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DOWNLANDS

TOWN AND COUNTRY PLANNING ACT 1990
(as amended)
Section 78 — APPEAL

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

EXPERT EVIDENCE OF JULIAN FORBES-LAIRD

ON BEHALF OF THE APPELLANT,
IN RELATION TO ARBORICULTURAL MATTERS

Vol. 2—PROOF

Prepared for: *Gleeson Land and John Allison Land & Research Ltd*

FLAC Instruction ref: *CC40-1020*

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1 Introduction

1.1 Authorship

1.1.1 This Proof of Evidence addresses arboricultural issues in relation to proposed development. It has been prepared by me, Julian Forbes-Laird, Senior Director of Forbes-Laird Arboricultural Consultancy Ltd ("FLAC") and co-founder (together with Alistair Baxter) of Sylvan, a specialist bidisciplinary consultancy (arboriculture and ecology) covering ancient woodland, veteran trees, and historic landscapes in the planning system. Both FLAC and Sylvan have provided advice to this project since 2020.

1.1.2 I hold the following relevant memberships and qualifications:

- Member of the Institute of Chartered Foresters (that is, I am a Chartered Arboriculturist)
- Member of the Royal Institution of Chartered Surveyors
- Member of the Expert Witness Institute
- Member of the Member of the Royal Society of Biology
- Professional Member of the Arboricultural Association
- Member of the Royal Forestry Society and holder of its 'Professional Diploma in Arboriculture'
- Technical editor for BS5837:2012 'Trees in Relation to Design, Demolition and Construction – Recommendations'
- Chairman of the British Standards Institution technical committee on trees, B/213

1.1.3 Full details of my qualifications and experience may be found at Appendix JFL1.

1.2 Instructions

I am instructed on this occasion by Gleeson Land Ltd and John Alison Land and Research Ltd ("the Appellants"). My instructions arise pursuant to an appeal (PINS' ref 3321978) against refusal of planning permission by Wealden District Council, of a hybrid planning application under its ref: WD/2022/1637/MEA.

1.3 Scope of Evidence

1.3.1 My evidence addresses elements within Reasons for Refusal 1, 2 and 4. Specifically, my evidence addresses allegations within these Reasons that the proposals would result in:

i) Loss of ancient woodland;

ii) Deterioration of ancient woodland due to hydrological change; and

iii) Deterioration of veteran trees.

1.3.2 The distinction I make at item (ii) in relation to deterioration of ancient woodland is intended to segue to the evidence of Mr Baxter, who deals with all other alleged types of deterioration of ancient woodland, including in relation to visitor impacts.

1.3.3 Relevant sections of Reasons 1, 2 and 4 addressed in my evidence are:

Reason 1

Having regard to the effect of the development on the Ancient Woodland, defined in the NPPF as an irreplaceable habitat, and in accordance with footnote 7 of Paragraph 11, this does not indicate that permission should be granted in this case.

Reason 2

The development proposals would result in indirect and direct degradation and loss of ancient woodland, an irreplaceable habitat… In addition, the development would threaten, harm and cause degradation to veteran trees, an irreplaceable habitat. The scheme is contrary to NPPF 2021 Natural England Standing Advice, ancient woodland & veteran trees and saved Policies EN1, EN12, EN13 and EN15 of the Wealden Local Plan 1998 and Wealden District Core Strategy Local Plan 2013, policy WCS12 Biodiversity and WCS14 sustainable development.

Reason 4

Details in the flood risk assessment and surface water drainage strategy in relation to surface water flooding… [rely] upon works to and within the Ancient Woodland which are unacceptable and will cause loss of irreplaceable habitat. It is accepted on the applicant's own evidence that on site infiltration cannot occur due to geology and ground conditions. Whilst the scheme is outline, it is not considered possible to proceed without the drainage strategy being worked upon and to demonstrate avoidance of Ancient Woodland.

1.3.4 Reason 1 essentially draws on Reasons 2 and 4 to reject application of the tilted balance. Reason 2 alleges loss and deterioration of ancient woodland, without providing details as to how that loss and deterioration is claimed to occur. Reason 4 raises an in-principle objection to the use of existing watercourses within ancient woodland for drainage purposes, which would, so Reason 4 alleges, cause a loss of ancient woodland (captured also within Reason 2).

1.3.5 In relation to Reason 4, technical aspects of the drainage strategy are addressed in Mr Jenkins' evidence, whereas I consider solely the question of the effect of this strategy on the ancient woodlands in question.

1.4 Proof Structure

1.4.1 Following Section 1, my Proof is structured as follows:

2. Relevant Planning Policy context and national-level guidance
3. Description of the Appeal Site and relevant trees and woodland
4. Summary of Appeal proposals and arboricultural impact
5. The position of the Council and third parties
6. Discussion Part One – Responses to points raised in objection
7. Discussion, Part Two – Other matters
8. Conclusions

1.4.2 My Proof is supported by the following Appendices (separately bound as Volume 3):

JFL1 Qualifications & experience of the author

JFL2 Arboricultural Impact Assessment text from the FLAC planning submission

JFL3 Explanatory information to the Tree Survey

JFL4 Tree Survey data, including tree retention/ removal outcomes

JFL5 RAVEN methodology & data recorder

JFL6 Tree Survey, Retention/ Removal Plan, FLAC dwg no. 40-1020.02

JFL7 Tree Protection Plan, FLAC dwg no. 40-1020.03

JFL8 FLAC technical note on boardwalk tree protection

JFL9 Tree & Landscape Officer consultation response on planning application

JFL10 Ecology Officer consultation response on planning application

JFL11 Drainage Officer consultation responses on planning application

JFL12 Sylvan representation to Natural England regarding Beechy Pit Wood

JFL13 Natural England first planning consultation response on Manydown

JFL14 Letter from Manydown planning consultants to Natural England

JFL15 Natural England second planning consultation response on Manydown

JFL16 FLAC technical note on trenchless drainage connection at Aspbury's Copse (M42 MSA)

JFL17 Email from Natural England accepting proposed trenchless drainage connection

JFL18 Product brochure for Radex *GroundScrews*

JFL19 FLAC technical note responding to the Woodland Trust's planning consultation response

JFL20 Sylvan technical note on alleged hydrological connection to Lake Wood

JFL21 Joint Natural England & Forestry Commission *Standing Advice*, November 2018

JFL22 Cartographic regression for secondary woodland adjacent to the A22

JFL23 Sectional details showing design of proposed emergency access

2 Relevant Planning Policy context and National Guidance

2.1 National Planning Policy Framework 2021

2.1.1 Paragraph 180c of the Framework applies protection to Irreplaceable Habitats, including ancient woodland and veteran trees in the following terms:

> *"Development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons[63] and a suitable compensation strategy exists."*

2.1.2 An illustration of the meaning of the term "*wholly exceptional reasons*" is given in footnote 63, which 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."*

2.1.3 Insofar as "irreplaceable habitat" is concerned, there are trees and woodland present on, and in the case of the latter, adjacent to the Appeal Site. Paragraph 180c of the Framework is *relevant* to a determination of this Appeal. The matter between the Appellant and the Council is whether it is *engaged* and through my evidence I conclude that it is not.

2.2 Local Planning Policy - general

No local planning policies are cited in Reason 1, and those cited in Reason 4 either relate to technical drainage matters, or duplicate policies cited in Reason 2. Reason 2 cites a total of six local planning policies, from two components of the Local Plan, as being breached:

i) Wealden Local Plan 1998, policies EN1, EN12, EN13 and EN15
ii) Wealden District Core Strategy Local Plan 2013, policies WCS12 and WCS14

2.3 Policies within Wealden Local Plan 1998

2.3.1 Policy EN1 relates to sustainable development and thus sits outside the scope of my evidence.

2.3.2 Policy EN12 seeks to protect trees and woodland areas where they contribute to the landscape character of the District through the promotion of specified actions.

2.3.3 Policy EN12 relates to trees and woodland in the general sense, and accordingly I consider it to be of less direct relevance than the NPPF in relation to the specific issues raised in this Appeal around Irreplaceable Habitat trees and woodland. However, I note in passing that EN12(3) encourages woodland management, which, in this case, would be delivered to a high standard within largely if not wholly neglected ancient woodlands should this Appeal be allowed.

2.3.4 Policy EN13 protects ancient woodland against "clear felling" or effects prejudicial to its ecology. This is a somewhat outdated turn of phrase, reflective of the age of this Policy. However, I will interpret the language as a proxy for the contemporary protection against loss found in the NPPF. The other protection in EN13, against "effects prejudicial to ecology", now translates as *deterioration*.

2.3.5 Policy EN15 relates to matters of ecology and is therefore addressed in evidence for the Appellant by Mr Baxter.

2.4 Policies within Wealden District Core Strategy Local Plan 2013

2.4.1 Policy WCS12 *Biodiversity* seeks to prevent net loss of biodiversity, and also sets out measures to protect Ashdown Forest SPA. These are matters for ecology evidence and accordingly they are addressed by Mr Baxter.

2.4.2 Policy WCS13 *Green Infrastructure* seeks protection and enhancement of green infrastructure. These are matters of landscape and ecology and accordingly are not covered by me.

2.5 National-level guidance

2.5.1 Two pieces of national-level guidance are relevant to the matter before this Appeal:

i) British Standard BS5837:2012 (**CD9/8**), titled *Trees in relation to design, demolition and construction – Recommendations* ("BS5837").

ii) Natural England and Forestry Commission Standing Advice - *Ancient woodland, ancient trees and veteran trees: advice for making planning decisions*, January 2022 (**CD9/3**).

2.5.2 BS5837 is considered seminal to appropriate management of the development interface with trees (both existing and proposed trees). It underpins the FLAC Tree Survey at **JFL4**, and the Tree Protection Plan at **JFL7**.

2.5.3 The *Standing Advice* is highly relevant to the matters addressed in my evidence, specifically to issues of loss or deterioration of irreplaceable habitats, and the nature and role of mitigation for aspects of development that might otherwise (in the absence of mitigation) have these effects. I discuss the *Standing Advice* in section 7.

3 Relevant trees

3.1 General

3.1.1 Please refer to the FLAC planning submission, found in full at **CD2/31**. Trees relevant to this Appeal are captured by the tree survey, undertaken in compliance with BS5837:2012, *Trees in Relation to Design, Demolition and Construction – Recommendations*. The findings are presented at Appendices **JFL4** (tree survey data) and **JFL6** (Tree Survey, Retention and Removal Plan). A Tree Protection Plan is appended at **JFL7**.

3.1.2 A key element of the BS5837 tree survey process is the differentiation of the tree stock as to its quality, by means of the methodology set out at Table 1 of the Standard (reproduced in slightly enhanced form within the survey key at **JFL3**). This method places trees into one of four categories, A-B-C-U, according to differing residual longevity thresholds as follows:

<10 years	Tree in poor condition unsuitable for retention as a viable specimen: BS5837 quality grade U
10+ years	Tree in adequate condition to survive until new planting is established: BS5837 quality grade C at best
20+	Tree in satisfactory condition: BS5837 quality grades B or C, though not A
>40	Tree in good condition, capable of long-term strategic contribution: BS5837 quality grades A or B, though rarely C

3.1.3 With each residual longevity threshold cleared, the BS5837:2012 grading system then relates directly to tree quality. In relation to the Appeal Site, tree grade statistics derived from the foregoing are set out in Table 1.

Table 1 – Tree grade statistics

BS5837 Grade	***Quality assessment***	***Count***	***%***
A	High	127	9
B	Moderate	617	42
C	Low	661	45
U	Unretainable in viable condition	64	4

3.1.4 Within the cohort of high quality (A category) trees, are included 40 veteran trees, comprising 10 individual trees and 30 trees forming a group (TG3013). Details of the veterans are found in my appendix **JFL5**. Additionally, they are shown on the tree survey and tree protection drawings with a bright green crown fill (appendices **JFL6** and **JFL7** respectively).

3.1.5 The veteran trees have been identified using my RAVEN method (*Recognition of Ancient, Veteran & Notable trees*), which is also included at **JFL5**.

3.2 Ancient Woodland – key principles

3.2.1 Ancient Woodland is defined in Annex 2 of the Framework in the following terms:

> *An area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites (PAWS).*

All of the ancient woodland being considered within the context of this Appeal is of the ancient, semi-natural type (ASNW).

3.2.2 The NPPF definition has three key elements, all of which must be in place for the definition to apply:

i) Woodland
ii) Continuity of woodland cover
iii) Persistence of woodland cover from the specified date (1600AD)

3.2.3 The concept of ancient woodland is the culmination of a theory first conceived in the 19th century, namely that the British landscape might (in the sense of *could possibly*) harbour woodland that had never been cleared or farmed and was, therefore, land continuously under woodland since its first capture by trees after the last Ice Age.

3.2.4 Whilst it is possible that some woodland fits this description, recent authoritative research casts serious doubt on this possibility, other than in rare cases. Indeed, the increasing use of terrain mapping by LiDAR has in many locations revealed a landscape history of pre-woodland agriculture on land considered and, sometimes, known to have been wooded since before the 1600AD threshold date for ancient woodland.

3.2.5 Whilst the "Ice Age remnant" theory has waned in prominence, this does not, of course, prevent certain woodlands from meeting the criteria necessary to fit the NPPF definition. There are, therefore, three types of woodland now generally understood:

Primary	woodlands that have never been cleared or farmed (very rare)
Ancient	woodlands present since at least mediaeval times (from 1600AD)
Secondary	woodlands planted after 1600AD

Ancient woodland is, therefore, a descriptor for woodland that has been present on a site for at least ca. 420 years. By definition, *secondary woodland* is not ancient woodland.

3.2.6 Returning to the type of ancient woodland at Downlands, it is necessary to say a little more about the term "semi-natural". This comes from recognition of the critical role that human influence has played in forming the ancient woodlands of today (those, at least, that have not been subject to overplanting with conifer, PAWS). Man has worked woodland in Britain for centuries (millennia in some cases probably), with the manipulation of light and shade that results from traditional sylviculture accidentally creating ideal conditions for a diverse assemblage of specialist flora, and the food web above.

3.2.7 From this historical situation, we can see that the reverse of biodiversity flourishing with woodland management is its collapse where neglect occurs. As wood products became progressively obsolete with the onward march of the Industrial Revolution, and due to the rural depopulation of the two World Wars, neglect became increasingly widespread. As *Keepers of Time* (**CD9/6**) explains:

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

3.2.8 Drawing together these threads, it should now be apparent that the reason why *ancient and semi-natural woodland* is considered to be of exceptional biodiversity value is because of its management history. Because neglect is a serious threat to woodland biodiversity, typically resulting in woodland of poor quality (e.g. Fir Tree Grove), the restoration of traditional management that would be delivered should this Appeal be allowed, should be afforded significant positive weight.

3.2.9 Whilst it is often suggested that sources of funding other than those associated with development can be found to pay for woodland management, the widespread occurrence of neglect, with all that this entails for loss of biodiversity, tells a different story. If a Micawber-esque *something will turn up* approach did in fact deliver sustained, positive management, the majority of England's ancient woodland would not be in neglected and declining condition. In my opinion, absent a clearly identified alternative funding source, and – of course – a willing landowner, a precautionary approach should be taken that assumes neglected woodland at Downlands will remain so unless enabling development occurs.

3.3 Tree Preservation Orders

There are no Tree Preservation Orders covering trees on the Appeal Site.

4 Summary of Appeal proposals and arboricultural impact

4.1 The Appeal Scheme

The Appeal Scheme is described in detail in the Planning SoCG (**CD1/10**) and Mr Mellor's evidence. In relation to trees, I would draw attention to the following elements of the proposals:

Table 2 – Key features of the Appeal Scheme in relation to arboricultural matters

Element	***Document***	***Ref.***
Retention of all veteran trees within safeguarded buffer zones to dimensions meeting or exceeding those recommended by Natural England the Forestry Commission in *Standing Advice*	Tree Protection Plan	JFL7
Provision of buffer zones to areas of ancient woodland, frequently exceeding the recommended minimum 15m depth	Buffer Depth Plan	AB1
Extensive new tree planting and woodland management proposals	Illustrative Landscape & Ecology Strategy Plan Woodland Management Plan	CD2/54 CD2/11
Very limited tree removal	Tree Retention/ Removal Plan	JFL6
Creation of a sustainable access route from the southwest of the site, through Fir Tree Grove ancient woodland	[INSERT DWG TITLE	CD2/17-CD2/22
Protection against ground damage from SANG routes within ancient woodland by means of boardwalks mounted on a minimally-invasive 'Ground Screw' support system	FLAC Technical Note	JFL8
Protection of roots from trees adjacent to the emergency access, by means of a no-dig structure, also with minimally-invasive support system	Highways consultant design detail (appended at:)	JFL23
Connection, using trenchless methodology, of storm water drainage basin outflows to existing on-site watercourses in Longwood Gill and Shermanreed Wood ancient woodland	Drainage Strategy Plan	CD2/113

4.2 Arboricultural impact on trees and tree groups

4.2.1 The principal arboricultural impact of the Appeal Scheme, tree removal, is shown graphically on the Tree Retention and Removal Plan at **JFL6** (FLAC Dwg no. 40-1020.02). Trees that would need to be removed in order to facilitate development are shown with a dashed blue crown outline. Additionally, retention and removal outcomes are given for each tree within the tree survey data at **JFL4**.

4.2.2 The impact of proposals for existing trees (comprising both individual trees and trees within tree groups, FLAC survey prefix TG) is set out in **Table 3**, differentiated according to tree quality grade. Note that trees in category U are excluded from development impact assessment. The total retention (1,252) to loss (153) ratio exceeds 8:1.

4.2.3 In relation to the various areas of woodland within the Appeal Site (FLAC survey prefix WG), 99.2% would be retained and placed under beneficial management. The only area of woodland loss relates to secondary woodland to enable formation of the main site access.

Table 3 – Tree count by quality and value categories, after impacts by the proposals

Grade	Existing	Proposed	Losses	Grade losses %	Grade retained %
A	127	126	1	1	99
B	617	550	67	11	89
C	661	576	85	13	87

4.2.4 Of the 153 trees identified for removal, 62 (40%) would be removed to facilitate the construction of the boardwalk through Fir Tree Grove. To set the loss of 62 trees from within Fir Tree Grove in its proper context, 644 would be retained (88% retention).

4.3 Arboricultural impact on woodlands

4.3.1 In relation to those matters addressed in my evidence, arboricultural impacts on woodland arising from the proposals comprise:

i) Loss of a small area of secondary woodland at the site access (0.8% of the total woodland area).
ii) Formation of the new sustainable access through Fir Tree Grove ancient woodland, by means of a screwpile-supported boardwalk.
iii) Similarly supported SANG boardwalk network within ancient woodland.
iv) Drainage connection into ancient woodland watercourses using trenchless methodology.

4.3.2 Without mitigation, including that which is inherent in the design of the features concerned, the latter three aspects of the proposals have the potential to result in harm to ancient woodland. Please refer to section 6 for further information.

4.4 Arboricultural impact: beneficial effects

4.4.1 I wish to highlight three elements of the proposals which I consider would result in *beneficial* impacts on arboricultural features:

i) The veteran trees present on site (**JFL5**) would be subject to a management plan. This would be based on a detailed habitat assessment undertaken using the *Veteran Tree Specialist Survey Method*[1] promoted by Natural England, and a detailed structural and vitality assessment undertaken using the widely used *Visual Tree Assessment*[2] methodology promoted by the Karlsruhe Institute of Technology (of which I am a Licensed Lecturer). The Veteran Tree Management Plan would be designed to maximise longevity of these irreplaceable habitat trees, and would be secured by Condition.

ii) As illustrated in the Green Infrastructure Plan (**CD2/9**) and the Illustrative Landscape & Ecology Strategy Plan (**CD2/54**), the Appellant proposes extensive new landscaping, including many new trees. The tree planting will include parkland type specimens, which can help ensure succession of open-grown trees on this site over a millennial scale timeframe.

iii) As Mr Baxter explains (BNG of September 2023, at Appendix 1; see Mr Baxter's Appendices), the woodlands around and within the Appeal Site are largely in poor condition, with many issues arising from a lack of management that seems to have persisted for many years. Inherent within the Appeal Scheme is a detailed Woodland Management Plan that would see these woodlands, most of which are ancient woodland, being subject to long-term restoration and management.

4.4.2 As I have already explained (**3.2.6**), ancient and semi-natural woodland has arisen due to human influence based on the working forest. Management confers value, whilst neglect results in decline. Viewed through this lens, the woodland management delivered by the Appeal Scheme is a strongly positive arboricultural impact.

4.4.3 In relation to veteran trees, as these irreplaceable habitat features age, they become increasingly vulnerable to potentially lethal structural failure, often resulting in the premature loss of the resource.

[1] Fay 1996
[2] Mattheck & Breloer 1994

This loss can be avoided (and at least substantially delayed) by timely, specialist intervention, such that veteran tree management plans also offer a strongly beneficial arboricultural impact. This has been recognised in two recent Appeals, Ash Manor (3272205, **CD4/8**, Downes, May 2022, DL55f) and Kingfisher Grove (3304042, **CD4/7**, Rollings, January 2023, DL31, 56, 63 & 68). Extracts from the respective Decision Letters are included at section **6.7**.

4.4.4 In this case, a large proportion (35 out of 40, 87%) of the veteran trees are growing as ancient ash coppice along the top of the substantial, historic woodbank that forms the outer rampart of Shermanreed Wood's southeast aspect. It is fair to describe these as historic trees located on a historic landscape feature, a feature to which they give context and added meaning. For this reason, I would describe their preservation as a benefit of a high order.

5 The position of the Council and third parties

5.1 General

The purpose of this section of my Proof is to provide a digest of consultee comments on the planning application relevant to my evidence. I go on to discuss these comments in section 6.

5.2 Tree & Landscape Officer

The Council's Tree and Landscape Officer provided a single set of comments (**JFL9**) on the application dated 17 October 2022, which objected to the proposals under four headings:

1. Proposed buffer zones: the Officer seeks greater buffers to ancient woodland than the recommended minima.
2. SUDS: the Officer objects to SUDS basins being sited, or partly sited, within ancient woodland buffer zones.
3. Drainage connections using trenchless methodology: the Officer considers that there would be both direct and indirect impact from this aspect of the drainage proposals.
4. Boardwalk connection [through Fir Tree Grove] to Uckfield Town: the Officer considers this would comprise an unwelcome and unnecessary intrusion into ancient woodland, and would lead to a loss of trees of habitat importance.

5.3 Ecology Officer

The Council's Ecology Officer also provided a single set of comments (**JFL10**), dated 14 October 2022. Material to my evidence, he raises objections on five grounds:

1. Siting of SUDS basins within ancient woodland buffer zones.
2. Drainage connections into the ghyll watercourses, on grounds of a) problems with the trenchless connections, and b) hydrological change.
3. 15m buffer zone depth to ancient woodland is inadequate given the scale of adjacent development that is proposed.
4. Loss of ancient woodland to the proposed boardwalk through Fir Tree Grove, and deterioration to ancient woodland due to pressure for related safety-critical tree work.

5.4 Conservation Officer

At 7.19 of her Proof (**CD1/21**), the Council's Conservation Officer identifies the risk of harm to the setting of the Downlands Farm Group from potential loss of an area of woodland within the curtilage of Partridges' Oast. The Conservation Officer describes this woodland as *an ephemeral feature with no formal protection*. I discuss the accuracy of this assessment in section 6.

5.5 Drainage Consultee

The Council's drainage consultee provided three sets of comments (**JFL11**), in August and September 2022, and in February 2023. Between these dates, the drainage consultee had received an initial technical response from the Appellant's drainage consultants, which thus informs the second response. I summarise the two responses as follows:

1. **JFL11a** August 2022: flags a concern regarding drainage connections into ancient woodland, but makes clear that this rests with the Council's Arboricultural Officer. In other words, the concern is raised by proxy on behalf of a colleague in anticipation of his objection.
2. **JFL11b** September 2022: restates many of the points made in the August response, but makes clear that his ensuing objection is by proxy in relation to arboricultural matters:

   > *"The key question is whether approval can be obtained from the Council's arboriculturalist* [sic] *for the works in the ancient woodland. I would therefore maintain my holding objection to this application until this point is determined."*
3. **JFL11c** February 2023: maintains his holding objection subject to review of the proposals in relation to ancient woodland by the Council's Arboricultural Officer.

5.6 Natural England

Natural England provided various comments on the application, the final set of which, comprising an Appeal Statement (**CD12/1**), was received on 14 July 2023. Natural England stated that the SANG pathways within ancient woodland should be protected from ground damage by use of boardwalks. Notwithstanding that this detail could readily be conditioned, the necessary amendments to this aspect of the SANG proposals have been made. See section 6 for further information.

5.7 The Woodland Trust

The Woodland Trust provided comments dated 16 September 2022 and 12 July 2023 (**CD12/3**). So far as is material to my evidence, in its first response the Woodland Trust raised only one point in issue: the deterioration of veteran trees due to safety concerns leading to the loss of habitat features. I provided a Technical Response to the Woodland Trust (see **JFL19**), providing additional information regarding veteran tree safeguarding measures. Having considered this material, the Woodland Trust withdrew its concern over veteran trees in its second response.

5.8 The Forestry Commission

The Forestry Commission, which is a non-statutory consultee, provided representations (**CD12/4**) to the Appeal dated 13 July 2023, in which it raises three concerns:

1. Loss of formerly designated ancient woodland to the site access.
2. Fragmentation of woodland corridor due to the access roads.
3. Indirect impacts arising from the proposals generally.

The second and third of these concerns is addressed in evidence by Mr Baxter. I discuss the first concern in section 6.

5.9 Sussex Wildlife Trust

In its representations to the Appeal of July 2023 (**CD12/224, p.9**), Sussex Wildlife Trust (SWT) raises a concern regarding the potential for adverse impact on the roots of trees growing within ancient woodland adjacent to the proposed emergency access. I respond to this point within section 6.

5.10 Dr Martyn Stenning

5.10.1 Dr Stenning is a local resident and professional ecologist. He lives ca. 2km from the Appeal Site and describes himself as a "regular consultee of WDC". He has provided two sets of comments, one on the application, in August 2022, and the second as Appeal representations dated 12 July 2023 (**CD12/6**) , as well as a Proof of Evidence (**CD1/35**).

5.10.2 Although Dr Stenning raises a number of issues in his 2022 comments, the one to which I responded in a Technical Note (prepared jointly with Mr Baxter as part of Sylvan; see **JFL20**) was framed in the following terms:

"The Sphagnum peat fed lake at Lake Wood, which also supports a huge biodiversity of aquatic plants, invertebrates and vertebrates, including great crested newts, is also fed with water from Downlands Farm and would be jeopardised by the drainage engineering proposed by the developers."

5.10.3 Whilst this suggestion does not reappear in Dr Stenning's Appeal representations, this baton has passed now to Dr Alan Thompson, who has submitted a Proof of Evidence (**CD1/32**). I respond to certain elements of both Dr Thompson's and Dr Stenning's Proofs in my section 6.

5.11 Dr Alan Thompson

Dr Thompson makes a number of claims concerning an alleged hydrological, and hydrogeological link between the Appeal Site and Lake Wood. His claims rest in no small part on his own, novel definition of the moisture relations of Ardingly Sandstone, which is present locally. I discuss aspects of Dr Thompson's position in section 6.

5.12 Council's Statement of Case

5.12.1 At 5.11 of its Statement of Case ("LPA SofC", **CD1/6**), the Council refers to a previous, substantial "de-listing" of ancient woodland. This might appear to pick up on the point referenced in the Forestry Commission's Appeal representation (per my **5.7**, above). However, the only amendment to the ancient woodland Inventory relating to the Appeal Site of which I am aware is the removal from it of the small area of woodland, *Beechy Pit Copse*, located ca.150m south of Longwood Gill (Figure 1, just below the word "UCKFIELD").

Figure 1 – Extract from MAGIC database showing local ancient woodland in June 2020



5.12.2 Figure 2 is an extract from the Uckfield Parish Tithe Map of 1841, which I have marked up to show the location of the copse today. This copse comprises mixed deciduous trees and scrub, situated around and within a small, deep pit, probably formed for iron ore extraction in the Tudor and early Stuart periods[3]. Cross referring the map to the Tithe Apportionment Record of even date, the entry for plot 67, "Beechy Pit ", describes the land use as arable.

[3] See, for example, *The Wealden Iron Industry*, Hodgkinson J, History Press 2008

Figure 2 – Extract from Uckfield Parish Tithe Map 1841 with location of modern copse circled



5.12.3 Insofar as the term ancient woodland only applies to *land continuously wooded since at least 1600AD*, the Tithe record confirms the absence of woodland in 1841, and hence Beechy Pit Copse is not ancient woodland. Sylvan presented this information to Natural England in August 2020 (see **JFL16**), further to which NE agreed to remove the copse from the Inventory, which it subsequently did. Notwithstanding the foregoing, Beechy Pit Copse is being retained as part of the Appeal Scheme.

5.12.4 Paragraph 5.19 of the LPA SofC identifies five points of concern with the Appeal Proposals:

1. Incursion into ancient woodland buffer zones for SANG routes and SUDS features;
2. "Significant engineering operations" for the drainage connections into the ancient woodland ghyll streams;
3. The use of ancient woodland as part of the SANG provision;
4. The insertion of a pedestrian/cycle access through the area of ancient woodland known as *Fir Tree Grove*; and
5. The lengthy interface between ancient woodland and development.

I consider these matters in turn, with the exception of number 3 (which I leave to Mr Baxter), within section 6.

5.13 Collated list of relevant points raised in objection to the Appeal Scheme

From the various comments on the application and Appeal, I have distilled a list of matters to which I respond in evidence within section 6. I set this out in Table 4.

Table 4 – Collated list of matters raised by consultees

Issue	Source	Date	Ref.
Depth of buffer zone to ancient woodland	Tree & Landscape Officer} Ecology Officer} LPA Statement of Case The Woodland Trust	October 2022 (undated) July 2023	JFL9 JFL10 CD1/6 CD12/3
SuDS features in AW buffer zone	Tree & Landscape Officer} Ecology Officer} LPA Statement of Case	October 2022 (undated)	JFL9 JFL10 CD1/6
Drainage connections into woodland watercourses	Tree & Landscape Officer} Ecology Officer} The Woodland Trust Drainage consultee LPA Statement of Case	October 2022 July 2023 Aug + Sept 2022, Feb 2023 (undated)	JFL9 JFL10 CD12/3 JFL11 CD1/6
Harm to Downlands Farm Group from potential loss of Partridges Oast copse	Conservation Officer Proof of Evidence at 7.19	September 2023	CD1/21
Boardwalk through Fir Tree Grove	Tree & Landscape Officer} Ecology Officer} LPA Statement of Case	October 2022 (undated)	JFL9 JFL10 CD1/6
Harm to trees adjacent to the emergency access	Sussex Wildlife Trust	July 2023	12/224
SANG access within AW	Natural England LPA Statement of Case	July 2023 (undated)	CD12/1 CD1/6
Harm to veteran trees	The Woodland Trust	September 2022 (withdrawn in July 2023)	CD12/3
Loss to site access of formerly designated AW	Forestry Commission Dr Martyn Stenning	July 2023 September 2023	CD12/4 CD1/35
Impact on Lake Wood hydrology	Dr Martyn Stenning Dr Alan Thompson	August 2022 September 2023 (not pursued in July 2023)	CD12/6 CD1/32
The presence of additional ancient woodland	Dr Martyn Stenning	September 2023	CD1/35
The lengthy interface between AW and the Appeal Site	LPA Statement of Case	(undated)	CD1/6

6 Discussion Part One – Responses to points raised in objection

6.1 Depth of buffer zone to ancient woodland

6.1.1 The Council take issue with the depth of ancient woodland buffer zone provision, with this amplified in paragraphs 5.32-5.33 of LPA SofC (**CD1/6**). Paragraph 5.33 states:

> *"The scheme has minimum buffer of 15m and that buffer is key to demonstrating the quantum of growth sought in the proposal. Put another way, a deeper buffer would call into question the ability to deliver 424 homes and associated facilities and SANG*."

6.1.2 The *Standing Advice* states that buffer zones between development and ancient woodland are a mitigation measure to protect that woodland from (chiefly) indirect effects, such as all forms of pollution, fly-tipping and so on.

6.1.3 The key here is that the Council has misunderstood the proposals. Whilst it is correct that certain of the Appeal Scheme drawings (including the FLAC Tree Protection Plan at **JFL7**) show the line of the 15m minimum recommended buffer zone, this detail is included solely to demonstrate that this is respected by the illustrative layout. In reality, the majority of the development proposals are set back from ancient woodland further than the 15m minimum. The detail of this is set out in Table 5 below, which aligns with Mr Baxter's Buffer Depth Plan (**AB1**).

Table 5 – Ancient Woodland buffer zone depths to nearest points of development

Ancient woodland unit	Proposed feature	Dist. Min (m)	Dist. Max (m)
Lake Wood	Main site access	61	80
Lake Wood	Development area	15	32
Fir Tree Grove	Development area	16	18
A22 roadside block (small)	Development area	16	22
Longwood Gill	Development area (south)	16	28
Longwood Gill	Development area (east)	36	36
Longwood Gill	Development area (north)	15	55
A22 roadside block (large)	Development area	22	47
Shermanreed Wood	Development area	16	35

6.1.4 The data in Table 5 demonstrate that in only two cases, out of nine interfaces between ancient woodland and development features, is the minimum buffer zone depth anywhere at the *Standing Advice* minimum of 15m. In both these cases, the buffer depth varies from this minimum to a much larger figure of at least double the minimum. In all other seven interfaces, the minimum buffer exceeds the 15m recommendation.

6.1.5 The Woodland Trust also takes issue with the depth of buffer zone, raising this on page 10 of its submission to the Appeal (**CD12/3**), where it calls for a universal 50m buffer. Before turning to the detail of this, it should be borne in mind that the Woodland Trust has an in-principle objection to any development on the Appeal Site. From page 9 of its submission:

> *"The Trust has fundamental concerns with the change of land use proposed for this site, and the impact this would have on the wider ecological functionality of the area and on our own Lake Wood site. Therefore, we remain opposed to development in this location."*

6.1.6 For this reason, whilst the Woodland Trust seeks a 50m buffer, it is not clear whether providing even this would overcome its opposition to development at Downlands. Be this as it may, in its submission the Trust signposts a case in Basingstoke where Natural England sought a 50m deep buffer zone. I have appended the relevant NE consultation response letter, dated February 2019, at **JFL13**. From this letter, it is apparent that the scheme on which NE was commenting (known as Manydown) was for 3,520 units, which were accompanied by many attributes of a small town. The scale, then, is an order of magnitude greater than that before this Inspector.

6.1.7 In this regard, the *Standing Advice* makes clear (**CD9/3** p.6) that:

> *The size and type of buffer zone should vary depending on the [inter alia] scale and type of development…*

This being the case, it is hardly a surprise that the very large Manydown development might attract a NE recommendation for a deeper buffer zone than the minimum.

6.1.8 However, following provision of further information (**JFL14**) by the Applicant's planning consultant (Tibbalds), NE went on to provide further comments dated January 2020 (**JFL15**), which the Woodland Trust has omitted to put before this Inspector.

In these further comments, NE advises that:

> *"The supporting covering letter (Tibbalds, 9th December 2019) outlines that a Woodland Management Plan will be provided and secured by planning condition. Natural England welcomes this and advises the planning condition is worded to ensure that such a Plan will detail measures,* ***including appropriately sized buffer zones****, to protect and enhance all ancient woodlands affected by the proposed development with details of long-term funding, implementation and management, and to be agreed with relevant stakeholders prior to the implementation of any key phase."* (With my **emphasis**)

6.1.9 What we have here is Natural England initially seeking a 50m buffer zone, then being reassured by the applicant's planning consultants (Tibbalds) that the ancient woodlands over which it had raised a concern were going to be brought under management. On this basis, NE removed its demand for a 50m buffer, instead leaving this to resolution by the planning condition that also covers provision of a woodland management plan. Thus, even on its own terms, the Manydown case does not support the Woodland Trust's blanket demand for a 50m buffer zone.

6.1.10 In the case of Downlands, a woodland management plan is already proposed, of which Natural England is well aware (as its Appeal Statement makes clear; **CD12/1**). This, taken together with the greater than minimum buffer zone that is being provided (my Table 5), should provide reassurance to the Inspector that an acceptable buffer zone proposal is before her. In any event, it seems to me that if Natural England was concerned regarding the depth of buffer zone, it has had several opportunities to say so, most recently in its Statement to the Appeal.

6.1.11 Finally, at **LPA SofC 5.32**, the Council sets out specific concerns in relation to buffer zone depth: noise, light, vehicle emissions, garden waste tipping and invasive species. These matters are all covered for the Appellant by Mr Baxter.

6.2 Placement of SuDS features within ancient woodland buffer zone

In relation to the question of SuDS features within ancient woodland buffer zones, I refer the Inspector to the Natural England/ Forestry Commission *Standing Advice* (**CD9/3**), which explicitly permits exactly this. It follows that this aspect of the proposals is compliant with unambiguous national-level guidance.

6.3 Installation of drainage connections into ancient woodland watercourses

6.3.1 As I set out in section 5.4, the position taken by the Council's drainage consultee (**JFL11**) in relation to ancient woodland impacts in fact refers across to the opinion of the Tree and Landscape Officer. It follows that there are no matters raised by this consultee, separate to the issues raised by the Tree Officer, that fall within the scope of my evidence. This leaves the concerns raised by the Tree & Landscape Officer, by the Ecology Officer, and in the LPA's Statement of Case.

6.3.2 The Woodland Trust are also concerned regarding this aspect of the Appeal Scheme. In its July 2023 submission (**CD12/3**), it raises the risks of increased urban runoff and pollution transfer into existing woodland watercourses. As Mr Jenkin explains in his evidence, run-off will be directed into the SuDS basins, with a metered Q-Bar overflow into the watercourses at existing inflow locations, to maintain continuity of hydrological supply. Additionally, the drainage chain will be fitted with a full suite of pollution interceptors, thereby preventing contamination. The drainage proposal has been designed from the outset with precisely the concerns in mind that the Woodland Trust have raised. There is no sound basis for concluding that the system would not effectively manage the risks in question.

6.3.3 In my view, the description of the trenchless connection from SuDS basin overflow to existing watercourses found in the LPA SofC as a "significant engineering operation" is an exaggeration of the scale of the work. As the evidence of Mr Jenkin confirms, the proposed connection method comprised:

1. Entry pit for guided drilling head formed outside the AW buffer zone.
2. Below-ground trenchless connection to pass below the depth of functional woodland/ tree rooting horizon.
3. Small-diameter (130mm) drill-head exit hole within the woodland.
4. Push-through of 100mm drainage connection pipe.
5. Ground-bearing, prefabricated, headwall installed by hand to accommodate pipe connection for outfall; headwall to be anchored in place with ground-spikes.

6.3.4 However, a review of the drainage proposals undertaken by Mr Jenkin, confirms that two modifications can be made at the detailed design stage which reduce their impact even further:

1. The small diameter of the connection pipes lead to flow velocities under 5.5m/sec, which removes the need for headwalls. Instead, small, ground-bearing, erosion control grids can be used.
2. In some locations, overflow pipes can be fitted to the upper side of SUDs basins to provide overland flow at the required connection points into the upper reaches of the ghyll sides, obviating the need for trenchless connections at the locations concerned. A good example is connection point SW06 (see plan extract at Figure 3), into Longwood Gill. My photograph of this location is included at Figure 4.

Figure 3 – Extract from Waterman drawing WIE16835-001-P01 showing inflow locations into upper reaches of Longwood Gill

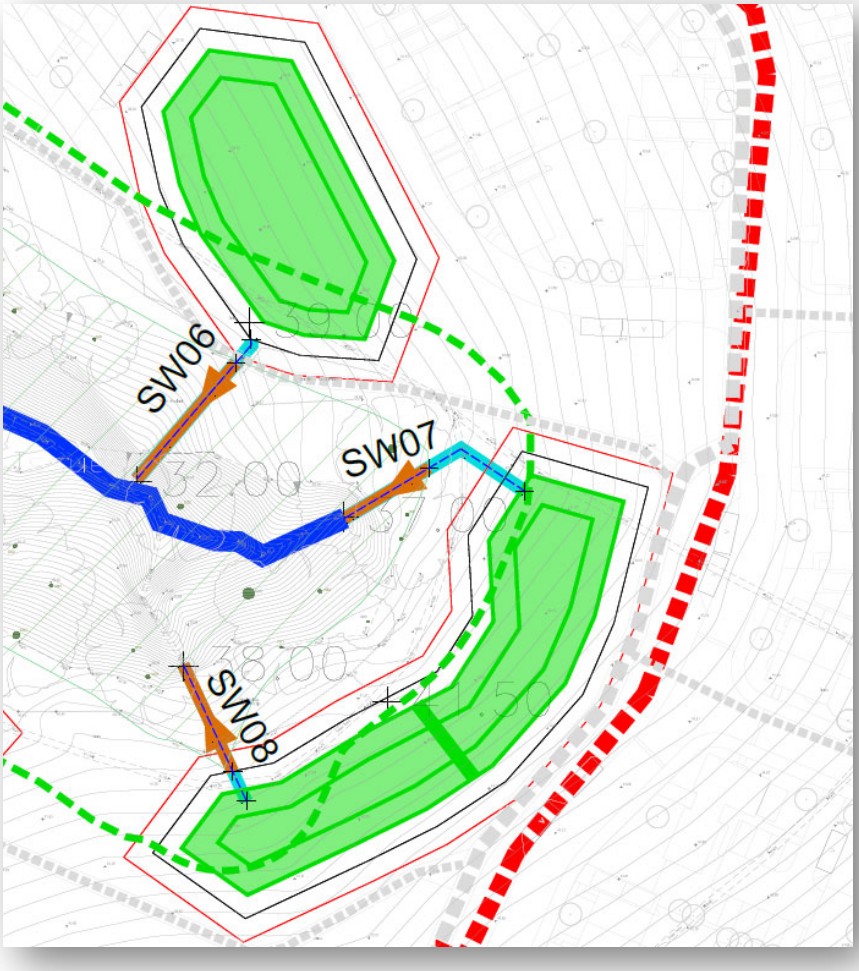


Figure 4 – Existing natural inflow point into Longwood Gill, location of connection SW06



6.3.5 When considering the trenchless connection aspect of the proposals, it is important to bear in mind that this is not a novel solution, but in fact one found in BS5837:2012 (**CD9/8**) at its Table 3 (albeit the technology is significantly more advanced now). BS5837:2012 Table 3, *Trenchless solutions for differing utility apparatus requirements* is introduced by the following text at its paragraph 7.7.2:

> *"Where underground apparatus is to pass within the [root protection area, RPA], detailed plans showing the proposed routeing should be drawn up in conjunction with the project arboriculturist. In such cases, trenchless insertion methods should be used (see Table 3), with entry and retrieval pits being sited outside the RPA*."

In this case, there is no requirement to form a retrieval pit because the drill-head emerges from a sloping bank. It follows that the stipulation about the formation of the retrieval pit being located outside the root protection area is not relevant here.

6.3.6 It was based on this advice that the same approach was used at Aspbury's Copse, an area of ancient woodland, as part of delivery of new motorway services on the M42 at Solihull. That matter went to Appeal (PINS ref. 3275290). In that case, the methodology (**JFL16**) for a proposed drainage connection into an ancient woodland watercourse was discussed in detail with Natural England, who explicitly confirmed (**JFL17**) that it considered this to be an acceptable approach. In allowing the Appeal (**CD4/9**), Inspector Boniface noted at DL69 that:

> *"The potential effects [on ancient woodland] have been considered and will be avoided as far as possible, for example using directional drilling for drainage installations and a sensitive lighting scheme."*

6.3.7 In short, Inspector Boniface accepted that the mitigation provided by the trenchless method for drainage connection meant that neither loss nor deterioration of the receptor ancient woodland would occur. He did not grapple with the question of whether the acceptability tests at NPPF 180c were met, because that paragraph's protective policy – although relevant – was not engaged in relation to this element of that appeal scheme.

6.3.8 A more recent Appeal Decision (PINS ref. 3317468, Woodward, August 2023, **CD4/12**), concurred in clear terms. In that case, which is also within the Wealden planning jurisdiction, the same drainage connection was used as for both Aspbury's Copse and here at Downlands, namely trenchless connection into an existing watercourse.

6.3.9 Inspector Woodward deals with the drainage proposal matter at DL32-39. At DL35, Inspector Woodward pronounced himself:

> *"Satisfied that this… drainage scheme could be devised without harming the integrity of the ancient woodland, subject to a suitably worded planning condition requiring the submission of a detailed scheme*."

6.3.10 At DL36, Inspector Woodward noted with approval that the:

> *"Appellant has provided several technical appraisals to support their argument that changes to hydrology would be minimal, with flow rates and volumes mitigated as a result of attenuation measures…. I am satisfied that any changes to hydrology would not negatively affect the ancient woodland."*

6.3.11 In relation to the risk of pollution from runoff, Inspector Woodward fully accepted the appellant's evidence, concluding (DL37) that:

> *"In terms of water quality, measures to prevent polluted surface water discharge into the ancient woodland would be incorporated into the sustainable drainage scheme and ongoing maintenance of the drainage system would be employed, specific details of which could be required by planning condition."*

6.3.12 Inspector Woodward went on to refer to the guidance set out in the *Standing Advice* (my section **7.1** refers), that the baseline condition of a woodland should not be taken into account when considering deterioration. At DL38, he states the following:

> *"National guidance requires that the existing condition of ancient woodland should not be taken into account when assessing the merits of a proposal. Therefore, its existing condition should not be a reason to grant planning permission.*

Be that as it may, and whilst the proposal would result in very localised disturbance to the woodland primarily as a result of the [drainage] option which would involve the construction of the headwall feature, this does not equate to deterioration of the ancient woodland. Any effects arising from construction or from the discharge of water into the ancient woodland would be mitigated by virtue of the scheme's design... Therefore, there is no requirement in this case to demonstrate 'wholly exceptional reasons' to allow the proposal as there would be no loss or deterioration of the ancient woodland."

6.3.13 However, at DL 33 Inspector Woodward had already considered the baseline condition of the woodland, noting the presence of a manure heap within it, which he refers to as a "negative feature", and its clay subsoil, which "makes no discernible contribution towards supporting woodland biodiversity". Then at DL34 he refers to siting the location of the outfall to avoid "sensitive biodiversity features", thereby recognising that the receptor woodland in that case contained a mosaic of qualitative interest (similar, for example, to Fir Tree Grove). It is clear, therefore, that whilst Inspector Woodward notes what the *Standing Advice* says as regards ignoring the baseline, this is not the approach which he himself adopts.

6.3.14 This approach, which I say is correct, allowed Inspector Woodward to conclude (DL39) that as well as complying with National Policy, the proposals before him also complied with Local Policy. He sets this out as follows:

"The proposal would not result in the loss or deterioration of ancient woodland. It would comply with Saved Policy EN13 of the Local Plan and Policies WCS12, WCS13 and WCS14 of the Wealden Core Strategy Local Plan 2013 (Core Strategy) which require, amongst other matters, that the District's green infrastructure and biodiversity is protected, including ancient woodlands, in the pursuit of sustainable development. The proposal would also comply with paragraphs 174 and 180 of the Framework which require that sites of biodiversity value are protected, and that loss or deterioration of ancient woodland is resisted. For these reasons it would also address the Wealden Design Guide Supplementary Planning Document 2008."

6.4 Potential harm to Downlands Farm Group from a future loss of Partridges' Oast copse

6.4.1 At paragraph 7.19 of her Proof (**CD1/21**), the Council's Heritage Officer suggests that future harm to the setting of the Downlands Farm Group of buildings could arise from the loss of the 'ephemeral' intervening woodland known as Partridges' Oast copse, a small area (0.66ha) of woodland under third party control. In addition to describing this copse as 'ephemeral', she also describes it as having 'no formal protection'.

6.4.2 The copse itself is included within our tree survey at FLAC ident WG7003 (see **JFL4** & **JFL6**). We found it to be in fair overall condition, with a minimum remaining longevity in respect of its principal trees of at least 40 years. Additionally, we noted that it has good diversity of species, canopy and age structure, including natural regeneration. No systemic issues were identified. The foregoing being the case, there is no reason to consider the woodland somehow to be 'ephemeral' for arboricultural reasons.

6.4.3 Turning to the suggestion that it has 'no formal protection', it would appear that the Conservation Officer is unfamiliar with the provisions of Forestry Act 1967, which include, inter alia, the requirement for a Felling Licence[4] for tree felling at other than very small scale. Felling trees without a Licence where one is required is a criminal offence[5], and so to say that the woodland is not formally protected is straightforwardly incorrect.

6.4.4 Beyond this point, it is also the case that if the Council were concerned about the protection of the copse they could make it subject to a Tree Preservation Order. This would make the Council a statutory consultee on any Felling Licence application where a grant of Licence is intended[6]. If a Council objects to such a Licence being granted, the Forestry Commission must pass the application to said Council for determination[7]. This carefully constructed statutory interplay between the Forestry and Planning regimes provides, by one route or another, effective safeguards over the future of Partridges' Oast copse, such that there are no grounds whatsoever for considering it to be at risk. Thus, both arboriculturally and legally, it is not accurate to suggest that this woodland is somehow a temporary feature in the landscape.

[4] Forestry Act 1967 s.9
[5] Ibid. s.17
[6] Ibid. s.15(1)(a)
[7] Ibid. s.15(2)(a)

6.5 Installation of boardwalks in Ancient Woodland

6.5.1 The proposed access through the area of ancient woodland known as Fir Tree Grove takes the form of a screwpile-supported boardwalk (**CD2/17-2/22**). Due to the nature of this structure, it would not result in loss of ancient woodland, although a total of 62 low and moderate quality trees would need to be removed (of which 50 are low quality trees, 80%)

6.5.2 It is here important to draw a distinction between loss of trees and loss of woodland. Tree removal from within woodland is a normal, indeed essential element of management, and is both inherent in and vital to the concept of *ancient and semi-natural woodland*. Whilst what is termed *continuous cover forestry* is far less impactful than clear-felling an entire woodland[8], even the latter occurs frequently within the Forestry Commission licensing regime.

6.5.3 Of course, what is proposed in this case is not a clear-fell, but selective, linear tree removal within a narrow corridor. The National Forest Inventory[9] defines woodland as:

> *A minimum area of 0.5 hectares under stands of trees with, or with the potential to achieve, tree crown cover of more than 20% of the ground.*

With this definition in mind, it is apparent that the limited tree removal required to accommodate the boardwalk no more causes a loss of woodland than catching fish causes a loss of pond.

6.5.4 Turning briefly to the question of whether the proposed tree removal would cause deterioration of Fir Tree Grove, as I have already explained felling is a normal part of sylviculture, and is, therefore, both a typical occurrence in most ancient woodlands and a normal feature within their associated management plans.

6.5.5 Such plans frequently include the formation of what are termed 'racks', access tracks for extraction of woodland products, or 'rides', often quite wide amenity/ sporting features hosting paths or roadways.

[8] *Continuous Cover Management of Woodland – A brief introduction*, Helliwell R, York 2013
[9] https://www.data.gov.uk/dataset/ae33371a-e4da-4178-a1df-350ccfcc6cee/national-forest-inventory-woodland-england-2015#:~:text=Summary,than%2020%25%20of%20the%20ground viewed on 11.10.23 at 0950

Features of this type are considered by Natural England to be integral to ancient woodland (e.g. **CD9/9 para 3.3.4 p.39**), while the Forestry Commission specifically identifies them as areas of elevated conservation importance[10]. For these reasons, it cannot plausibly be maintained that the proposed tree removal would be harmful to Fir Tree Grove, as otherwise so would routine aspects of woodland management that are widely agreed to be beneficial.

6.5.6 As Mr Baxter explains, there would, however, be a minor and highly local reduction of woodland functionality below the Fir Tree Grove boardwalk due to shading. However, the sparse presence of woodland ground flora within this severely neglected woodland, affords ample opportunity for nearby receptor sites (generally only a few metres away) for translocation of plants from within the boardwalk footprint. This is, at heart, a gardening operation, chiefly comprising relocation of bulbs by means of a trowel or hand fork. It would have no adverse impact on the woodland.

6.5.7 The use of boardwalks within woodland, including ancient woodland, is a well-established response to access management, and indeed Natural England itself requires their use in this case for the SANG woodland pathway network (per Section 1 of NE Appeal Statement 13 July 2023, **CD12/1**). This fact, together with the precise and sensitive construction system that would be employed (and the translocation of woodland plants from below the boardwalk), prevent this aspect of the proposals from resulting in harm to ancient woodland.

6.5.8 At the Case Management Conference of 16 August 2023, the Inspector requested further information regarding the use of boardwalks within tree root protection areas, including those found within woodland (CMC Note at **CD1/8**). This request would apply equally to the SANG boardwalks sought by Natural England and to the Fir Tree Grove boardwalk.

6.5.9 In response to this request, I prepared a Technical Note dated 21 August 2023, which I append for convenience at **JFL8**. Within this Technical Note, I reference one particular product for providing minimally invasive structural support within tree root protection areas (Radex *GroundScrews*). I have appended a brochure for this product at **JFL18**. Whilst I offer it as an example of the sort of system that would be suitable, it is certainly one that I favour.

[10] *Managing Rides, Roadsides and Edge Habitats in Lowland Forests*, Ferris R & Carter J, FC Bulletin 123 Forestry Commission 2000; see, for example, p.6

6.5.10 The Inspector also asked for details of any tree losses necessary to facilitate construction of the SANG boardwalk. In this regard, it should be understood that the SANG boardwalk would follow the routes taken by existing paths, and as such these are free of trees in any event. However, we have undertaken a walkover assessment of the existing path network, in order to identify the maximum extent of tree removal that might be required to formalise these paths with a boardwalk. In this regard, we have tested the boardwalk at 2m width, whereas it is our understanding that a 1.5m wide boardwalk will be sufficient for the SANG path.

6.5.11 When considering this matter, I have had regard to the highly effective tree root protection afforded by use of the proposed support system. Figure 5 is a photograph taken at Centre Parcs, Woburn, in September 2023, showing trees retained within a metre or so of a boardwalk. The continued good health of the trees concerned ten years after the boardwalk was completed demonstrates the effectiveness of what is proposed for use in this case. Figure 6 is a close-up view of the ground-screws used to support the boardwalk.

Figure 5 – Successful tree retention near to ground-screw supported boardwalk (Ground-screws arrowed)



Figure 6 – Alternative view of boardwalk in Figure X showing GroundScrews (arrowed) (Ground-screws arrowed)



6.5.12 My assessment of the direct impact of the SANG boardwalk on existing trees is as follows:

1. No high or moderate quality trees would need to be removed to deliver the boardwalk.
2. A low number, fewer than 20, of low quality trees *might* need to be removed, subject to topo survey & setting out of the route on site. This equates to a mean spacing along the route between trees for removal of >30m at the worst-case loss estimate.
3. A low number, fewer than 20, of early-mature (but not ancient or veteran) hazel coppice stools *might* need to be translocated to nearby areas within the woodland, where receptor opportunities are plentiful; also subject to topo survey & setting out.

6.5.13 The potential loss of a very few, low-quality trees is *de minimus* in the context of a large area of contiguous woodland.

The very minor scale of any impact would not result in deterioration of ancient woodland, either at all, or when the beneficial effect of the boardwalk is considered as remediation for the current situation of frequent and severe ground damage from existing ad hoc access. The impact from potential translocation of a small number of relatively young hazel coppice stools is even less.

6.6 Harm to trees adjacent to the proposed emergency access

This point, which has been raised by Sussex Wildlife Trust (**CD12/224 p.9**), I can deal with very shortly. During the lengthy design process that lies behind the Appeal Scheme, I provided specific advice to the Appellants' Highways consultants (Motion) regarding this aspect of the proposals. My advice included details of requirements for no-dig construction in accordance with the principles set out in BS5837:2012 (**CD9/8**) clause 7.4. The resulting design is appended for convenience at **JFL23**, which shows a no-dig structure with minimally-invasive supports. In my opinion, this would cause no adverse impact on the roots of adjacent trees.

6.7 Harm to veteran trees

6.7.1 The Tree and Landscape Officer and the LPA SofC both allege harm to veteran trees located within the SANG area; there is no allegation that development per se is a problem. Initially, the Woodland Trust also raised a concern on this point, relating inter alia to public access close to veteran trees, to which I responded (**JFL19**), explaining that this would be prevented. The Woodland Trust considered this information and formally withdrew its concerns in its July 2023 statement (**CD12/3**).

6.7.2 As set out in my Technical Note, the Appeal Scheme would deliver a detailed veteran tree management and succession plan, leading to a net positive outcome for veteran trees overall. If the Inspector were minded to allow this Appeal, it is intended that a planning condition would be applied requiring the veteran trees to be subject to further assessment using the *Veteran Tree Specialist Survey Method* promoted by Natural England.

6.7.3 A detailed baseline data capture having been undertaken, each of the veteran trees would have its own management plan prepared. The veteran tree management plans would be designed to maximise the longevity of the trees and the habitat they provide. Example operations could include pruning to prevent catastrophic structural failure (e.g. from storm damage), and a careful, phased reinstatement of former coppice cycles.

6.7.4 The management plan would include provision for periodic monitoring and plan adjustment and would be designed to run for a substantial period (fifty years is suggested). A key element of the management plan is the provision of successor trees to the current generation of veterans. These would comprise existing (but not veteran) oak trees, as well as trees planted and maintained pursuant to the usual landscaping condition.

6.7.5 Given the high emphasis placed by the Framework on protecting irreplaceable habitat trees, the function of a planning permission in helping preserve such exceptionally valuable features should be a matter of very substantial positive weight. Added to this is the significant benefit of succession, including new parkland planting designed to encourage an open-grown form. Due to the considerable lifespan of pedunculate oak in parkland, this is a benefit potentially delivered at the millennial scale.

6.7.6 At a recent Appeal (Ash Manor, 3273305 **CD4/8**), Inspector Downes had before her a veteran tree management and succession plan similar to that proposed here, which in that case also safeguarded a notable species of fungus (oak polypore). Inspector Downes agreed with the Appellant that this would result in a benefit, concluding that it:

> *"Would have a positive effect on the ecological resource and result in a significant enhancement to biodiversity"* (DL55-56, Downes, May 2022).

6.7.7 More recently still, this same benefit was put to Inspector Rollings (Kingfisher Grove, 3304042 **CD4/7**), who concluded (DL31) that:

> *"The development would also enable the green space around the proposed built-up zone to be maintained as a recreational parkland and biodiverse resource, together with the formal management of three identified veteran trees, of which at least one is at risk of failure without intervention."*

6.7.8 As regards the Appeal Site, the storm damaged and heavily decayed veteran beech tree 7041 (Figure 7) is also at risk of loss due to stem breakage without management intervention. Several of the ancient ash coppice stools (for example, tree 3002) are also at risk of collapse, due to decay and lapsed coppice cycles. For this reason, allowing this Appeal directly results in preservation of irreplaceable habitat facing near term loss should the Appeal be dismissed.

Figure 7 – Veteran beech tree 7041 showing extensively decayed lightning scar



6.8 Loss of formerly designated ancient woodland

6.8.1 The Forestry Commission's reference (in **CD12/4**) to previously designated areas of ancient woodland in the vicinity of the site access, has no basis of which I am aware, though the FC may of course be correct. However, the only material question before this Inspector is whether the woodland in question is considered by Natural England to be ancient now. Absent this, paragraph 180c of the Framework is not relevant (and so, of course, cannot be engaged). The woodland concerned is presently considered to be secondary (i.e. of post 1600AD origin).

6.8.2 Bearing this fact in mind, paragraph 26 of Dr Stenning's Proof (**CD1/35**) states that:

> *In their separate Technical Note TN06, Aspect Ecology (2022b) assert that water courses and woodlands "are fully retained under the proposals". This cannot be so, however, given that access points to the proposed development would sever the woodland corridor between Lake Wood and Budletts Common. The argument that there have been gaps in the past does not wash because small patches of woodland that may have had short-term reductions of trees will have retained protected ancient woodland soils and indicator species such as Anemone nemorosa, Hyasinthoides nonscripta [sic] and others which have clearly subsequently regenerated and which are ancient woodland indicator species.*

6.8.3 Here Dr Stenning appears to suggest that the presence of ancient woodland indicator species is confirmation of ancient woodland in the locus of the proposed site access (compartment 8c; see **CD1/14 Enc.4 Plan ECO3**). This position appears to reflect a profound misunderstanding of the subject matter. Ancient woodland indicator species are slow colonising, woodland specialist plants, the presence of which is considered – in broad terms – to indicate very long established or ancient woodland. However, this is a complex and nuanced topic, with ancient woodland indicators not doing, as it were, what it says on the tin.

6.8.4 At 6.1.3.2 of its Handbook (**CD9/9**), Natural England advises that:

> *The indicator species tool is inexact but simple: the more species recorded on the site, the more likely that site is to be ancient (**the presence of [indicator species] does not prove a wood is ancient** and neither does their absence prove recentness).*

> *However, there is no linear relationship between the precise degree of likelihood and the number of species present that can be routinely applied at site-level. There is no threshold species count above or below which the status of a wood becomes a certainty. For this reason, [botanical] information should be used as a supporting part of the wider investigation.* (With **my emphasis**.)

6.8.5 As part of our Sylvan collaboration, Mr Baxter and I have undertaken original research on the comparative presence of ancient woodland indicator species in two woodlands, one known to be ancient, the other known to be secondary (in fact only around 70 years old). We report the findings of our research, together with our original indicator recording and assessment methodology *WISDOM*[11] in a paper[12] recently submitted for publication in the peer-reviewed *Journal for Nature Conservation*.

6.8.6 In brief, we found 19 ancient woodland indicator species in the 70-year-old (i.e. secondary) woodland, and 43 in the known ancient woodland. This study confirms what Natural England also recognise, namely that indicator species do not prove ancientness, they are merely one element of an investigation into woodland origin.

6.8.7 In this regard, it is widely accepted that map evidence is the primary source, and the one deserving of most weight. Figure 1 of Dr Stenning's Proof (**CD1/35**) is titled *Historical Woodlands in North Uckfield*, which is a map-based diagram to show the relationship between the Appeal Site, woodland mapped by the Ordnance Survey in 1897/98, and a map of part of the Streatfeild Estate dating from 1829. This 1829 map is the earliest evidence of woodland adjacent to what is now the A22, with three earlier maps (Greenwood 1823/4, Ordnance Survey Draft 1799, and Faden 1795; see **JFL22**) all showing the presence of a substantial gap between Lake Wood and Thirty Acre Wood.

[11] (For *Woodland Indicators: Strength, Distribution and Occurrence Matrix*; see CD1/14 Enc.4 *Updated Baseline Ecological Appraisal*, September 2023, Annex 5).
[12] *Introducing a new methodology to improve the predictive value of ancient woodland indicator species for landscape history*, available on the Biology preprint server at https://biorxiv.org/cgi/content/short/2023.10.03.560441v1

6.8.8 In addition to these three maps, I have found no earlier map that shows woodland in the location now proposed as ancient by Dr Stenning. This means that the earliest evidence of woodland in the material location (compartment 8c) is the Streatfeild Estate map of 1829, a map produced, therefore, more than 200 years after the onset date for ancient woodland (1600AD). Even if an earlier map were to be produced, this would still leave three maps showing an absence of woodland. Of these three, the Ordnance Survey Draft has an accuracy in depicting woodland that scholars consider exceeds 95%, which is often used as the confidence threshold for the criminal test of *beyond reasonable doubt*.

6.8.9 At this point, it is important to remember why the threshold date was set at 1600AD. As the head of Natural England's specialist tree and woodlands team explains:

> *The date initially chosen, 1600, was based on English and particularly lowland conditions the end of the medieval period, the point at which good maps started to become more common and prior to the impetus for new woodland planting from the publication of Evelyn's* Sylva *(1670).*[13]

More recently, scholars in this field have recognised that the period after Evelyn, extending until ca. 1850, was one of such widespread woodland planting in lowland Britain, that it has become known as The Great Replanting[14].

6.8.10 In simple terms, the presence of a woodland today known only from, say, the first half of the nineteenth century, does not indicate a woodland that is probably ancient. In the absence of good evidence of antiquity, especially map evidence, the greater likelihood is that it is secondary woodland.

6.8.11 Drawing together these threads, we can see that Dr Stenning's assertion that the presence of an unremarkable assemblage of ancient woodland indicator species does not demonstrate that compartment 8c should now be regarded as ancient woodland. There is no reasonable basis for reaching such a conclusion and Dr Stenning's suggestion in this regard deserves no weight.

[13] *The ancient woodland concept as a practical conservation tool in Great Britain*, Goldberg et al, Journal for Nature Conservation 15 (2007) 109—119
[14] *Rethinking Ancient Woodland*, Barnes G & Williamson T, Studies in Regional and Local History Vol.13, UHP 2015

6.9 Impact on hydrology of Lake Wood

6.9.1 The only consultee to raise this matter at application stage was Dr Stenning. In his August 2022 representations (**CD12/6**) on the planning application, Dr Stenning stated that there is an important hydrological link between the Appeal Site and the sphagnum moss bed at the head of the lake in Lake Wood. As noted above, Mr Baxter and I considered this point in detail, responding in October 2022 by means of a bidisciplinary Technical Note, TN08, which we authored jointly under our collaborative brand Sylvan. TN08 is appended at **JFL20**.

6.9.2 In order to test Dr Stenning's assertion of such a link, we undertook desk- and field-based research, with our findings being subsequently passed to the Appellant's hydrology consultants for peer review. We undertook this work due to our considerable experience of woodland surveying for specialist plants, including phyto-hydrological marker species. Because plants are symptomatic of their microenvironmental conditions, the presence of certain plants can provide indications as to areas of elevated moisture concentration. It follows from this that a hydrological connection of the kind suggested by Dr Stenning, namely inflow(s) from the Appeal Site to the (generally lower lying) Lake Wood, should be identifiable by the presence of hydrophilic plant species associated with inflow zones.

6.9.3 In addition to this strand of our research, we also reviewed existing information regarding the geology and hydrology of the site, as this data further informs the likelihood or otherwise of Dr Stenning's thesis.

6.9.4 As noted, the fruition of our research is contained in TN08, in which we conclude that:

i) There is no evidence of the hydrological link proposed by Dr Stenning; and
ii) That in fact the evidence runs strongly counter to the plausible existence of a link.

6.9.5 Although Dr Stenning did not pursue this matter in his Statement to the Appeal (**CD12/6**), as already noted, Dr Thompson has adopted it (**CD1/32**). Whilst noting that I am not qualified to comment on detailed matters of geohydrology, I wish to make the following comments of an observational nature.

i) The necessary starting point for Dr Thompson's hypothesis of sub-surface flows from Downlands to Lake Wood to be correct, is his assertion (para.8) that the British Geological Survey (BGS) has mis-characterised the Grinstead Clay Member as an 'aquiclude'. Instead, according to Dr Thompson, it is an 'aquitard'. Dr Thompson appears to have reached this conclusion based on a misunderstanding of what an aquiclude is, which he describes as: *A geological formation which is impermeable to the flow of water.*

This is not how the BGS defines it, which is:

> *A geological stratum or formation that may be capable of storing water but is unable to transmit it in significant amounts*[15]

As we can see, the BGS does not claim that aquicludes are *impermeable*, but instead that they do not *transmit water in significant amounts*. This nuanced understanding appears to have escaped Dr Thompson, which puts the validity of his downstream conclusions in some doubt. The BGS characterisation of the Grinstead Clay Member as an aquiclude, when properly understood according to its definition, is consistent with the findings of the site investigation, which found insufficient permeability for infiltrative drainage.

ii) Having challenged the BGS (I say unsuccessfully), Dr Thompson then relies on four points to support his hypothesis.

- **First** is a photograph (his Plate 5), which he says shows "Overland Flow from Downlands Farm into Lake Wood". Mr Jenkin, for the Appellant, addresses this point.

- **Second**, Dr Thompson refers (para.12) to *various forms of hydrophilic vegetation* being *present in Lake Wood*, and (para.17) to *saturated hydrophilic vegetation… clinging to the lower rock faces on many outcrops*.

  Notwithstanding the plurals, the reality is that Dr Thompson provides but a single example of such vegetation, at his plate 16. This plate is an image of a liverwort provided by Dr Stenning, that is said to be growing *on a sandstone outcrop on the north side of Lake Wood*.

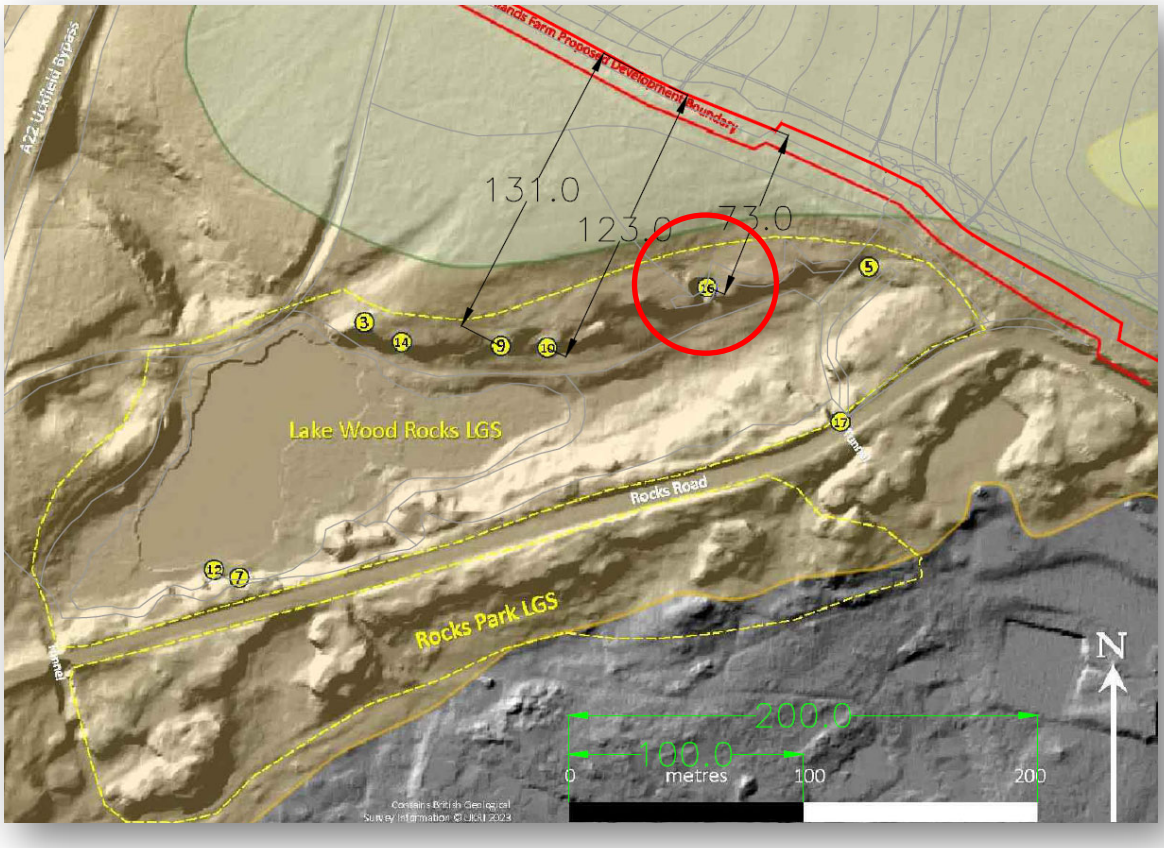
[15] https://www2.bgs.ac.uk/groundwater/resources/glossary.html viewed on 11.10.23 at 1615

The location of this outcrop is indicated on Dr Thompson's Figure 3. Dr Thompson's Figure 3 uses a 1m Digital Terrain Model LiDAR visualisation as its mapping base. Inserting this mapping base in georectified form into AutoCAD allows distance measurements to be taken with 1m accuracy.

I have inserted Figure 3 into a CAD program, and scaled it to align with the topographic survey of the Appeal Site. This has enabled me to measure the distance from features identified by Dr Thompson to the nearest point of the Downlands boundary. I have then added relevant dimensions to my composite plan.

An extract from this composite plan appears as my Figure 8, on which I have circled the location of the liverwort shown at Dr Thompson's Plate 16.

Figure 8 – Extract from composite plan, based on Dr Thompson's Figure 3



The distance between the location of the bryophyte in Plate 16 (marker 16 on Dr Thompson's Figure 3) and the Appeal Site is just over 70m.

At his para.13 Dr Thompson notes that:

> *Borehole investigations carried out on behalf of the Appellant enable the interface between the Ardingly Sandstone and the Grinstead Clay to be plotted and this reveals that the strata dip gently towards the north-west, throughout the site*.

I agree. However, this means that he is suggesting that precipitation falling on Downlands, as opposed to precipitation falling within Lake Wood itself, is supplying moisture to a liverwort more than 70m from the boundary, in a plane perpendicular to the lie of the geology. Confining myself to matters of botany, it is, of course, vastly more likely that the water supply for this plant is simply drawn from within its immediate vicinity.

I turn finally to the supposed "blatant contradiction" (per Dr Thompson's para.17) of our findings (in TN08) concerning phyto-hydrological marker species in Lake Wood. Concerning such species, we were searching within a *plausible* zone of influence from Downlands, and so did not scour sandstone outcrops remote from the boundary. Within our search zone, we found none, as we correctly reported.

- The **third** point on which Dr Thompson relies is Dr Stenning's unsupported assertion that water from Downlands *flows into Lake Wood from Downlands Farm [passing] through an area of Sphagnum peat bog before reaching the lake*. Like Dr Stenning before him, Dr Thompson provides no evidence in support of this assertion. The reality is rather different. The uphill basin of the ghyll relative to the moss bed measures a little over 1.1ha, most of which is located to the far side of the ghyll relative to Downlands.

  Adding to, and likely exceeding this catchment, is the location of the Sphagnum bed at the eastern shore of the lake, with the moss growing at or very near to lake level: this provides a reliable and plentiful moisture supply.

As with the liverwort, so with the Sphagnum bed: Dr Thompson seems once again to be seeking to make complicated something that is actually very simple. We do not need to hypothesize a relatively remote water supply from Downlands for the Sphagnum bed when there are in fact two moisture sources readily to hand: the Lake Wood catchment and the lake itself.

- The **fourth** point on which Dr Thompson seeks to rely is apparent water seepage through Ardingly Sandstone within Lake Wood, seepage which Dr Thompson claims is of water that precipitated onto Downlands. In support of this claim, Dr Thompson exhibits images at Plates 9 and 10. Referring back to Dr Thompson's Figure 3 for the locations of these seepage areas, and measuring the distances once again in AutoCAD, we find that locations 9 and 10 are over 120m and 130m away from Downlands respectively. Nowhere does Dr Thompson explain why this seepage is of water originating from Downlands, as opposed to water originating from precipitation onto the not insubstantial intervening land within Lake Wood. If one confines oneself to that which is more likely than not, one must conclude that it is *probable* that the moisture visible in Dr Thompson's Plates 9 & 10 arises from local, rather than remote rainfall. If there are reasons why this is not so, Dr Thompson does not explain them.

6.10 The lengthy interface between ancient woodland and the Appeal Scheme

Whilst the Council seemingly raises this point as a stand-alone issue, it is clear from reading the opening sentence of para. 5.32 of its Statement of Case, that this issue is linked to its position on buffer zone depth. As such, I have covered this topic already (6.1).

7 Discussion Part Two – Other matters

7.1 Natural England and Forestry Commission joint *Standing Advice*

7.1.1 The current *Standing Advice* was published in January 2022 (**CD9/3**). This document has been revised a number of times (approximately eight), with some of the changes over time being material to this Appeal. The text as it is now, includes two specific pieces of advice which should be given very limited weight. These are:

1. The recommendation not to take into account the existing condition of a woodland when considering whether development proposals would result in its deterioration.
2. The inclusion of woodland management within the list of possible *compensation* measures.

I discuss these issues in more detail below.

7.1.2 The *Standing Advice* which preceded that of January 2022, was published in November 2018 (**JFL21**). In relation to woodland condition, it states the following:

> *"Where a proposal involves the loss of ancient woodland, you should not take account of the existing condition of the ancient woodland when you assess the merits of the development proposal*."

In my view, this is a sensible proposition and I take no issue with it.

7.1.3 However, the current *Standing Advice*, says this:

> *"Where a proposal involves the loss or deterioration of ancient woodland… you should not take account of the existing condition of the ancient woodland… when you assess the merits of the development proposal."*

As can be seen, "deterioration" has been brought into the prohibition against existing condition being considered.

7.1.4 This position is not rational. In order to assess whether deterioration will occur it is necessary to have regard to the baseline situation (i.e. the woodland's existing condition). It is not possible to assess whether a habitat will deteriorate as a result of development unless there is a benchmark against which to assess what impact that development (and any mitigation) will have on the habitat. This is the case for every other form of environment-related impact assessment, and there is no logical reason to set this well-established and effective analytical process aside for ancient woodland.

7.1.5 It is also well-established that mitigation measures are measures inherent within a proposal that are designed to avoid or reduce adverse effects that would otherwise occur. As Inspector Woodward concluded at Clear View Farm (my para 6.3.11 refers), the test of whether deterioration has occurred needs to be approached taking into account mitigation. In other words, the correct approach, which Inspector Woodward followed, is that the test for deterioration is whether there is an adverse outcome after mitigation.

7.1.6 Beneficial management which improves the condition of a woodland comes in two forms:

1. Mitigation: management of a woodland affected by a development proposal
2. Compensation: management of a woodland other than one affected by a development proposal

Unlike the 2018 *Standing Advice*, which correctly placed woodland management of an impacted woodland under the heading of mitigation, the current *Standing Advice* places all woodland management under the heading of compensation. In the case of an impacted woodland where management is proposed as a mitigation measure to avoid or reduce an impact, it cannot be right to disregard this mitigation within the assessment of the scheme in the round. Once again, this is not how any other environment-related impact assessment operates. To depart from the normal process when considering ancient woodland would seem unsound.

7.1.7 In the present case, the logical and correct approach is to consider:

1. whether any aspect of the development scheme might have an adverse effect on ancient woodland, and

2. where the ancient woodland would be affected, whether that woodland is in sub-optimal condition, and
3. what effect any mitigation would have in preventing the deterioration of the ancient woodland.
4. Thus, the question of whether proposed development would result in the deterioration of ancient woodland can be tested by asking:
   "Would the condition of the ancient woodland after the proposed development (including any mitigation) be better or worse than before the development?"

If the answer to this question is that the woodland would be in the same or better condition, the only conclusion that can be reached is that the development would not result in its deterioration.

7.1.8 Applying this approach to Fir Tree Grove, as Mr Baxter explains this area of ancient woodland is in poor condition; this is the factual baseline against which any deterioration should be assessed. The Appellant accepts that, without mitigation, the proposed boardwalk might theoretically result in a localised adverse effect. Specifically, the area of shading under the boardwalk footprint is just under 300m^2, which is 1.2% of the total area of Fir Tree Grove (2.5ha). In my opinion, the impact from this very minor reduction in functional area can fairly be said to sit below a level of materiality and would not result in the deterioration of the ancient woodland. However, mitigation is provided anyway as an inherent part of the proposals, comprising: a) translocation of woodland plants from under the boardwalk footprint (to nearby bare ground receptor sites); and b) woodland management. The translocation exercise would ensure no net loss of existing ground flora, and together with the woodland management would result in a net positive effect overall. Thus, no deterioration would occur.

7.2 Overall assessment of Reasons for Refusal covered by my evidence

7.2.1 Reason 1 seeks to disapply the tilted balance predicated on the engagement of a Fn7 protective policy within the NPPF, specifically that policy found at 180c which deals with irreplaceable habitats (including ancient woodland and veteran trees). As I understand it, for Reason 1 to stand, the Council's allegations under Reason 2 or Reason 4 would need to be made out.

7.2.2 Reason 4 deals specifically with drainage matters. Whilst noting, as Mr Jenkin explains, that there is no technical issue raised against the proposed drainage strategy, Reason 4 essentially rejects it in principle due to its reliance on discharge to watercourses in ancient woodland. At its heart, therefore, Reason 4 speaks to the allegation of loss or deterioration in Reason 2, and does not raise a separate challenge to the proposals.

7.2.3 Reason 2 bundles up the Council's concerns to allege loss and deterioration of ancient woodland, and at least deterioration also of veteran trees. This latter concern is, now, not shared by any other consultee, and is wholly misplaced. The details of the harm alleged to ancient woodland are found within the consultation responses of the Council's Tree and Ecology Officers, which are then combined within the Council's Statement of Case. I have examined each of the allegations in turn, together with objections raised by other commentators, and find that they only bear scrutiny if one sets aside a combination of national guidance, appeal precedent, the opinion of the government's biodiversity watchdog, accepted good practice, and the actual, rather than perceived, details of the proposals.

7.2.4 The reality is that the Appeal Scheme has been designed with detailed input on ancient woodland matters from me and Mr Baxter, provided over the last three and a half years or so. This input that has been precisely geared towards addressing the issues raised subsequently by Officers. Potential adverse impacts are either avoided or mitigated, with the end result being that there would be no actual adverse impact on the irreplaceable habitat in question. In short, I consider that Reason 2 is not supported by the evidence.

7.2.5 With Reason 4 being caught within the allegation of loss and deterioration in Reason 2, and Reason 2 being addressed by details within material elements of the Appeal Scheme, I leave it to Mr Mellor, for the Appellant on planning matters, to consider whether Reason 1 rests on secure ground.

8 Conclusions

8.1 As the only member of the Appellants' witness team who was involved with the 2007 cojoined Inquiry, for which I was instructed on Bird in Eye North, I have approached the potential for development at Downlands with a critical and skeptical eye. This is because the former proposals on this site were unsupportable from my perspective.

8.2 With this background in mind, when I was asked by Gleeson Land to assist with this project, I was fully alive to the sensitivities of the site regarding ancient woodland in particular. It is based on this awareness that I have provided detailed advice to the project, in close collaboration with Mr Baxter, since June 2020.

8.3 The foregoing means that every aspect of the proposals with the potential to cause harm to ancient woodland has been considered deeply and with great care over a number of years. This process has been supported by one of the most detailed evidence and data gathering exercises I have been involved in during my 30+ year career in arboriculture, resulting in a very close familiarity with key aspects of the Appeal Site and its woodlands.

8.4 I make these points to provide the Inspector with the context within which my evidence sits. My opinion is not set out herein as a post facto justification for what is proposed, but as the culmination of over three years' work to arrive at a scheme that I believe would not result in harm to irreplaceable habitat.

8.5 Indeed, the reverse is true. We have before us a substantial area of ancient woodland, most of which is in deteriorating condition due to neglect. For various readily identifiable reasons, this is a common problem in lowland Britain. But if irreplaceable habitat is of such high value that it merits special protection within the NPPF, it cannot be right to stand by and allow decline through neglect to continue when help is at hand. The old argument that *something will turn up* simply does not wash: if something turned up, neglect of ancient woodland would not be so prevalent.

8.6 The reality is this: if there is reason to protect ancient woodland, there is reason to allow this Appeal so that, at Downlands, it can be restored, maintained and preserved for future generations. Raising issues such as harm from 130mm diameter guided drilling, or insertion of screwpiles for a boardwalk, are distractions from the vastly more important bigger picture, akin to treating acne whilst allowing the patient to die of cardiac arrest.

8.7 The application and appeal have attracted a significant number of objections arising from concerns over ancient woodland. But these concerns have been anticipated, considered and designed out over several years, such that the scheme before us would not, in my opinion, lead to loss or deterioration of irreplaceable habitat in relation to those matters considered by me. It is on this basis that I would ask that the Appeal be allowed.

Statement of truthfulness and professional endorsement

Pursuant to Planning Inspectorate guidance 'Planning Appeals and Called-in Applications', specifically section 1.13 Expert Evidence (PINS 01/2009 published in April 2010), I confirm that the evidence which I have prepared and provide in this Proof of Evidence is true, and has been prepared, and is given in accordance with the guidance of my professional institutions (Institute of Chartered Foresters, Royal Institution of Chartered Surveyors and the Expert Witness Institute). I further confirm that the opinions expressed herein are my true and professional opinions.

Julian Forbes-Laird