodland, over the dam with views across the lake to the rocky outcrops

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59 HIA CD2/83 para 4.15

60 Proof para 3.97

61 CD11/14 page 14 second bullet

62 They donated land for the construction of the Public Hall, The Uckfield Institute, the Cottage Hospital, the Victoria Pleasure Grounds and Lake Wood to the Woodland Trust (HH para 5.17)

63 See e.g. appendix 8 page 8 and appendix 9 page 5 of Ms Hall's proof

64 Para 3.103

65 Para 3.106

and through the carriage tunnel to be presented with panoramic views southwards across the parkland before turning eastwards to approach the house across the lawns.' (para 5.30)

99. Mr Stratford asserted that the modern development surrounding Buckswood Grange defines its setting (para 3.107 of his proof). However, this completely ignores the area to the north including the appeal site. Indeed, as Ms Hall points out, the land to the north is all the more important because it is the only remaining part of the setting which enables Buckswood Grange to be read as the main house for the country estate.

100. Mr Stratford further argued (para 3.110) that 'there is nothing about the non-descript farmland within the site which indicates this historical ownership link or indeed suggests any connection whatsoever with Buckswood Grange'. That is simply wrong. There are direct connections from Buckswood Grange, through Lake Wood and into the appeal site. In any event, it is easily understood with even a cursory knowledge of local history (remembering that there is nothing in policy or guidance which requires the entirety of a historical relationship to be immediately obvious on the ground).

101. Ultimately, Mr Stratford's assertion that there was no experience of Buckswood Grange within the appeal site (para 3.112 proof) is an assertion which was made (a) without visiting Buckswood Grange itself, (b) with a mistaken understanding that the connections under Rocks Road are now defunct, (c) without travelling the route under Rocks Road and through Lake Wood, (d) under the mistaken impression that the carriage drive no longer exists and (e) without due regard to the history of the connection of the appeal site to Buckswood Grange. Mr Stratford's reductive interpretation of the setting is therefore to be rejected.

102. Properly understood, and as set out in the detailed evidence of Ms Hall, the setting of Buckswood Grange includes those elements which form part of the surviving landscape which is contemporary with the house and the wider estate associations (proof para 5.18) and Buckswood Grange derives part of its significance from this setting (also para 5.18). The setting includes: the rural character of the historic access (5.19), Lake Wood, Fir Tree Grove, Chicory Cottage and the appeal site which formed part of the wider estate which formed part of an articulated arrival sequence and has continuity with other features such as the surviving sections of the carriage drives and the lodge houses (para 5.22).

103. Ultimately the appeal scheme falls within the setting of Bucskwood Grange will harm the setting of Buckswood Grange and the appreciation of its significance through the development of the appeal site on the historic farmland, by demolishing chicory cottage, by urbanizing the rural character of the area directly opposite the main entrance of Buckswood Grange and the creation of the access from the A22 (via impact upon Lake Wood) (see Heather Hall proof 7.5-24) the level of harm would be 'moderate' less than substantial harm.

Buckswood Grange Group – Lake Wood

104. Lake Wood is not designated. The NPPF defines a non-designated asset as:

'Heritage asset: A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing)'

105. In his proof Mr Stratford accepted that Lake Wood has heritage significance, albeit he stated this was limited (3.204). Part of his reasoning was that it was an 'isolated remnant' of the designed landscape (a mistaken conclusion based upon a misunderstanding of there being no tunnel under Rocks Road and also that the carriageway is no longer extant (see para 3.202 of his proof)). He also expressed a view that there is no opportunity to experience or appreciate the historical connections (3.205 of his proof). That is demonstrably wrong as can be seen from walking between Bucskwood Grange, Lake Wood and the Appeal site. Even if that were not possible, the historic associations are clear from the source material and from a number of public representations on this appeal.

106. It's clear that the historic significance of Lake Wood is much more than limited. As set out in Ms Hall's evidence it was part of an historic landscape which meets a number of the criteria for significance in Historic England's Register of Parks and Gardens Selection Guides (CD11/4 referenced at para 5.25 Ms Hall proof). It is 'a rare and unique example of a natural landscape deliberately appropriated as a design feature with a dual purpose of managed woodland, virtually unchanged in its design and still in active woodland management, with surviving specimen trees' (Ms Hall 5.26). It is valued for its artistic interest and aesthetic value (para 5.28) and is described in literature and the 1888 Brooker's Guide Directory (appendix 13 to Ms Hall).

107. The setting for Lake Wood includes Fir Tree Grove to the east (including the same rocky outcrops and woodland) and also the open farmland to the north highlighting the contrasting character and being the productive part of the original estate (Hall para 5.32). The public accessibility gives the site a communal value (Ms Hall 3.34).

108. Mr Stratford sought to argue in his oral evidence that the heritage interest was confined to the lake and its immediate surrounds and that the setting was the woodland. That is simply wrong. As Ms Hall highlights, Lake Wood was designed as a whole and remains in tact. It cannot be simply carved into component parts. Mr Stratford also argued there was no intervisibility between Lake Wood and the appeal site. This is clearly wrong as any site visit will demonstrate.

109. The appeal proposals will introduce visible built form together with lighting noise and activity immediately adjacent to Lake Wood. It will adversely affect its tranquil qualities (less pronounced at the western end by virtue of the A22) and its understanding as part of a 'gentleman's retreat on the edge of Uckfield and thereby detract from the appreciation of its significance' (Ms Hall 7.8). The removal of tree cover from Thirty Acre Wood would

increase the road noise within Lake Wood and also further disrupt the route of the carriage drive (Ms Hall 7.11). The harm would be at a moderate level.

Chicory Cottage

110. Chicory cottage has some significance by virtue of its association with Buckswood Grange. Indeed, its historic association is boasted about on the sales particulars (Ms Hall appendix 14). Its historic interest has also been picked up in third party representations, see e.g. Mrs Stephens who states it was the 'home to the last Streatfieild' (Ms Hall appendix 8 bottom of page 8). On any view it has a degree of heritage interest which merits consideration in this planning appeal. Its total loss is clearly a material factor weighing against the proposal.

Downlands Farm Group

111. Downlands Farm is recorded on the Historic Environment Record as a partially extant medieval farmstead (Ms Hall Appendix 16). Each of the assets, Swallow Barn, Partridges Oast and Oast Cottage were historically the buildings which farmed the appeal site. In short they:

a. became part of the Streatfeild estate in 1750 (HH para 5.38), including the appeal site (HH App 5(c) – Figgs maps 1829 (number 1 is the farm and buildings));
b. remained part of the Streatfield's tenanted lands (HH 5.40) in the 1800s;
c. are shown on the 1841 Tithe Map (HH App 3) and consistently on later OS maps, with some southerly expansion in the late 19th century (HH 5.43);
d. in 1953 the Oast House and a barn were linked and converted into Partridges Oast; and
e. followed by conversion of Swallow Barn in c.1996, including removal of a number of modern agricultural buildings to enhance its setting.

112. Swallow Barn and Oast Cottage are grade II listed. Partridges Oast is agreed by both the Council and the Appellants to be a non designated heritage asset.[66]

113. Again, Mr Statford argued that each asset overwhelmingly derived its significance from its historic fabric (HIA para 5.12) but this was based solely on the listing descriptions which is an inappropriate use of those sources. Despite this, Mr Stratford's HIA did accept that the appeal site does contribute to the significance of the listed buildings through providing an understanding of their historic context (HIA 5.26). Applying the NPPF definition of setting the appeal site must form part of the setting of the Downlands Farm Group. In his evidence to the Inquiry, Mr Stratford appeared to argue that the historic association did not contribute to the experience of the assets but this ignores the terms of

[66] Confirmed by Mr Stratford in response to the Inspector day 3 26 October 2023

the PPG set out at para 85 above and also section 2 of GPA 3 which makes clear that historic association does form part of experience.

114. Mr Stratford made a separate argument in relation to Swallow Barn which was that its relationship with the agricultural land was never a key contributor to its setting or significance (para 3.88 proof). However, as can be clearly seen from the first edition OS Map (1987, Ms Hall Appendix 7) the barn was arranged directly onto the field behind it. Later some open sided animal shelters were added. Mr Stratford's point misunderstands local farming practice in the Weald and goes nowhere.

115. On any view the appeal site forms part of the setting of each of the three assets. Significantly it is virtually undisturbed and is closely associated with the medieval origins of the farm (see Ms Hall 5.35, 5.65-6). Mr Stratford accepted that if the appeal site is the last remaining element of the historic setting and is lost then that would add weight to the harm (albeit he did not accept that the appeal site forms part of the setting to the Downlands Farm Group).[67]

116. Mr Stratford relied heavily upon the woodland to the west of Partridges Oast as interrupting the experience of the assets with the appeal site. Notably this assertion was made without visiting any of the assets or attributing any experiential qualities of the existing land use, landscape character, lighting and diural/seasonal changes. Without experiencing views from within the gardens of Oast Cottage and Partridges Oast. Without any knowledge of the gate connecting Oast Cottage into the appeal site. Even if such views didn't exist it is clear that the appeal site forms part of the setting of the assets.

117. The assets are read as a group of historic farm buildings and they are immediately adjacent to the historic farm which they used to serve. There are some views from the assets to the appeal site and there are some views from the appeal site to the assets. Even if those views were not present, one doesn't walk past the farm buildings and into the appeal site forgetting that they are there. The Appellants have incorrectly sought to characterise this last point as a reference to 'kinetic views' it is not. It is simply that part of the experience of the asset can include walking past the buildings into the appeal site and vice versa. This is entirely consistent with the step two checklist in GPA 3 which includes, functional relationships, history, surrounding landscape, tranquility, land use and degree of interpretation as elements which can be attributes of an asset's setting (quite apart from views).[68]

118. Mr Stratford also argued that views of Swallow Barn from the farm track are 'devoid of historic integrity' (proof 3.89). It was entirely unclear what he meant by that. He confirmed it wasn't that the views would not have been available historically. As such, it is hard to understand the point.

[67] Confirmed by Mr Stratford in response to the Inspector day 3 26 October 2023

119. Mr Stratford refused to accept that the absence of development could be something which is experienced. The absurdity of the position was revealed when he accepted that if the appeal scheme proposed a tall building on the appeal site then that could fall within the setting of the Downlands Group.[69] But, the converse must be true, the absence of development must be part of the setting of the asset.

120. Ultimately the appeal scheme will mean that the assets will 'no longer have any tangible relationship' to its historic farmland. This will result in moderate less than substantial harm to Swallow Barn (given its proximity to the appeal site) and a low level of less than substantial harm to Partridges Oast as a non-designated heritage asset and to Oast Cottage (Ms Hall 7.19-23).

121. It is the case that in 2009 heritage was not considered to be a reason to refuse development at the Downlands Site or at Bird in Eye Farm. However, clearly things have moved on. There is now the NPPF and a considerably increased understanding of the statutory duty (see *Barnwell Manor*). This is exemplified by the fact that the recent Bird-in-Eye South appeal decision found that the appeal scheme would cause less than substantial harm to the setting of a listed farmhouse and that this harm was not outweighed by the delivery of 290 houses.[70] This is despite the fact that the Council did not raise any heritage harm in its decision.

Conclusion on heritage assets

122. Overall the harm to the setting of the listed assets outlined above should be given considerable importance and weight in the planning balance. The harm to those assets is not outweighed by the public benefits of the proposal (discussed above)[71]. To this harm can be added the harm to the non listed assets which must also be weighed against the proposal. The harm to heritage assets in this case significantly and demonstrably outweighs the benefits of the appeal scheme.

Ancient Woodland and related Biodiversity Issues

123. The terms of national policy are strict. Paragraph 180(c) provides that '*development resulting in the loss of deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists*'. Footnote 63 states: '*For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat'.*

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[68] CD11/2 page 11

[69] XX day 3 26 October 2023

[70] CD4/36 see paras 55-69

[71] Robins proof CD1/41 para 5.53

124. The NPPF's glossary defines AW as '[A]n area that has been wooded continuously since at least 1600AD. It includes ancient semi-natural woodland and plantations on Ancient Woodland sites (PAWS).

125. The Appellants accepted that the policy test does not require a significant loss of AW, some loss would suffice to engage para 180(c). Similarly, there need not be significant deterioration, merely some deterioration. The Appellants accept that 180(c) applies to all types of development and all AW, irrespective of its condition.[72]

126. The Appellants further accepted that all impacts need to be considered cumulatively and that the impacts of the development need to be considered over the course of its lifetime, i.e. in perpetuity and that harm to trees can take a long time to manifest.[73]

127. The policy test is concerned with irreplaceable habitats. As accepted by the Appellants, that includes the soils (which are a habitat for the trees and plants) and the trees and plants which are part of the habitat for fauna.[74]

The PPG and Standing Advice

128. Mr Forbes Laird accepted that the Standing Advice is up to date and based upon the current version of the NPPF. He also accepted that both the Forestry Commission ('FC') and Natural England ('NE') had advised in this case that it should be followed.[75] Despite this, he stated that the 2018 version of the standing advice was 'correct' and that the 'current version has strayed into an irrational place'.[76]

129. When Mr Forbes Laird was asked under cross-examination whether he was arguing that the PPG should not be followed he stated 'certainly not'. However, when he was taken to the Natural Environment chapter of the PPG (CD9/19) he sought to row back from this. No doubt recognizing that his evidence was directly contrary to (a) the clear guidance that 'existing condition is not something that ought to affect the local planning authority's consideration…'[77] and (b) the indication in the PPG that decision makers should follow the Standing Advice.

130. There is, in fact, nothing irrational about (a) decision makers not taking the existing condition of the woodland into account and, (b) treating management as compensation. The principle of not taking an existing condition into account occurs elsewhere in the NPPF (*cf* para.196 where there is deliberate neglect of or damage to a heritage asset). Clearly, such a provision is designed to stop exactly the situation which the Appellants now argue for which

[72] Day 7 9 November 2023
[73] Mr Forbes Laird XX day 7 9 November 2023
[74] Mr Forbes Laird XX day 7 9 November 2023
[75] Mr Forbes Laird XX day 7 9 November 2023
[76] Day 7 9 November 2023
[77] CD9/19 para 33

is that management proposals can be used to counterbalance/offset the harm caused. These woodlands have been in existence for at least 400 years, if not since the last ice age. There is clearly the potential for them to be managed in the future, without the need to approve harmful development.

131. The Inspector at *Badbury Hill* (ID22) put the matter as follows:

> '*14. Standing advice from the Forestry Commission and Natural England includes that the complex ecological relationships found in ancient woodlands cannot be recreated once taken away, due to the timescales involved and changes in the modern abiotic environment. For this reason, ancient woodlands are regarded as irreplaceable; a finite biodiversity resource. If the existing condition of ancient woodland is poor this should not be seen as a factor in favor of development because condition can usually be improved with good management, and compensation should not be considered as a benefit for development impacting irreplaceable habitats. BS 42020:2013 reflects this.'*

132. That is clearly the correct approach.

133. With regards to management and existing condition in this case, the Appellants accepted[78] that there was no evidence from the landowner that they would not manage the woodlands if the appeal were refused permission. The Appellants did not provide any viability evidence to demonstrate that a scheme of this size was required to 'enable' management to occur. The Appellants have not demonstrated that available grants are not sufficient to fund management of the woodlands. Finally, with regards to public access, the Appellants stated[79] that public access could be stopped up at any time. That being the case, any damage currently caused by public access (e.g. the bare earth footpaths) clearly should not be taken into account in determining whether this proposal will lead to loss or deterioration.

134. In his oral evidence Mr Baxter sought to argue that it wasn't the Appellants' case that management was a mitigation measure to be taken into account and that it wasn't the Appellants' case that existing condition should be taken into account. However, that was directly contrary to his written evidence (see 4.6.3 of his proof CD1/59), the evidence given by Mr Forbes Laird (see para 7.1.6-9 of his proof CD1/57) and the management plan itself (CD2/111 para 4.2.4).

135. Finally with regards to policy and guidance, the Appellants sought to rely upon DEFRA's document 'Keepers of Time' (CD9/6). The introduction of this document makes clear that planning policy is contained within the NPPF and also that the Standing Advice has been published 'to support this'. There is nothing in Keepers of Time which supports a position that recreational benefit can outweigh loss or deterioration of AW.

Consultation responses

[78] XX Mr Mellor 15 November 2023

136. Before going on to the direct and indirect impacts of this proposal, it is necessary briefly to address the positions of NE and the FC. NE has provided a number of consultation responses on the proposal. The most significant of which is at CD12/1. It makes clear that its 'advice on this application is focused on its impact on designated nature conservation sites'. It further makes clear that the council and Inspector should apply the Standing Advice when considering the impacts upon AW and that NE is not providing bespoke advice on this issue.

137. However, NE has provided some comments which are relevant to AW and the SANG. For example, it has recommended the use of boardwalks, the discounting of capacity and also long term management of the SANG.

138. A similar situation arose at the appeal at Bird in Eye (CD4/36) where NE had recommended the provision of a path for SANG through AW (c.100m). The Inspector in that appeal noted that NE's advice 'appears to be largely focused on the creation of the SANG and it is possible some issues with respect to impacts on the ancient woodland may have been overlooked'. As Ms Graham stated, the same appears to have occurred here.[80]

139. The FC has also made consultation responses in relation to this appeal (CD12/4). Their consultation response is focused upon AW and other woodland. They note that the proposals 'are expected to result in direct loss and impacts to woodland, including Ancient Woodland' (p3). The FC has raised particular concerns with regards to fragmentation, recreational pressure (e.g. soil compaction, litter) including at Lake Wood, hydrology, and the need for much more extensive buffers. The FC is an expert consultee and their views on the issue of AW should be given significant weight.

140. I now turn to the direct and indirect impacts of the appeal scheme.

Direct loss/deterioration as a result of the boardwalks

141. Mr Forbes Laird accepted the following: (a) that trees are part of ancient woodland habitat, (b) the term habitat is broader than indicator species (c) all ancient woodland is equally protected by policy, irrespective of quality.[81] Once that is accepted, it is abundantly clear that the boardwalk in FTG and in the SANG would lead to the loss of ancient woodland habitat. The Appellants assessed that 62 trees (not including category U trees) would be lost in FTG for the boardwalk and that c40 trees were estimated to require removal as a result of the SANG boardwalk (although no definitive plan has been provided).

142. Obviously relevant is the fact that not only would the boardwalks result in a loss of those trees but that the boardwalk would prevent, <u>in perpetuity</u> the growth of trees or any indicator ground flora underneath them. The relevant areas are c280m2 within AW in FTG

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[79] Question asked of Mr Mylchreest Day 2 Inquiry 25 October 2023

[80] CD1/44 para 5.2.6

[81] Day 7 9 November 2023

(para 7.166 ES CD1/14) and c639m2 in AW in the SANG (para 7.168 ES CD1/14). The paths will also necessitate facilitative pruning over their lifetime.[82]

143. The Council's case on this matter is entirely consistent appeal decisions before the Inquiry and decided on the basis of paragraph 180(c) NPPF as it currently stands. In particular:

a. Land at Bird-in-Eye North CD4/36 (para 19) '*Part of the ancient woodland would therefore effectively be lost and unable to regenerate itself'*

b. Lilas Wood (ID27) (para 19) *'Any increased human traffic on site along with the more permanent siting of various structures would only further inhibit such plant growth and deter wildlife all of which would result in further deterioration of this ancient woodland*'

c. The Finches (ID26), stationing of holiday caravans, (para 13) *'Although in small pockets, it would nevertheless prevent or disrupt managed or natural regeneration of ancient woodland over a significant part of the site, including where the cabins would be sited. There is no evidence that existing or proposed open spaces would result in any meaningful functional benefit to ancient woodland equivalent to the arrangement or extent of open space envisaged by the FC restocking notice. Moreover, the resulting fragmentation of woodland across the site, and nature of proposed human activity and use, would unduly erode a purpose of the site as a buffer to the off-site trees. This would detract from the overall integrity of this entire parcel of ancient woodland.'*

144. The Appellants have not identified any appeal decision where development has resulted in the loss of a number of ancient woodland trees and/or indicator species and but has not amounted to loss or deterioration of AW.[83]

145. Notably, the Appellants' assertion of no loss was contrary to (a) how it treated the loss of woodland other than ancient woodland and (b) how the impact of the boardwalk was treated in its 2022 BNG assessment.

146. The Appellants' documents consistently referred to the impact of the emergency access as a 'loss' of woodland. This, despite the fact that the Appellants asserted that the emergency access would result in the loss of only one tree and cause no adverse impact to tree roots[84]. Relevant references are:

a. Paragraph 3.4.3 of Mr Baxter's proof (CD1/59) stated that there would be losses of woodland as a result of the accesses onto the A22;

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[82] Accepted by Mr Forbes Laird, day 7, 9 November 2023. This is one impact which may lead to loss or deterioration in the standing advice CD9/3 top of p.6

[83] During cross-examination on 9 November 2023, day 7 of the inquiry, Mr Forbes Laird stated that he had been involved in a case relating to siting of holiday homes in ancient woodland and there was an appeal decision which supported his position. This turned out not to be the case.

[84] For asserted impact on tree roots see para 6.6 of Mr Forbes Laird CD1/56

b. Paragraph 7.117 of the ES (CD1/14) which states: 'The majority of woodland habitats are retained. However, the Development will result in the removal of small amounts of woodland to create the main Site access, secondary emergency access, and to create a SuDs feature'

c. Paragraph 7.208 of the ES (CD1/14) which describes 'the loss of approximately 0.54ha of secondary deciduous (non-ancient) woodland' as including '0.04ha (7m x 55m within area W7, to create the proposed secondary emergency access and pedestrian link'.

147. Further, the Applicant's own 2022 BNG calculation (CD2/86) stated that sections of woodland within Fir-tree Grove would be 'lost to boardwalk' (line 5 of the table on PDF page 20).

148. The references above are based upon the ordinary definition of the term loss. They are clearly correct. The same is true of the Council's case in relation to the impact in FTG and the SANG.

149. The Appellants' arguments for why the loss of trees for the boardwalks were not 'loss' in terms of para180(c) were many and varied, but none of them credible. I deal briefly with each in turn.

150. The Appellants argued that the loss of trees should be seen as 'management' (see e.g. Forbes Laird proof para 6.5.2-4). First, this application is not for management of a woodland. Second, the boardwalk would result in areas of woodland where trees and indicator species can no longer grow, in perpetuity. That is not part of management. Third, 'management' is not caught by NPPF 180(c) as such the comparison is simply irrelevant. If this really were an argument in support of the Appellants' position then it could be used by any applicant who wishes to fell ancient woodland to facilitate its development. Once that is appreciated, it is clear how unreasonable the argument is. A similar argument was run in the Finches appeal decision (ID26) at para 13 and rightly rejected.

151. The Appellants argued that access tracks are frequently constructed as part of management (Forbes Laird 6.5.6). That may or may not be the case. If they require planning permission and result in the loss of ancient woodland then they will have to demonstrate wholly exceptional circumstances under 180(c). There is no carve out of para 180(c) for any form of access track.

152. In oral evidence Mr Baxter sought to argue that for there to be a loss of ancient woodland the trees would have to be particularly important.[85] There is simply no basis for this qualification on the test in para 180(c). It finds no support in the PPG, standing advice or any other document.

[85] Day 7 of the Inquiry, 14 November 2023

153. Also in oral evidence Mr Forbes Laird sought to argue that for there to be loss of AW habitat there would have to be deletion from the MAGIC map. However, there is nothing in policy or guidance which indicates this. Indeed, presence or absence from the MAGIC map is not determinative of AW status.[86] The fact that the handbook (CD9/9 p39) for updating the inventory of AWI suggests that some forest tracks might be included in the inventory is neither here nor there.

154. In oral evidence Mr Baxter sought to argue that the loss of AW would require loss of soils again, there is simply no justification for this in paragraph 180(c) or in any other document. Notably, it doesn't accord with the Appellants' view that the emergency access would lead to loss of woodland (no loss of soil is proposed there).

155. Overall, the Appellants' case on this issue is untenable

156. Finally, on this issue, given the Appellants' response to the Council's costs application it is expected that the Appellants will seek to characterise the Council's case as 'the loss of one tree is a loss of Ancient Woodland'. That may well be the case but the Inspector will note that is not how the case is put above. Nor is it how the case has been pursued in evidence or in cross-examination before the Inquiry (despite the Appellants' attempts to characterise it as such). This appeal scheme does not involve the loss of one tree. It involves the loss of over 100 trees, the loss of plant species and the erection of development which will prevent those species from growing in the area of the boardwalks in perpetuity. On any view, that is loss/deterioration.

Screwpiles

157. The boardwalks will require the insertion of screwpiles along their length CD1/18. It is clear that these will disrupt the AW soils in their area. The Appellants state that there will be no disruption to tree-roots. However, they are to be positioned according to the specification of a structural engineer not an arboriculturalist (see CD1/18) and therefore there is a clear risk of root damage. Further, the argument of Mr Forbes-Laird that as one screw is 'de minimis' then hundreds of screws must also be de minimis does not hold water. Each one will disrupt soil and brings with it the potential of damaging tree roots. It is wholly untenable for the Appellants to discount this impact as *de minimis*.

158. It is further notable that the emergency access will require screw piles within the root protection areas of AW either side (Forbes Laird appendices p204.). Again, the screwpiles are said to be to the specification of an engineer and not of an arboriculturalist. As such, there can be no confidence that the screw piles will not cut through tree roots.[87]

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[86] It is pertinent to note that the path between Thirty Acre Wood and Long Acre Shaw has in fact been deleted from the Magic Map.

[87] Mr Forbes Laird relied upon section 7 of the British Standard in his evidence in chief. However, it can be noted that (electronic page 29, physical page 23 CD9/8) makes clear that 'Construction within the RPA

Translocation

159. Applying the Standing Advice, and the ordinary understanding of the terms, translocation is a compensation measure as opposed to a mitigation measure.[88] The mitigation measures listed in the Standing Advice (C9/3 p.7) are all about preventing or reducing the impact of the development.[89] It can be noted that the Appellants are not proposing to translocate the majority of the trees lost to the boardwalks (c.62 in FTG and 20 in the SANG). It is proposing to translocate indicator species and up to 20 coppice stools.[90]

160. The translocation of indicator species in FTG involves a number of different species (CD2/81 page 12) (we don't know how many in the SANG as that has not been surveyed). Nowhere in the documents before the inquiry have the Appellants provided any evidence as to the ability of these to be translocated. The sole document was at appendix 11 to Mr Baxter's proof and this does not address any of these species. As Ms Graham highlighted, this exercise will lead to the permanent loss of the soil structure which has formed over several hundred or thousands years.[91] Further, the evidence which is available suggests that indicator species do not respond positively to translocation.[92]

Buffers

161. The Standing Advice provides for a minimum 15m buffer zone and that where other impacts are likely to extend beyond that distance then a proposal is likely to need a larger buffer zone. The 15 metres is explicitly termed 'the root protection area' in the Standing Advice (CD9/3 p7). The standing advice deals with both access and the provision of sustainable drainage schemes ('SuDS') within buffers. It states:

'You should consider if access is appropriate. You can allow access to buffer zones if the habitat is not harmed by trampling.'

'You should only approve sustainable drainage schemes if:

- they do not affect root protection areas
- any change to the water table does not negatively affect ancient woodland or ancient and veteran trees'

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should accord to the principle that the tree and soil structure take priority, and the most reliable way to ensure this is to preserve the RPA completely undisturbed' (para 7.1.1 see also 7.2.1) and it gives guidance on hard surfacing in RPAs where it is 'considered unavoidable' (7.4.1).

88 Mr Baxter accepted that if it came after loss it would be a compensation measure. Cross examination day 7 14 November 2023

89 Accepted by Mr Baxter in XX day 7 14 November 2023

90 Mr Baxter accepted in XX that there was no policy basis for separating out indicator species from trees in AW when considering loss or deterioration day 7 14 November 2023

91 CD1/44 para 7.2.11

92 *Ibid* para 7.2.12

162. Even if it were appropriate for a minimum 15m buffer to be applied in this case, the buffers proposed by the Appellants clearly contravene the Standing Advice with regards to access and SuDS. The development proposal includes provision of a footpath within the root protection areas of Thirty Acre Shaw and Longwood Gill (CD2/15). Under cross examination Mr Forbes Laird could not support this. He stated that it could be converted to a boardwalk. However the plans at CD2/15 (Hard and Soft Landscaping for the SANG) are for approval as part of this appeal.

163. Whilst the SuDS are not to be fixed as part of this scheme, it is clear that the options for draining the site are limited due to the topography of the site and also the quantum of development proposed. The plans at CD2/31 (Arboricultural Impact Assessment) show the SuDS basins sited well within the root protection area defined by the standing advice. Mr Forbes Laird argued that the root protection area in the British Standard Guidance[93] should be used. However, that is clearly incorrect from an objective reading of the standing advice which, unsurprisingly, requires a more precautionary root protection area to be provided. Even if the British Standard is used the basins remain in the RPAs as plotted by Mr Forbes Laird.

164. The Appellants assert that the basins can simply be moved out of the RPAs. However, it has provided no plan which demonstrates this to be possible. Mr Mellor sought to argue it would be open for a scheme at reserved matters stage to propose fewer than 424 houses if this was a constraint. However, that is wrong. The law is clear that if a planning permission is 'up to' a certain number of houses it is not open to the local planning authority to refuse RMS on the basis that the site cannot accommodate the maximum number (see Dove J *R(oao Village Concerns) v Wealden DC* [2022] EWHC 2039 (Admin) at para.45).

165. The Appellants propose excavation within the RPA buffer to FTG (see CD2/22). This is development and is clearly contrary to the Standing Advice.

166. As a matter of fact, the scheme proposes no buffer to Thirty Acre Shaw in the vicinity of the emergency access. No buffer in FTG as a result of the boardwalk and no buffer as a result of the boardwalk in the SANG.

167. The Standing Advice is clear that where impacts are likely to extend beyond 15m a larger buffer is likely to be required. Here, as set out in Ms Graham's evidence, a number of impacts are likely to extend beyond 15m. These include: noise, light, garden waste and fly tipping and pet predation.[94] Despite this, the Appellants have not (a) assessed these impacts and (b) provided for an appropriately sized buffer to mitigate those impacts. Taking just one of those impacts, pet predation, the scheme is likely to lead to the introduction of c100 new cats adjacent to the AW. This is clearly likely to have a directly detrimental impact upon small

[93] CD9/8

[94] CD 1/44 para 7.2.64

mammals and birds in the AW leading to deterioration. The ability of noise, light, predation and fly tipping to lead to deterioration was noted in the Bird in Eye decision (para 25 CD4/36). Here, as there, the configuration of the AW is particularly susceptible to these impacts. Particularly Longwood Gill which is long and thin and would have development surrounding it.

Construction of drainage basins and hydrology

168. The Appellants' aboricultural and biodiversity evidence reached its conclusions of no harm as a result of an assertion that there would no change to the site's hydrology (Mr Baxter stated that the hydrology would be 'fully replicated' para 3.4.4). However, this was not supported by the Appellants' own drainage evidence which was that the 'proposed drainage strategy mimics the natural flow regime to the extent that is possible' (Mr Jenkin Proof CD1/54 para 7.55, emphasis added).

169. On any view, there will be a change to current flows from the appeal site to the AW. The Appellant's own ES states:

'As set out in the Natural England/Forestry Commission Standing advice, changes in hydrology are likely to be harmful, resulting in alterations to soil moisture content, with the result that the composition of plant communities could be altered. Ghyll woodlands (such as Longwood Gill and Shermanreed Wood, which surround watercourses WC1 and WC2 are considered to be particularly sensitive to such changes.' (CD1/14 para 7.181)

170. This supports the Council's view that there will be harm.

171. The construction of the basins, and the directional drilling underneath the AW is also likely to lead to harm. The concern of the Council with regards to directional drilling 11 outfalls under AW is not merely that it would be under AW. It is that would pass through complex geology (see Mr Kean's proof para 3.7 CD1/67). This issue did not arise in the appeal decisions relied upon by the Appellants on this issue (CD4/9 Land adjacent M42, CD4/12 Clear View Farm). The Appellants' evidence has not assuaged the concern about the practicalities of direct drilling at the Appeal Site. In particular, the email provided from the drilling consultants suggests that the drill cannot pass through all rock and that if seams of rock cause the drill to abort then it will have to be withdrawn and commenced again on a different line.

Fragmentation

172. The FC considers that the woodland (including AW) which runs along the A22 is 'a woodland corridor of high ecological potential'.[95] It is undoubtable that this proposal will (through the introduction of the accesses and lighting) fragment plant and faunal species in this woodland.

[95] CD12/4

173. The Forestry Standard states that many woodland species 'especially those associated with ancient woodland, disperse slowly and so their ability to move between areas of suitable habitat may be low' (CD9/25 p.28). Mr Baxter confirmed[96] that the Appellants found indicator species in woodland either side of the main access and emergency accesses. Despite this the Appellants provided no assessment on the impact of the main or emergency access on seed dispersal.

174. The creation of the accesses will cause the direct loss of habitat for certain fauna including nesting birds, hazel dormice and bats.[97] They will also fragment the connectivity of the woodland which currently exists from Shermanreed Wood in the North to Lake Wood and FTG in the south through the introduction of lighting. This is of particular concern for bats and dormice.

175. The Appellants have proposed a doormoouse hopover for the main access. However, these plans have not been signed off by the highway authority who have concerns about the proposals (see Mr New proof CD1/22 consultation response at pdf page 43). As such, it is unclear whether there is a design solution which would be satisfactory from a highways safety perspective and still provide sufficient ecological mitigation.

176. Further, the main access and that at FTG are proposed to be lit. The Appellants have relied upon its Dark Areas Map (CD2/12) in order to prevent fragmentation (see Mr Baxter proof 9.4.8 CD1/59). However, the Highway Authority has confirmed that it is not content with the proposed lighting levels for the main access which would need to be brighter to ensure highway safety. Mr New confirmed that the Highway Authority had informed the Appellants of this in August 2023.[98] The Appellants have no answer to this point.

177. Further, the Appellants have relied upon a continuous tree canopy at FTG in order to reach their conclusions (see Baxter 4.6.9 CD1/59). However, its own plans (CD2/23) show that there is no such continuous canopy.

178. The ecological information provided by the Appellants has shown that myotis species of bats and barbastelle bats use the appeal site to forage and commute. The Appellants have not conducted a roost survey, further the majority of its bat monitoring locations were on the edge of or outside of the woods. As such, data was not collected within the woodland to substantiate the claim that the bats largely preferred the woodland edge habitats (ES CD1/14 para 7.226). The myotis group includes Bechstein's bat which are rare.

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[96] XX day 7 14 November 2023

[97] Mr Baxter asserted during his evidence day 7 14 November 2023 that no trees in the vicinity of the accesses had potential for bat roosts. However, no bat roost survey has been done by the Appellants. It can be noted that para 7.2.51 of the ES (CD1/14) in fact states that a number of trees with bat roost potential are located in the development area.

[98] Evidence in chief day 4 31 October 2023

179. In his proof of evidence Mr Baxter stated, of Barbestelle, that the 'species was not recorded in 2023 demonstrating that it has no reliance on the appeal site' (3.4.8 CD1/59). It has now emerged that the 2023 surveys did in fact detect Barbestelle on numerous occasions. Ms Graham's response to the latest survey data highlights that there has not been sufficient analysis of the data to establish whether this means that there is likely to be a roost within the site boundary. Whether or not the site hosts a roost or functions as a dispersal corridor the site appears to be important for this rare species.

180. The myotis group and barbastelle are extremely sensitive to light levels. As Ms Graham highlights the appeal proposal will 'cause significant fragmentation for bat species with particular reference to light-sensitive bat species'. (proof CD1/44 7.3.27).

181. Further, the Appellants are also proposing to erect dog-proof fencing around all of the AW where access is not encouraged (see management plan CD2/111). As Ms Graham points out the 'fencing would have a significantly deleterious impact upon the freedom of movement of species which are currently using the' AW and other woodland habitats. If the fencing is successful in protecting against dogs then it will also prevent species such as badgers, foxes and hedgehogs moving between different parcels of woodland (Graham 7.3.15). The ES did not consider this impact. The Appellants' response is that badgers will tunnel under the fences. If that is the case, then so too will dogs.

182. Overall, in line with the views of the FC, the appeal proposals will cause fragmentation and thereby harm to flora and fauna currently sited within the AW and non-ancient woodland.

Recreational disturbance within AW

183. The Standing Advice lists the following as direct and indirect effects that can cause loss or deterioration of AW: 'damaging or destroying all or part of them (including their soils, ground flora or fungi)', 'damaging roots and understorey', increasing levels of …noise', 'increasing disturbance to wildlife, such as noise from additional people', 'increasing damage to habitat, for example trampling of plants and erosion of soil by people accessing the woodland or tree root protection areas', 'increasing damaging activities like fly-tipping and the impact of domestic pets', and 'increasing the risk of damage to people and property by falling branches or trees requiring tree management that could cause habitat deterioration'

184. All of these impacts can be expected to arise as a result of the appeal scheme.

185. The appeal scheme proposes to introduce a significant number of people into the AW as part of the FTG access and also as part of the SANG. Whilst people are unlikely to leave the boardwalk in FTG (on account of its being enclosed) there is clearly a likelihood of those using the boardwalk dropping litter (organic and inorganic over the side).

186. Litter is also likely to be a feature of the SANG. Whether being deposited from the boardwalk itself or by people who have left the boardwalk to walk into the woods.

187. The Appellants' assessment of the proposals rely upon visitors to the SANG being confined to the boardwalk and that this will be achieved by a handrail to one side and signage. However, that is wholly unrealistic. There is clearly a strong likelihood, over the lifetime of the scheme, of people leaving the boardwalk, trampling over flora and on root protection areas and creating new bare earth paths within the woodland. The boardwalk is proposed to be 15cm off of the ground. As such, it will be easy for visitors to step off and explore the woodland. The management regime proposed by the Appellants (CD2/111) is, to say the least, 'light touch'. No ranger (or similar) is proposed to dissuade people from leaving the path.

188. The creation of additional bare earth paths would, on the Appellants' own evidence be extremely damaging (see CD1/14 ES addendum p368) where the list of impacts to be expected include destruction of ground flora, compaction of the soil, poaching, tree stress leading to progressive deterioration. The paths which are currently visible in the AW have arisen from low or limited use.[99] Thus, even a low or limited use in the future can be expected to have similar impacts.

189. Notably, Lakewood has paths which are approved for use and signed[100]. And yet, there has clearly been the formation of additional desirelines by people who have not stuck to the paths. Lakewood has a team of volunteer wardens, seemingly more active management than the Appellants are proposing for the Appeal Scheme.

190. It is also obvious that dogs will roam off of the boardwalk. The likely impact of dogs is disturbance to wildlife and also eutrophication from their faeces and urine. Mr Baxter claimed in his oral evidence that dogs are more likely to defacate near their cars, but there was no evidence before the inquiry of this.

191. Noise can also be expected to arise as a result of the use of the boardwalk (and the wider AW). Mr Baxter asserted that this would not be an issue and relied upon a paper which considered the impact of noise upon the great tit. That is only one of some 30 bird species recorded within the AW. As such, his assertion that noise won't impact breeding birds within the AW is not supported by evidence.

192. Whether or not people stick to the boardwalk, the use of the AW can be expected to lead to the introduction of invasive species through the presence of seeds from garden plants being brought into the woodland on shoes and pet fur as well as pests and diseases (Graham proof CD1/44 para 7.2.68). The Appellants provided no answer to this point.

193. As explained by Ms Graham, the Appellants' management plan (CD2/111) will not be successful in preventing adverse impacts upon the AW as a result of recreational disturbance (see proof 7.2.28-9). As noted above, there is to be no ranger/warden to enforce

[99] Accepted by Mr Baxter in XX day 7 14 November 2023

[100] Relied upon by Mr Stratford in his oral evidence day 2 25 October 2023

visitors sticking to the path. The management plan contains no requirement to pick up litter for example, weekly. The management plan simply states it will occur 'on a regular basis (see para 6.2.6). Even taking the schedule of management works at its highest (see PDF page 67) litter picking could happen only once per month. The same is true of removing fly tipping (same page). Further management will not prevent the introduction of invasive species, pests and disease, noise and disturbance and vandalism.

194. Lakewood is actively managed by the Woodland Trust and has a team of volunteer wardens. I.e. a level of active management which goes above that which is being suggested here. Even with this level of management Lakewood suffers harm as a result of recreational disturbance. The management plan (CD11/5) details 'on-going issues with anti-social behaviour including litter, fires, camping ….and vandalism' (p11) and that 'Anti-social behaviour has caused damage to features and vegetation on a regular basis (p8).

195. It is notable that the management plan provides for fencing to be checked only once a year (CD2/11 pdf page 67). There is clearly potential for there to be trespass from the residential development to areas of AW which are proposed to be off-limits. This includes Lake Wood. Trespass clearly has the potential to cause deterioration of the ancient woodland through recreational disturbance. Similar effects can be expected in the SANG AW.

196. The SANG discount cannot be relied upon to prevent disturbance. As highlighted by Ms Graham discounting the SANG's capacity will not reduce visitor numbers. The scheme is proposing two car parks (c.36 spaces). It has the potential, if successful, to attract a large number of visitors from outside of the Appeal Site. Although Natural England has recommended a discount they have not explained how this would in fact reduce visitor numbers to this SANG.

Lake Wood

197. The Woodland Trust (CD12/3), and Ms Graham (proof see paras 7.2.36-40), have raised the issue of increased recreational disturbance in Lake Wood leading to deterioration of that area of AW. The Appellants claim that their SANG will balance out additional visitors to Lake Wood is not well founded. Mr Baxter described Lake Wood as a 'honeypot site'.[101] The appeal scheme will introduce 424 homes and a car park close to Lake Wood and those living in the south of the Appeal Site will be closer to Lake Wood than the SANG (entrance where Rocks Road crosses the A22).

Conclusion on AW

198. As summarised in these closings and as set out more fully in the evidence of Ms Graham and Mr Massheder, this proposal will lead to both loss and deterioration of AW.

[101] Evidence in chief and XX day 7 of the Inquiry 14 November 2023

199. Paragraph 180(c) NPPF provides that 'development resulting in the loss or deterioration of irreplacable habitats (such as ancient woodland...)should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists'.

200. Mr Mellor, for the Appellants argues that there are 'wholly exceptional reasons' here. That is clearly not correct. This is, on any view, a run of the mill housing proposal with a SANG which is mitigation for its impact on the SAC (and therefore cannot attract additional weight). The Appellants have not provided any reasons why housing has to be provided in this location.

201. Footnote 63 of the NPPF (attached to 'wholly exceptional reasons') states 'For example, infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of habitat.

202. Mr Mellor sought to argue that this can be interpreted as meaning that the phrase 'wholly exceptional reasons' is synonymous with 'where the public benefit would clearly outweigh the loss or deterioration of habitat'. That is clearly wrong. That phraseology is simply a description of the types of infrastructure projects which would meet the wholly exceptional reasons test. For Mr Mellor to be correct there would have to be an 'or' before the phrase 'where the public benefit would clearly outweigh the loss or deterioration of habitat'.

203. As stated by Mr Robins, had the Government considered that the delivery of housing would meet the 'wholly exceptional reasons' test then it could and would have made this clear.

204. Finally, whatever the meaning of 'wholly exceptional reasons' the Appellants cannot rely upon the exception to the requirement to refuse under para 180(c) because it has not put forward a suitable compensation strategy. The Appellants have provided no arboricultural or biodiversity evidence for any compensation strategy (the matter not being addressed in the ES, the proofs of Mr Forbes Laird and Mr Baxter or in their oral evidence). Crucially, the Appellants have not consulted upon any compensation strategy (clearly bodies like the Forestry Commission should be given the right to respond). In his proof Mr Mellor stated that any harm could only be 'de minimus' and this was the basis on which he claimed that a suitable compensation strategy existed. Under cross-examination he sought to extend this to include all harm alleged by the Council. Either way, this was, with respect, an assertion of the planner unsupported by any expert evidence which would reasonably be required to support the assertion that loss and deterioration would be suitably compensated by the proposal.

Biodiversity net gain ('BNG')

205. The Appellants produced two BNG calculations to support their proposals (CD2/86 and Baxter Proof Appendix 5719/1 p143). The short point is that neither is reliable. They

are both predicated upon (a) the Appellants' contention that there would be no loss/deterioration of AW and (b) the Appellants' contention that it is capable of managing the woodland to pristine condition. If the Inspector accepts the Council's case that there would be likely to be loss/deterioration of AW then the BNG calculation is undermined. As Ms Graham explained, it is wholly unrealistic to expect that, for example, the Appellants would be able to eradicate all invasive species and all pests and disease from the AW (something which would be required to achieve the Appellant's predictions)[102].

206. The second BNG calculation purported to downgrade the condition of FTG[103]. However, condition should be assessed at the time of the planning application CD9/19 p.21. As such, the second BNG calculation has used an incorrect baseline.

207. Further, both calculations have relied upon 'enhancements' which are part of the SANG. The guidance for creating SANG (CD9/5, p.10 para 3) states "'*For BNG to be delivered on SANG, the SANG should achieve nature conservation outcomes that demonstrably exceed existing obligations under the SANG guidance, as quantified through the metric.'* Under cross examination Mr Baxter asserted that this SANG goes above and beyond what would ordinarily be required. However, that has not been demonstrated anywhere in the documentation before the inquiry.

208. Overall, the claimed biodiversity benefits of the proposal cannot be relied upon.

Conclusion on AW and biodiversity

209. The appeal scheme will cause direct and indirect impacts upon ancient woodland which will lead to loss and/or deterioration. The proposal is therefore contrary to paragraph 180(c) NPPF and this provides a clear reason for refusing the development (see paragraph 1(d)(ii) NPPF). It is also contrary to saved policies EN1, EN12, EN13 of the Wealden Local Plan and policies WCS12 and WCS14 of the Core Strategy.

Conclusion

210. This proposal is not in accordance with the development plan. Material considerations do not indicate that a decision should be taken other than in accordance with the development plan in this case. As such the Council respectfully asks the Inspector to refuse the appeal.

Victoria Hutton

39 Essex Chambers

10 December 2023

[102] See GG Proof 1/44 table 1 pp37-42 and oral evidence at inquiry

[103] Moderate condition in CD2/86 (W9 on p26) but poor in Appendix 5719/1 p143