Town and Country Planning Act 1990

Appeal by Gleeson Land and John Alison Land and Research Ltd

Land at Land at Downlands Farm, Uckfield, TN22 3PU

Wealden District Council Ref:	Planning Inspectorate Ref:
WD/2021/1637/MEA	APP/C1435/W/22/332978

STATEMENT OF CASE

RULE 6

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1.0 Introduction

1.1. Wealden District Council ('the Council') submits this Statement of Case ('SoC') in respect of the forthcoming Inquiry into the appeal ref APP/C1435/W/22/3321978 by Gleeson Land and John Alison Land and Research Ltd ('the Appellants') pursuant to section 78 of the Town and Country Planning Act 1990 ('the 1990 Act').

1.2. The appeal is against the Council's refusal of planning permission that was lodged as a hybrid application given Council reference WD/2022/1637/MEA. The particulars of the case are as follows:

Hybrid planning application comprising:

Outline application (with all matters reserved except for access) for the erection of up to 424 no. residential dwellings including affordable housing, the provision of vehicular, pedestrian and cycle access and separate emergency access from the Uckfield bypass (A22), pedestrian and cycle access from Snatts Road, open spaces including children's play space, sustainable urban drainage systems, associated landscaping, infrastructure and earthworks; and

Full application comprising creation of a strategic SANG, associated landscaping and car parking, and demolition of existing residential property and other buildings and provision of pedestrian and cycle access from Rocks Road, associated landscaping, infrastructure and earthworks.

all on Land at Land at Downlands Farm, Uckfield, TN22 3PU.

1.3. This SoC sets out the case to be presented by the Council at the Inquiry.

1.4. The Appellants have drafted a Statement of Common Ground ('SoCG'). It has been reviewed by the Council and the parties are working towards completing this ahead of the Casework Management Conference (CMC).

1.5. The Inspector is advised that the Appellants have helpfully begun constructing a Core Document (CD) list to be read alongside the SoCG. To avoid duplication, we will adopt the CD references.

1.6. The appeal site has detailed planning history which includes an appeal that was recovered by the Secretary of State ('SoS'). This decision and the Inspectors report can be found at CD4/2 and CD4/3.

1.7. A full list of the determined drawings can be found in the Council Notice of Decision. This is CD5/1.

2.0 The Application

2.1 This is largely covered in the SoCG and need not be repeated in any significant detail here.

2.2 The appeal scheme is hybrid, seeking residential development (the outline planning permission with all matters reserved for future consideration with the exception of access). The full application component is the creation of a creation of a strategic SANG[1], associated landscaping and car parking, and demolition of existing residential property and other buildings and provision of pedestrian and cycle access from Rocks Road, associated landscaping, infrastructure and earthworks.

2.3 The application was received on the 24 June 2022 and registered complete on 8 July 2022.

2.4 The Illustrative Site Layout and Landscape Strategy and SANG Design Plan seeks to demonstrate the extent, scale and distribution of development for which hybrid planning permission is sought.

2.5 An Environmental Statement (ES) has been prepared to support the planning application. This followed an EIA Scoping Report (found at Appendix 2.1 of the ES), which was submitted to the Council on 13 October 2020 in support of a request for an EIA Scoping Opinion in accordance with Regulation 15 of the EIA Regulations.

2.6 The Council adopted a Scoping Opinion on 30 November 2020 (Appendix 2.2 of the ES). The Appellants team responded to the Scoping Opinion via email on 1st December 2020 to clarify the topics to be scoped in and out of the ES and a subsequent email response was provided by the Council on the 11 December 2020 (Appendix 2.3 of the ES).

2.7 The disciplines scoped into the ES comprise:

- Landscape and Visual;
- Biodiversity;
- Water Resources and Flood Risk;
- Cultural Heritage; and
- Land Contamination.

2.8 The Scoping process identified that the Development would not give rise to likely *significant* effects on the environment with respect to:

- Population and Human Health;
- Transport and Access;
- Air Quality;
- Noise and Vibration;

[1] SANG is a Suitable Alternative Natural Greenspace and is a mitigation device for avoiding in combination impacts on the nearby Ashdown Forest.

- Wind Microclimate;
- Daylight, Sunlight & Overshadowing;
- Agricultural Land;
- Lighting;
- Waste;
- Climate Change & Greenhouse Gases; and
- Accidents and Disasters.

2.9 The ES comprises the following:

Chapter 1 Introduction;
Chapter 2 EIA Methodology;
Chapter 3 Site and Development Description;
Chapter 4 Alternatives and Design Evolution;
Chapter 5 Construction Methodology and Programme;
Chapter 6 Landscape and Visual Effects;
Chapter 7 Biodiversity;
Chapter 8 Water Resources and Flood Risk;
Chapter 9 Cultural Heritage;
Chapter 10 Land Contamination; and
Chapter 11 Summary and Residual Effects

Alongside the ES, a stand-alone Non-Technical Summary has been prepared and was determined by the Council.

2.10 The total site comprises 46 hectares. This is shown on plan with the application site boundary outlined in red.

2.11 In addition to the ES and Non-Technical Summary, the following were submitted and determined by the Council:

- Design and Access Statement;
- Planning Statement (including Affordable Housing Statement);
- Economic Benefits Statement;
- Transport Assessment;
- Framework Travel Plan;
- Lighting Impact Assessment;
- Arboricultural Submission, including Tree Survey, RAVEN Veteran Tree Identification, Proposed Tree Retention and Removal, and Tree Protection Plan and Arboricultural Method Statement; and
- Downlands Woodland Park – SANG and Woodland Management Plan.

Planning History

2.12 A previous application (WD/2006/2855/MEA) was made by Clarence Preston Will Trust & Barham Estates Ltd on 9 October 2006 (‘the 2006 Application’). This was for Residential development for 750 dwellings; employment development for 9,600sqm of B1 and B8 uses; neighbourhood centres with primary school, community hall, land for community facilities; creation of new vehicular access from Black Down Roundabout (A22) and emergency and bus only accesses from Snatts Road; construction of estate roads and new cycle footway connections;

provision of managed country park with warden's lodge/information point and education/interpretative facility, public and amenity open space, playing fields and associated development and changes of use. This was refused by the Council on 22 February 2007.

2.13 The 2006 Application was considered at Inquiry, conjoined with two other sites elsewhere at Uckfield, Bird in Eye North and Bird in Eye South. The Inquiry sat variously between 15 January and 18 July 2008, which closed in writing 14 October 2008. The appeal was recovered by the Secretary of State ('SoS') who issued her, as it was then, decision refusing the appeals on 24 February 2009. As noted, these can be found at CD4/2 and CD4/3.

2.14 The significance of this appeal and the planning history of the site is drawn upon in this statement and will be further relied upon the Council's evidence to the Inquiry. We mention purely in passing that a request for PINS to conjoin the current appeal with a recent refusal and appeal at Bird in South has been rejected.

Consultation Responses

2.15 A summary of the responses received in reply to the normal consultation procedures, from within the Council, statutory consultees and from third parties is within the Councils Delegated Officer Report (DoR) which was sent with the appeal questionnaire. It is also at CD5/2.

2.16 The Council would draw the Inspector's attention to the fact that this is a controversial scheme which has attracted a great deal of public concern.

2.17 Comments from 336 households objecting to the scheme were received, coupled with objections from surrounding Parish Councils and the Uckfield Town Council.

2.18 A precis of the issues raised are as follows:

- Site is located outside of the defined development boundary
- Adverse landscape impacts.
- Adverse ecological impacts.
- Adverse impact on Ancient Woodland
- Reduction of the important countryside gap between Uckfield and Maresfield.
- Access provision is inadequate.
- Traffic impact on the surrounding highway network would be unacceptable.
- Snatts Road is unsafe for pedestrians and cyclists.
- Insufficient infrastructure and services.
- Increase in noise, disturbance, air and light pollution.
- Adverse impact on public footpaths.
- Increase in traffic congestion in the town centre.
- Adverse impact on Lake Wood SNCI
- Development is poorly related to Uckfield and will function as a separate community, heavily reliant on the car.
- Adverse impact on residential amenities of properties at Budletts Common and along Snatts Road.
- Increased flood risk
- Uckfield does not need any more houses

- Many issues left over from previous planning appeal and public inquiry: not addressed by reduction in scale of development

3.0 Planning Policy Context

The Development Plan

3.1 The adopted development plan for Wealden District comprises the following documents:

- The Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan adopted 19th February 2013 ('CSLP')
- The Wealden Local Plan (adopted December 1998) (Saved Policies) ('WLP').
- The East Sussex and Brighton & Hove Waste Local Plan (adopted February 2006) (Saved Policies).
- East Sussex, South Downs and Brighton and Hove Waste and Minerals Local Plan (adopted February 2013).
- The Affordable Housing Delivery Local Plan (May 2016) ('AHDP')

The development Plan also includes three neighbourhood plans, but they are not affected by the appeal scheme and so not listed here.

CSLP – changes to WCS 12

3.2 On 28 March 2013 an application was made to the High Court under Section 113 of the Planning and Compulsory Purchase Act 2004 challenging the validity of the CSLP on the grounds that it failed to comply with the requirements of Directive 2001/43/EC on the Assessment and Effect of Certain Plans and Programmes on the Environment and the implementing Environmental Assessment of Plans and Programmes Regulations 2004. This was dismissed by Order dated 21 February 2014. However, an appeal on 3 grounds was made to the Court of Appeal. On 7 October 2014, the Court of Appeal dismissed Grounds 1 and 2 relating to the housing numbers in the Core Strategy (original ruling was upheld) but allowed the appeal on Ground 3. The Judgment in Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government [2015] EWCA Civ 681 can be found at CD4/6

3.3 Ground 3 related to whether the Council had considered reasonable alternatives to the use of a 7km zone in relation to the provision of mitigation in relation to Ashdown Forest Special Protection Area (SPA). On 9 July 2015 in response to the Court of Appeal decision, the Council published changes to CSLP Policy WCS12 as directed by the Court of Appeal relating to Ashdown Forest SPA.

3.4 Prior to the Court of Appeal Judgment, Policy WCS12 provided that any net increase in residential development between 400m and 7km of the SPA would be required to mitigate its recreational impact through the provision of Suitable Alternative Natural Green Space (SANGS) and on-site visitor management measures. The reference to the 7km zone and the specific mitigation identified in this policy was removed. However, all relevant planning applications continue to be subject to the Habitat Regulations which protect the Ashdown Forest SPA.

3.5 The rest of the CSLP was unaffected therefore remains intact as part of the adopted development plan for the purposes of this application.

WLP Saved Policies

3.6 Certain policies of the WLP (1998) were 'saved' via Direction of the Secretary of State dated 25 September 2007, under the provisions of Paragraph 1(3), Schedule 8 of the Planning & Compulsory Purchase Act 2004.

3.7 Under 'saved' policies EN1 (sustainable development) and EN27 (layout and design) of the WLP 1998, the Council has also formally adopted the Wealden Design Guide, November 2008, as a Supplementary Planning Document. The Council considers that the weight to be given to 'saved' policies and the Design Guide is dependent on the degree to which they are consistent with the NPPF (having regard to NPPF paragraph 213).

Relevant Development Plan Policies

3.8 The relevant development plan policies include:

- Saved Policies GD2, EN1, EN2, EN8, EN12, EN14, EN15, EN27, EN29, DC17, HG5, HG6, HG7, TR3, TR13, TR16, LR1, LR3, LR5, CS1, CS2, CS3, CS4 of the adopted Wealden Local Plan 1998 (WLP).

- Policies WCS1, WCS2, WCS3, WCS4, WCS5, WCS6, WCS7, WCS12, WCS13 and WCS14 of the adopted Wealden Core Strategy Local Plan 2013 (CSLP).

- Policy AFH1 Affordable Housing Delivery Local Plan 2016 (AHDLP)

These can all be seen at Appendix 6 divided into documents sections.

National Planning Policy Framework (NPPF)

3.9 The latest iteration of the National Planning Policy Framework (NPPF) came into force in July 2021 and is a material consideration in assessing and determining planning applications. Due regard has been had to any relevant national policy guidance, in particular paragraphs 2, 8 10, 11, 12, 38, 47, 55, 56, 57, 60, 63, 65, 73, 74, 77, 90, 92, 93, 95. 97, 98, 100. 104, 106, 110, 111, 112, 119, 120, 124, 130, 131, 134, 153, 154, 159, 165, 166, 168, 174, 176, 179, 180, 182, 183, 185, 194, 195, 218 and 219 of the NPPF.

Draft Wealden Plan

3.10 The Council had produced a new draft Wealden Local Plan which was submitted to the Secretary of State on the 18 January 2019 for examination. The Examination Hearings began on the 21 May 2019, but at the rise of Stage 1 of the Examination, the Inspector declared the plan to be unsound. It was withdrawn by the Council in early 2020.

3.11 Work has begun on a new Local Plan. A 'Direction of Travel' consultation took place between 23 November 2020 and 18 January 2021. The Local Development Scheme projected consultation on a Regulation 18 draft Local Plan in spring 2022.

Although large sections of the Plan are drafted in response to the Direction of Travel consultation, the Regulation 18 draft is delayed by issues that have arisen nationally in respect of housing numbers and potential revisions to the NPPF.

3.12 An update on the emerging Local Plan can be provided at the Inquiry if helpful. However, to be clear, whilst the new Plan will have likely been progressed to Regulation 18 stage by the sitting days of the Inquiry (24 October 2023), the Council does not and will not be relying on policies in this emerging strategy for the purposes of the appeal.

4.0 Determination of the application

4.1 Section 70 of the Town and Country Planning Act 1990 requires a planning authority (and any decision maker) to have regard the provisions of the development plan, so far as material to the application as well as any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that determination must be made in accordance with the development plan unless material considerations indicate otherwise.

4.2 The Council's Constitution was updated by Full Council on the 23 February 2023. A copy is at CD6/15. It includes at Part 7 – a Management Structure & Scheme of Delegation. Under Section H7, authority is delegated to exercise all the Council's powers duties and functions relating to the responding to appeals, whether or not subject of any determination made on behalf of the Council and to make arrangements for the holding of a public local inquiry or hearing or to attend any hearing arranged by the Courts and if necessary in relation to such matters to use or instruct consultants, internal or external solicitors or counsel to make submissions or represent or appear on behalf of the Council.

4.3 This appeal is made against the refusal of planning permission issued by the Council on the 21 April 2023. There were 9 reasons for refusal and a copy of the Notice of Decision can be found at CD4/1. The officer's report sets out reasoning for the Decision. The officer's report is not repeated unnecessarily here.

4.4 The Inspector will note the informative attached to the decision as follows:

Reason 5 relates to Great Crested Newts (GCNs) and the common ground that GCN ponds were identified through the survey work completed with the application. That pond is likely to be affected by the development and either a Natural England licence is required to secure GCN mitigation. Or there is the option of a District Level Licence with Nature Space. Providing either is secured then Reason 5 will not be contested in any s78 appeal.

Reason 7 are matters that can be secured through an appropriate legal agreement and Statement of Common Ground. Therefore, if an appropriate legal agreement is forthcoming, this reason for refusal would not be contested in any s78 appeal.

Reason 8 relates to the proximity of the site and in combination impacts on the Ashdown Forest, accepting that the part of the scheme includes an on site SANG. In the scenario that the SANG is considered to be acceptable, then this reason for refusal highlights that there is no mechanism in place to secure that SANG and its access in perpetuity. The SoCG addresses these matters, and it is understood the Appellants are to draw up s106 Legal Agreement which will seek to address this reason for refusal.

4.5 In light of the above, and assuming an acceptable legal agreement is advanced to cover reasons 5, 7 and 8, the appeal is considered to relate to the following matters:

- Location of site beyond development boundary

- Effect of development upon Ancient Woodland

- Effect of development upon designated and non designated assets

- Whether the scheme can realistically deliver up to 424 homes and a SANG without adverse impacts

- Whether the scheme the subject of the planning application is in an accessible location.

- Whether the scheme the subject of the planning application can provide safe access.

- Whether the scheme avoids severe impacts on the highway network, namely in and around Uckfield town centre.

- Whether the development incorporates sustainable urban drainage and will avoid flooding elsewhere

- Planning balance and whether the issues left from the earlier appeal decision have been addressed.

More detail for each of the above reasons why the Council considers the appeal should be dismissed is set out below.

5.0 Case for the Local Planning Authority

Conflict with the development plan

Reason for Refusal 1:

The proposed development represents an unjustified and unacceptable form of development of a site that for planning purposes lies in the countryside, outside of the defined development boundary for Uckfield, contrary to Policies GD2 and DC17 of the Wealden Local Plan. It is accepted that the Council cannot demonstrate a five-year supply of deliverable housing sites. This means that policies most relevant to the determination of the application should not be considered up to date and that the proposals should be considered in the context of the presumption of sustainable development as set out in the NPPF. However, having regard to the effect of the development on the Ancient Woodland, defined in the NPPF as an irreplaceable habitat, and in accordance with footnote 7 of Paragraph 11, this does not indicate that permission should be granted in this case. Even if this were not the case, because of the environmental harm identified, the proposals would not be sustainable development, its environmental impacts significantly and demonstrably outweighing its social and economic benefits when assessed against the policies in the Framework as a whole.

5.1 The site lies outside the development boundary as shown on the 1998 Wealden Local Plan, Proposals Map 53 where development is resisted in accordance with saved policies GD2 and DC17 (see appendix 6). In this context the Council notes that Core Strategy Policy WCS2 in the CSLP states that land will be allocated at Uckfield for an additional 1000 dwellings up to 2027. The policy then goes on to confirm that broad locations for housing development are indicated on the Core Strategy Key Diagram but that individual sites to meet these housing provisions will be allocated in the Site Allocation DPDs. There is no Site Allocations DPD. The Key Diagram (and Fig 6 on page 38 of the Core Strategy) shows a 'pink blob' which represent the said broad locations. This is to the west of Uckfield abutting the A26 and is the former Ridgewood Farm site. It is material that planning permission has been granted for a mixed-use scheme here including up to 1000 dwellings, coupled with a school site, employment floor area but also retail uses. Application WD/2015/0219/MEA was approved on the 24 March 2016. Subsequent Reserved Matters have been approved for the first two phases of development and c.200 dwellings are on site, coupled with key infrastructure such as two new roundabouts and a cross site linking road.

5.2 The settlement or development boundary of Uckfield was not extended or changed in the Core Strategy, this being a matter left for later review within subsequent DPDs (see CSLP 6.11(2)). As of today, and notwithstanding attempts, no such review has been adopted.

5.3 The CSLP confirms that development boundaries are used to define built up areas (within the development boundary) and the countryside (outside the development boundary) and that in principle development in the countryside is subject to greater restrictions, to preserve the character of the rural area.

5.4 The CSLP therefore seeks to support appropriate development within the built-up area contained within the Uckfield development boundary.

5.5 The Appellants rely heavily upon a case that the development plan does not deal with sufficient growth and also that other sites locally and elsewhere have been approved outside development boundary locations. The Inquiry can be appraised on any of those sites proffered by the Appellants.

5.6 Whilst it is correct that development has been approved outside of development boundary locations, this does not mean that all development outside of settlement boundaries is necessarily acceptable. The starting point for the consideration of the application is the development plan, and it is clear that this application site lies outside of the settlement boundary where residential development is not supported.

5.6 To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 – these provisions also apply to appeals). The appeal must be refused unless material considerations justify taking a different view.

5.7 One such material consideration includes the NPPF which, at paragraph 11 sets out the presumption in favour of sustainable development. This states: .

For decision-taking this means:
c) approving development proposals that accord with an up-to-date development plan without delay; or
d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

5.8 As is set out in more detail below, here the adverse effects of this development proposal significantly and demonstrably outweigh its benefits (paragraph 11(d)(ii)). Further, and in any event, paragraph 11(d)(i) is engaged in this case. This is because this proposal will result in the loss or deterioration of Ancient Woodland (which is an irreplaceable habitat, see paragraph 180 NPPF) and the application of paragraph 180(c) NPPF provides a clear reason for refusing development. This is addressed in more detail below under reason for refusal 2. .

Impact on Ancient Woodland

Reason for Refusal 2

The development proposals would result in indirect and direct degradation and loss of ancient woodland, an irreplaceable habitat, and lead to the unacceptable fragmentation, isolation and disturbance of natural habitats that support protected wildlife species and other flora and fauna of acknowledged nature conservation importance. In addition, the development would threaten, harm and cause degradation to veteran trees, an irreplaceable habitat.

The scheme is contrary to National Planning Policy Framework 2021, section 180c, Natural England Standing Advice, ancient woodland & veteran trees and saved Policies EN1, EN12, EN13 and EN15 of the Wealden Local Plan 1998 and Wealden District Core Strategy Local Plan 2013, policy WCS12 Biodiversity and WCS14 sustainable development.

5.11 The site includes extensive areas of Ancient Semi Natural Woodland and veteran trees. The Ancient Woodland sites are designated as a mix of ancient semi-natural woodland and plantation ancient woodland sites on Natural England's Ancient Woodland Inventory (AWI). The Council is aware that the AWI was adjusted just before the planning application was submitted to the Council. The effect of that was to deallocate a large section of Ancient Woodland. The Council understands an application has been lodged to Natural England to contest that decision. This is understood to be an 'Ancient Woodland Site Boundary and Inventory Amendment Application with Natural England reference 348445. Furthermore, that the categorisation of the of adjacent Local Wildlife Site (at Lake Wood) is the subject of a request from the Forestry Commission to Natural England, to alter the designation to a Site of Specific Scientific Interest (SSSI). This is because of its sensitivity and relationship to surround land, including the appeal site. West Park Uckfield Local Nature Reserve (LNR) is located approximately 100m to the south of the site, Lake Wood Local Wildlife Site (LWS) is directly adjacent to the development site, while Butchers Wood Local Wildlife Site (LWS) is functionally linked to the Downlands Farm site. Further to this the site, the sits within the impact risk zone for the Buxted Park SSSI which is located approximately 800m to the east of the site.

5.12 The development proposed as part of this application would involve the creation of a new residential development of a significant size and scale (400+ dwellings). Where development is sited in close proximity to ancient woodland there is the potential for the woodland and its wildlife to be adversely affected by this change of land use and the associated impacts of increased activity. This application has the potential to impact on several areas of ancient woodland, resulting in their long-term deterioration. The Council consider that the following areas of Ancient Woodland would be ~~could be~~ subject to loss or deterioration :

- Longwood Gill (or Long Gill Wood) (TQ 46597 22117)
- Shermanreed Wood (TQ 46824 22284)
- Lake Wood (TQ 46454 21797)
- Thirty Acre Shaw 2 (southern wood alongside A22) (TQ 46397 22179)
- Thirty Acre Shaw (TQ 46486 22354)
- Fir Tree Grove (TQ 46730 21758)
- Part of Thirty Acre Wood west of A22 (TQ 46246 22110)
- Budletts Wood (TQ 46803 22530

5.13 Paragraph 180(c) of the NPPF clearly advises that development resulting in the loss or deterioration of irreplaceable habitats such as ancient woodland and ancient or veteran trees) should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. Footnote 63 explains wholly exceptional reasons which are identified as being infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills) where the public benefit would clearly outweigh the loss or deterioration of habitat. This application does not include those exceptional works/circumstances.

5.14 Saved policy EN13 of the Wealden Local Plan 1998 states that the Council will resist development proposals that involve the clear felling or otherwise prejudice the ecology of the Ancient Semi-Natural Woodlands.

5.15 Natural England and Forestry Commission have identified impacts of development on Ancient Woodland or Ancient and Veteran trees within their Standing Advice. This guidance must be considered the Government's position with regards to development impacting Ancient Woodland. A copy can be found at CD9/3. This states that when making planning decisions, authorities should consider reducing the level of impact of the proposed development on Ancient Woodland. Authorities should **refuse** planning permission if development will result in the loss or deterioration of ancient woodland unless there are wholly exceptional reasons and there is a suitable compensation strategy in place.

5.16 The Standing Advice (CD9/3) maintains that where a proposal involves the loss of ancient woodland, a decision maker should not take account of the existing condition of the ancient woodland when they assess the merits of a development proposal. Its existing condition, regardless of quality, is not a reason to give permission for development.

5.17 Although particular areas of concern have been listed above, it must be recognised that the entirety of the site, from Ancient Woodland to ghylls to grassland are intrinsically linked at an ecological level. This landscape of natural habitats and their wildlife populations are functionally dependent on each other.

5.18 It is material that Natural England has set out concerns, the Forestry Commission object as do the Woodland Trust. Locally, the District Council ecologist and arboriculturist object and the Sussex Wildlife Trust, a rule 6 party to the early appeal, also object.

5.19 In particular, the Councils concerns are related to both direct and indirect impacts:

- Major and extensive incursion to 15m Ancient Woodland buffer areas in order to facilitate delivery of the appeal scheme. This includes direct impacts from the proposed SANG route but also multiple and necessary SuDS drainage basins within the buffer area (some basins shown within 5m of the Ancient Woodland)
- Significant engineering operations causing direct and unavoidable operations within and under the Ancient Woodland in order to facilitate drainage outlet into the Ancient Woodland gyhl stream.

- The provision of a SANG route within and directly through the Ancient Woodland
- The primary pedestrian and cycle connection routed through Ancient Woodland
- Lengthy interface between the appeal development and boundaries of the Ancient Woodland, urbanising the highly sensitive and irreplaceable Woodland and associated ecological habitats.

These points are expanded upon below as necessary.

Drainage matters

5.20 Regarding the proposed surface water drainage works within, close to (in buffer areas) and through the Ancient Woodland area. There are no wholly exceptional circumstances as set out in 180(s) to the NPPF which would justify the proposal and even if there were, there is no suitable compensation strategy proposed.

5.21 The scheme is lodged with hydrology assessment that purport to set out why there would be no impact upon ecology and water table. The Council considers that the scheme wholly under represents the synergy between the Ancient Woodland ecology and the natural, undeveloped, state of the site. That includes the current environment and water on the site. The Appellant's own evidence shows the water table is high on the site largely as a consequence of the geological composition of this part of Uckfield (see paragraph 5.56 and Table 8.4 of the ES). The high water table precludes infiltration and as such, the scheme shows connections from SuDS basins into existing streams via new engineering works to form a piped connection. The piped connection is unproven and the Council cannot see how it would fail to cause deterioration of the irreplaceable habitat. Moreover, it is the Appellants' case that in excess of 9,000m3 of SuDS storage capacity is required to facilitate the appeal scheme (see Tables 8.5 and 8.6 of the ES). All of that water is to connect into existing Ancient Woodland streams on the site via piped connection rather than the current undeveloped situation where the water naturally flows within and around the irreplaceable habitat. The Appellant say this arrangement is "**anticipated** to successfully mimic the existing drainage regime within the Ancient Woodlands in terms of surface water runoff rate and water quality" (paragraph 8.143 of the ES with emphasis added).

5.22 The Standing Advice (CD9/3) is clear that decision makers should <u>only</u> approve sustainable drainage schemes within Ancient Woodlands or buffer areas if:

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

5.23 The appellant has not demonstrated that its proposals will not change the water table and will not negatively affect the Ancient Woodland.

5.24 The Standing Advice (CD9/3) refers to buffer zones and accepts they can protect Ancient Woodland and individual ancient and veteran trees and provide valuable habitat for woodland wildlife, such as feeding bats and birds. 15m is the minimum distance but the size and type of buffer zone should vary depending on the:

- scale and type of development and its effect on ancient woodland, ancient and veteran trees
- character of the surrounding area

For example, larger buffer zones are more likely to be needed if the surrounding area is:

- less densely wooded
- close to residential areas
- steeply sloped

5.25 It is relevant to note that the previous inquiry debated direct and indirect impact upon ancient woodland (see CD4/2) and at that stage, for a much larger site and proposal. However, the Inspector's Report (see CD4/3) at para 730, is clear that

"However, from the evidence of several other parties I have quite serious reservations about the long term integrity of the AW on and nearby the site, if for any reason any future protective management regime should prove insufficiently effective. And I also have general concerns about the future of protected species. Unless the Secretary of State is minded to place great credence, and weight, on the claimed conservation benefits of the scheme, she might conclude that these amount to unnecessary risks, which are not worth the taking".

5.26 Since then and that appeal, the tests in policy and guidance for irreplaceable habitats can only be described as becoming firmer and more restrictive, not least with 2019 changes to NPPF. The Council is clear that if there is to be development at the appeal site, it should be informed by more rigorous and deeper buffer zone (see CD 9/3 and 9/4) and which are kept free of engineering operations (such as drainage infrastructure and SANGs route. Only a buffer well in excess of the minimum 15m depth would be sufficient to properly mitigate the urbanisation of the site and associated direct and indirect impacts on the irreplaceable habitats. More information these concerns is given below.

SANG outside Ancient Woodland but within 15m buffer

5.27 For the SANG (outside Ancient Woodland) – which is a full application and not outline, there can be little doubt that the SANG is for the most part well within the (minimum) 15m buffer from Ancient Woodland and the Standing Advice says this is only acceptable if the habitat is not harmed by trampling. This is not explained any further. The SANG is to be provided with the purpose of providing recreation and it is clear that it will experience a significant increase in footfall. The introduction of a significant level of recreation immediately adjacent to the Ancient Woodland is likely to amount in trampling and recreational disturbance on the edge of the woodland and within the woodland itself. This represents a clear threat to the ecology of the ancient woodland.

SANG within Ancient Woodland

5.28 Further, parts of the SANG are within Ancient Woodland through the Appellant case is this affects parts that are already disturbed or have well-trodden paths. It

is clear the Standing Advice maintains that where a proposal involves the loss of Ancient Woodland, decision makers should not take account of the existing condition of the Ancient Woodland when assessing the merits of a development proposal. Its existing condition, regardless of quality, is not a reason to give permission for development. Natural England are clearly unsure of the effects here, suggesting that the entirety of the circular walk in the Ancient Woodland be elevated off the ground on boardwalks. The works to provide such features will cause direct impact on the Ancient Woodland ground, and no such details are in the appeal scheme. This is of concern. Further, and in any event, the Council will also present evidence setting out that the provision of boardwalks will not mean people will keep to these routes. There is no way, nor manner of controlling, users of the SANG wandering off the boardwalk. This is especially so with those walking dogs off leads who will want them to roam freely. The Council is in no doubt that the appeal scheme will cause trampling within the Ancient Woodland, and this is contrary to the Standing Advice (CD9/3).

5.29 It seems highly irregular to create a SANG seeking to avoid disturbance of an irreplaceable habitat (the Ashdown Forest) whilst causing adverse impact on an irreplaceable habitats (the Ancient Woodland on and abutting the appeal site). This is supported by wording within the 'Guidelines for creation of SANGS' document produced by Natural England (CD9/5), which states: "*The identification of SANGS should seek to avoid sites of high nature conservation value which are likely to be damaged by increased visitor numbers. Such damage may arise, for example, from increased disturbance, erosion, input of nutrients from dog faeces, and increased incidence of fires. Where sites of high nature conservation value are considered as SANGS, the impact on their nature conservation value should be assessed and considered alongside relevant policy in the development plan."*

Works within Chicory Cottage

5.30 Regarding the pedestrian route through Chicory Cottage and its curtilage – the Appellants' case is that the site is already disturbed Ancient Woodland. The route through seeks to demonstrate least amount of direct impact on the ground (boardwalk and uses disturbed areas). However, the Standing Advice already quoted CD9/3) is very clear that the existing condition of the woodland and should not weigh in the balance of whether planning permission should be granted. It seems wholly incompatible to propose the main pedestrian and cycle connection to the appeal site directly through irreplaceable habitat. There can be no doubt this route will see frequent comings and goings, high use and activity, lighting etc. These are indicative of adverse urbanisation that all the guidance says should be avoided, rather than allowed, through such an irreplaceable habitats.

Veteran Trees

5.31 It is common ground that there are veteran trees on site and these are listed in the supporting documents. Given the number of dwellings proposed this would lead to future occupiers using the Ancient Woodland as amenity space, resulting in indirect impacts from trampling, understorey clearance and recreational pressure, as well as the risk of the new informal access points, increased disturbance to wildlife, potentially damaging impact from the promotion of non-native plan species and the predation of domestic pets. The application would likely cause the direct

effects listed in the Standing Advice which decision makers are told to avoid in regard to veteran trees.

Lengthy interface between the appeal development and boundaries of the Ancient Woodland, urbanising the highly sensitive and irreplaceable Woodland and associated ecological habitats

5.32 Due to the close and lengthy interface between the boundary of the existing Ancient Woodland and the developable area, the site has all the hallmarks and qualifying conditions justifying a much deeper buffer to protect the irreplaceable habit and veteran trees. It does not have that. In this regard reference to current Standing Advice recommends, in cases where impacts such as the significant increase in traffic and the effect of air pollution occurs, a larger buffer zone would be required. Given that at present there is no vehicular activity at all within this site, the effects during and post development would be immediate and sudden. A larger buffer zone would temper this abrupt change. The Woodland Trust has identified a number of cases where larger buffer zones were supported, ranging from 50-200m in the UK, to mitigate against effects such as noise, light, vehicle emissions, the transmission of garden waste and invasive species (see CD9/4). All of these matters are relevant in this case and would clearly suggest a deeper buffer to the irreplaceable habitat would be required here.

5.33 Instead, 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. There is separate impact (considered elsewhere in this SoC), relating to drainage proposals: which will also further compromise Ancient Woodland.

Conclusion on Ancient Woodland

5.34 There can be little doubt that the Ancient Woodland here is under threat directly and indirectly from the appeal scheme. On this basis alone, and in the absence of any wholly exceptional reasons, the appeal ought to fail. The development proposal would harm the Ancient Woodland, placing it in conflict with saved policy EN13, Policy WCS12 of the Core Strategy as well as the NPPF and Natural England's standing advice on Ancient Woodland.

Effect on Heritage Assets

Reason for Refusal 3

The Council has a duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses (Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990) (hereafter referred to as The Act). There are three listed buildings immediately surrounding the site, including Oast Cottage (NHLE 1028090) and Swallows Barn (NHLE 1262256) at Downlands Farm and the grade II listed Buckwood Grange (NHLE 1194277).*

It is commonly agreed that Spring Cottage and Patridges Oast are considered to be non-designated heritage assets. The application also identifies an unlisted historic building - Chicory Cottage - which has the potential to be considered a non-designated heritage asset (if not curtilage listed) by virtue of its historic association to Buckwood Grange. There are further unlisted historic buildings at Downlands Farm Cottages (historically known as Bridge Farm) which also have the potential to be considered non-designated heritage assets.

Section 72(1) of The Act relates to planning and conservation areas and requires that Local Planning Authorities pay special attention to the desirability of preserving or enhancing the character or appearance of that area. In this instance, the proposed access for the application site lies in the vicinity of the designated Maresfield Conservation Area. The Draft Conservation Area Appraisal for Maresfield has been published on the Council's website, and provides the most up to-date considerations of the character of the conservation area as designated in March 2017.

It should be noted that the Courts have held that 'preserve' means an absence of harm. The NPPF points out that harm can be either 'substantial' or 'less than substantial' and where harm occurs, it should be given considerable weight as a material consideration in the assessment of planning applications and as part of the balance exercise and in ascertaining if any public benefits would outweigh that harm. This national policy intent is addressed by 'saved' Local Plan Policies EN1 and EN27; Core Strategy Policy SP02; as well as Chapter 12 of the Wealden Design Guide.

The scheme in its totality would cause less than substantial harm to the significance of heritage assets through the proposed development within their setting.

At present, in the absence of any mitigation evidenced in the indicative proposals, this is regarded to be the higher end of less than substantial harm. Though it was set out that this harm might be reduced through more thorough and considered understanding of significance and amendments to the design, none has been forthcoming.

In summary, the National Planning Policy Framework recognises that heritage assets are an irreplaceable resource that should be conserved in a manner appropriate to their significance. Great weight should be given to the conservation of designated heritage assets, including any harm or loss of significance through development within their setting. The National Planning Policy Framework also places great importance on development being of good design and responding to local character to ensure the integration of new development into the existing environment. Where harm is considered to be less than substantial, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. It is not considered that any heritage benefits would arise from the present scheme, nor that planning conditions could be capable of sufficiently mitigating that harm.

The wider public benefits matters could include the delivery of housing on a site that is ready and available. However, the delivery of that housing presents other

challenges in regard to Ancient Woodland, access and connectivity. If the only benefits of the scheme are laced and intertwined with those harms, then the less than substantial harm is not outweighed. Therefore, the scheme would not satisfy the aims of the National Planning Policy Framework as regards the conservation of heritage assets, nor would it 'preserve' the significance of the listed buildings, including one grade II listed building and two grade II listed buildings.*

5.35 The Council has a duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses (Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990). There are three listed buildings immediately surrounding the site, including Oast Cottage (NHLE 1028090) and Swallows Barn (NHLE 1262256) at Downlands Farm and the grade II* listed Buckwood Grange (NHLE 1194277). Section 72(1) of The Act relates to conservation areas and requires that LPAs pay special attention to the desirability of preserving or enhancing the character or appearance of that area. In this instance, the proposed access for the application site lies in the vicinity of the designated Maresfield Conservation Area. The Draft Conservation Area Appraisal for Maresfield has been published on the Council's website, and provides the most up-to-date considerations of the character of the conservation area as designated in March 2017 (see CD11.1)

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5.36 The requirements of The Act are reinforced by the NPPF, which at Chapter 16, sets the national agenda for 'Conserving and enhancing the historic environment'. This, in particular, requires the significance of any heritage asset to be identified and assessed that may be affected by a proposal (including by development affecting the setting of a heritage asset) and for this to inform future change in order to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Paragraph 200 of the NPPF states that significance of a designated heritage asset can be harmed or lost through alteration or destruction of the heritage asset or through development within its setting. Paragraph 189 of the NPPF states that planning should conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations. Paragraph 193 affords 'great weight' to the conservation of designated heritage assets through an understanding of the impact of a proposed development on their significance and this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

5.37 Under the Historic Buildings and Ancient Monuments Act 1953, Historic England compiles a register of "gardens and other land" situated in England that appear to be of special historic interest. Although the inclusion of an historic park or garden on the register brings no additional statutory controls, registration is a material consideration and local planning authorities must take into account the historic interest of the site when determining whether or not to grant permission and give great weight to their conservation as designated heritage assets under the NPPF. Buxted Park lies to the north-east of the site, and encompasses a scheduled monument relating to the deserted medieval village (NHLE 1002236).

5.38 The NPPF Glossary defines a non-designated heritage asset as a building, monument, site, place, area or landscape identified as having a degree of

significance meriting consideration in planning decisions because of its heritage interest. It is commonly agreed that Spring Cottage and Patridges Oast are considered to be non-designated heritage assets. Both the Council and Appellant also identify an unlisted historic building – Chicory Cottage – which has the potential to be considered a non-designated heritage asset (if not curtilage listed) by virtue of its historic association to Buckwood Grange. There are further unlisted historic buildings at Downlands Farm Cottages (historically known as Bridge Farm) which may also have the potential to be considered non-designated heritage assets.

5.39 The Inspector will know the Courts have held that 'preserve' means an absence of harm. The NPPF points out that harm can be either 'substantial' or 'less than substantial' and where harm occurs, it should be given considerable weight as a material consideration in the assessment of planning applications and as part of the balance exercise and in ascertaining if any public benefits would outweigh that harm. This national policy intent is addressed by 'saved' Local Plan Policies EN1 and EN27; Core Strategy Policy SP02; as well as Chapter 12 of the Wealden Design Guide.

Considering the Effect of the Proposals

5.40 The heritage issue for consideration is the impact of the proposed development on the significance of heritage assets. The NPPF glossary defines significance as 'the value of a heritage asset to this and future generations because of its heritage interest'. Such interest may be archaeological, architectural, artistic or historic and it may derive 'not only from a heritage asset's physical presence, but also from its setting'. Historic England's Good Practice Advice Note 3: The Setting of Heritage (GPA3) gives general advice on understanding setting.

5.41 Under Step 2 of GPA3's methodology a settings assessment should consider the way attributes of an asset's setting have contributed to its significance in the past (particularly when it was first built, constructed or laid out), the implications of change over time, and their contribution in the present. In this regard, the Council does not consider that the Archaeological and Heritage Assessment (AHA) is rigorous enough to support its conclusions (Step 3 of GPA3), particularly in respect of impact on the former Downlands Farm group, but also in respect of the setting of Buckwood Grange which shares an historic relationship with the land within the site, as well as Downlands Farm, the former Bridge Farm (now Downlands Farm Cottages) and Lake Wood which represents part of the designed landscape immediately adjoining the site.

5.42 Contrary to GPA3, the AHA focuses only on visual impact of the development, with no understanding of the kinetic or experiential attributes which contribute to setting; and with an over-reliance on existing levels of public accessibility. There is no awareness that the proposal will introduce public accessibility from the land itself and open up views and transitory experienced from and towards the assets, moving across the landscape with which they share an historic relationship. This is particularly relevant to the designated heritage assets, and more particularly the relationship between Buckwood Grange and Lake Wood at the southern extents of the site, and in relationship between the agricultural land and Downlands Farm in the north-eastern part of the site. There is nothing to suggest that the

indicative layouts in these locations have been informed by heritage sensitivities associated with the setting of these assets.

5.43 In respect of the Downlands Farm grouping there is still evidence of a metalled farm track adjoining the former farm buildings – which have readily identifiable and locally distinctive farm typologies – directly linking the farm group and the open fieldscapes to which it is historically related. Whilst not presently a public right of way, it is clearly well-used and easily accessible in its current form. The proposals to provide a public route through the planted 'buffer' which is suggested to adequately protect the setting of these assets, would in fact introduce new experiences of the assets. As regards the conservation of heritage assets, there is an obligation not to prejudice understanding of its significance for future generations. The Council considers, the buffer, read in the context of parkland style planting and suburban housing development, has no meaningful contribution as the farm buildings will no longer have any tangible relationship to nearby open land (only woodland and modern development). The most common experience of them would be from within this new context, of which the ANA demonstrates no understanding.

5.44 In respect of Buckwood House, there is a legibility that the land to the north of Rocks Road, encompassing both Lake Wood and the grounds surrounding Chicory Cottage, formed part of the wider landscaped setting of the house. Historically, a footbridge crossed over the road joining the ornamental grounds surrounding the house with the woodland walks beyond, in the immediate vicinity of the site boundary. Portions of Rocks Road and Snatts Road retain historic stone boundary walls enclosing Lake Wood and Fir Grove (now associated with The Quarry House) which add to the legibility of these historic relationships, and historic maps show clear historic routes through these parcels of land which connect with routes in the parkland and gardens surrounding the house, including the existing gated entrance track to the Woodland Trust's land.

5.45 The Council considers that the relatively tranquil experience of moving through the landscape associated with Buckwood Grange has the potential to be irreversibly altered by the noise, activity and visual qualities of modern housing development immediately on its edge. The settings assessments were carried out in the summer of 2020 and 2021, with no real appreciation for potential effects of such large scale, and closely sited areas of development with regard to seasonal or diurnal changes, as well as the effects of topography in this location in particular. The land within the site has historic associations with both Downland Farm and Buckwood Grange as part of its wider estate, though the latter is only very briefly acknowledged. It is considered that the agricultural land would have played an important role in the setting of the parkscape and how it was appreciated as part of the ornamental and pleasure grounds of the house, and was incorrectly dismissed from further assessment as part of the AHA. As a result, the proposals within Fir Tree Grove at the south-eastern extent of the site, appear to pay little regard to the character of the landscaped grounds surrounding Chicory Cottage, or the serpentine woodland walks which historically traversed the woodland, opting instead for an overtly straight path and what appears to be highly engineered interventions within the woodland. This appears to be the only driver for demolition of Chicory Cottage, which retains some historic visual character and as the former butlers house to Buckwood Grange, further evidences the intrinsic historic relationships, and could

continue to do so. It is clear that an understanding of significance has not informed the proposals here, nor have opportunities to enhance or better reveal significance been taken.

5.46 For the avoidance of doubt, the Council agrees with the finding of less than substantial harm, at the lower end of the scale, to the Maresfield Conservation Area (as set out in paras 5.35-5.46 and 6.7-6.9 of the ES). That impact does, however, weigh in the balance.

5.47 As is clear from the discussion above, the assessment of impact on heritage assets is incomplete. A scheme linked to developable areas based upon this work is unsound. Paragraph 206, the NPPF requires LPAs to look for opportunities for new development within the setting of heritage assets to enhance and better reveal their significance. The appeal scheme does not do this.

5.46 Taking this all into account, it is considered that there would be :

- less than substantial harm to the significance of heritage assets at Buckwood Grange, the Barn at Downlands Farm and Oast Cottage through the proposed development within their setting. At present, in the absence of any mitigation evidenced in the indicative proposals, it is considered that this would be at the higher end of less than substantial harm.
- less than substantial impact on the setting of Maresfield Conservation Area (lower end of the scale), and
- less than substantial harm to non-designated heritage assets

5.47 Although the Council has found that the harm to designated assets would be less than substantial, such harm is, nevertheless, a matter of considerable importance and weight in the appeal. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon decision makers to pay special regard to the desirability of preserving these listed buildings, their setting or any features of special architectural or historic interest which they possess. Furthermore, and despite it being suggested that these listed properties are of limited significance and the subject of some unsympathetic alterations in the past, the NPPF sets out that great weight should be given to the conservation of designated heritage assets. The NPPF also sets out, at paragraph 202, that where a development proposal would lead to less than substantial harm to a designated heritage asset, this harm should be weighed against the public benefits of the proposal

5.48 Whilst the harm to non-designated heritage assets does not present a statutory test for assessment, the NPPF guidance at paragraph 203 is brought into play, requiring a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset.

5.49 The appeal scheme includes open market, affordable and other specialist housing (custom and self build) of which there is a recognised shortfall in the District. The contribution of up to 424 units to unmet need, would be considerable and as such, this should be given substantial weight. However, the development would cause

harm to the setting of designated assets by failing to robustly consider the relationship of the appeal site to designated assets, underplaying the significance of the parkland landscape to the appreciation of the setting to the listed buildings.

5.50 Taken together and, given that the harm identified to the designated to the heritage assets is a matter of considerable importance and weight in the determination, the public benefits would be insufficient to outweigh the harm identified.

Surface Water Drainage

Reason for Refusal 4

Whilst the site is within Flood Risk Zone 1, details in the flood risk assessment and surface water drainage strategy in relation to surface water flooding for this major development fail to demonstrate to the satisfaction of the Local Planning Authority and the County Council, as the Lead Local Flood Authority, that the proposed development on the site would not increase flood risk elsewhere. This is because it relies upon works to and within the Ancient Woodland which are unacceptable and will cause loss of irreplaceable habitat. It is accepted on the applicants 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.

The details as submitted and determined by the Local Planning Authority fail to demonstrate that adequate provision for Sustainable Drainage Systems can be satisfactorily accommodated within the site layout and that the development would not lead to increased risk of surface water flooding both on and off-site and therefore the proposal is contrary to Saved Policies EN1 and CS2 of the Wealden Local Plan 1998; SPO1, SPO13 and Policy WCS14 of the Core Strategy Local Plan and having regard to National Planning Policy Framework 2021, specifically paragraphs 167 and 169 and guidance offered within Chapter 4 Paragraphs 8.6, 8.7 and 8.8 of the Wealden Design Guide.

5.51 The site lies wholly within EA Flood Zone 1. It is not at risk from tidal, sea or fluvial flooding or from failure of a drainage asset such as a canal or reservoir. The majority of the site is at very low risk of flooding from surface water but with high risk flow paths associated with the watercourses described below.

5.52 Groundwater levels are stated to be typically greater than 1.9 metres below ground level. There are ordinary watercourse systems shown on the EA mapping which rise within the site and flow westwards off the site towards the Shortbridge Stream. The majority of these are ghyll streams located within areas of Ancient Woodland. There are ponds shown on the EA mapping within the application site, both associated with the watercourses and on their own.

5.53 There are no records of flooding close to this location within the Council's land drainage database.

5.54 The Geological Map for the area is complex. The eastern side of the site is on the

Upper Tunbridge Wells Sand Formation of interbedded sandstones and siltstones; the north western area is on the Ardingly Sandstone Formation of sandstones and the south-western area is on the Grinstead Clay Formation of mudstones.

5.55 There are no adopted, public surface water sewers in the vicinity of the site so this method of drainage is unavailable. Infiltration is the first recommended drainage method in the SUDS hierarchy but the mixed, underlying mapped geology of the site and the presence of watercourses and ponds on the surface suggests that this may not be a usable solution for this site.

5.56 The site drainage proposals are illustrative at present and comprise a series of swales and attenuation ponds directing water to the existing ordinary watercourses. The Appellant points out that drainage is indicative at this stage and only one indication of how the drainage scheme, might be presented at Reserved Matter stage. However, it is appropriate at this stage to consider whether in principle the development proposal can accommodate an appropriate drainage strategy.

5.57 The scheme includes a drainage strategy with majority relating to the outline and housing component. Soakage testing was undertaken across the Site, which demonstrated soil permeability that was too low to calculate the infiltration rate in most locations. In one location a rate of 1.12 x 10-6 m/s was calculated, which is considered too low to successfully support infiltration. The Geo- Environmental Site Investigation report concludes that the disposal of surface water to soakaways will not be feasible at this Site due to the predominantly cohesive nature and proved low permeability of the underlying soils. Discharge to ground is therefore precluded. Another scheme or system is required.

5.58 The development proposes 13 SuDS ponds on the site. 9 of these are proposed within the minimum 15 metre buffer zone for Ancient Woodland, irreplaceable habitat. This includes SuDS pond on sheet 2 of the hard and soft landscape plan at 7 metres, SuDS on sheet 3 at 4 metres, SuDS on sheet 4 at 7 metres and SUDS on sheet 6 at 0 metres. It is material that just over 9,000m3 of attenuation storage is required in these basins (see ES Tables 8.5 and 8.6). It is clear SuDS at these locations cannot be accommodated without direct and indirect impacts upon Ancient Woodland. Natural England standing advice has already been quoted: there can be little doubt it is breached here. “A buffer zone should consist of semi-natural habitats such as: woodland; a mix of scrub, grassland, heathland and wetland”.. Whilst SuDS can provide wetland habitat they do not provide sufficient buffer habitat for Ancient Woodland and waterbodies reflect light and noise. The majority of SuDS proposed are between road and Ancient Woodland where noise impacts would be frequent (e.g. from vehicle movements).

5.59 At 11 locations the SuDS are proposed to have outflows directionally drilled underground through Ancient Woodland, emerging within the Ancient Woodland ghyll streams. This will cause direct damage to the habit and species where drilled pipes emerge through Ancient Woodland soils, levelling and siting proposed headwalls and ongoing impacts through proposed permanent siting of what is described as groundbearing, prefabricated headwalls. Further, whilst bore-hole surveying has been undertaken on the site, for assessing soakaway capabilities of the site, this is at sporadic locations and it is understood such proposed directional

drilling can be prevented by soil and rock composition on proposed routes, for example seams of sand causing drilling to change direction or be aborted; it is noted such geology is present very near and potentially on the site. There is also likelihood that one or more of the proposed directionally drillings will meet complication and not able to be completed or damage Ancient Woodland habitat, soils or tree roots in the process.

5.60 The proposed development would significantly increase hard surfaces on the site leading to a concentration of increased water storage and flows. The appeal scheme brings within urbanisation of the site, potentially contaminated surface water run-off from roads and other surfaces. Failure of the SuDS could cause impact on Ancient Woodland.

5.61 The SuDS outflows are proposed to be concentrated at 11 points within the Ancient Woodland where changes in hydrology will likely occur with increased localised flow rates and increased localised erosion of Ancient Woodland habitat within the Ancient Woodland ghylls. Currently the drainage conditions onsite consist of a large expanse of grassland, which provides soakaway outside of the Ancient Woodland and distribute residual amounts of water widely into the Ancient Woodland, maintaining slow water flow and negating erosion. The proposed development suggests it would 'anticipate' mimicking the existing hydrological regime, but as water outflows would be concentrated into the watercourses through drainage pipes; such piping of water would not act as current processes of slowing water flow down to prevent erosion and silt deposition within the Ancient Woodland.

5.62 Further to the impact upon Ancient Woodland, the Local Lead Flood Authority and the Council's own drainage engineer have advised that the drainage strategy is at concept stage and does not provide a design to fully demonstrate the illustrative layout is feasible in terms of levels and drainage. The Council recognises that the majority of drained area is part of the outline application with all matters reserved. The Appellants argue that there is sufficient plan area set aside for attenuation features in the concept design and that a more comprehensive drainage strategy can be presented at Reserved Matters stage. However, the Appellant has not demonstrated that this is possible with the quantum of growth which is proposed and without the unacceptable impacts to irreplaceable habitat outlined above.

Effect of Ecology – Great Crested Newts

Reason for Refusal 5

Insufficient information has been submitted to demonstrate the proposed development would not result in adverse impacts on protected species (GCN) and therefore the proposal would be contrary to Policy WCS12 of the Core Strategy 2013 and paragraph 174 and 180 of the National Planning Policy Framework 2021.

5.63 Reason 5 relates to GCNs and common ground that GCN ponds were identified through the survey work completed with the application. That pond is likely to be affected by the development and either a Natural England licence is required to secure GCN mitigation. Or there is the option of a District Level Licence with Nature Space. Providing either is secured then Reason 5 will not be contested in

the appeal. Discussions are on going with the Appellants and this issue will be clarified in the SoCG.

Safe Access and lack of non-car modes of transport

Reason for Refusal 6

The proposal has not demonstrated that a safe and suitable access arrangement can be achieved for all users and to reduce dependence on the private car.

The scheme would therefore be contrary to Saved Policies EN1, EN2, TR3 and TR13 of the Wealden Local Plan 1998, Spatial Planning Objectives SPO7 and SPO15 and Policies WCS7 and WSC14 of the Wealden Core Strategy Local Plan 2013 and the guidance within Chapter 9 of the NPPF.

Impact on highway network and site access

Reason for Refusal 7

The proposal does not satisfactorily demonstrate that there would be an acceptable impact on the surrounding highway network, particularly (though not limited to) Uckfield town centre which is already heavily congested at peak times, nor that safe access can be secured for all parts of the site and scheme, contrary to, to SPO2, SPO12, SPO13 and Policy WCS14 to the Wealden Core Strategy Local Plan 2013, Saved Policies TR3 andTR16 of the adopted Wealden Local Plan 1998, coupled with the requirements of paragraph 110 of the National Planning Policy Framework 2021.

5.64 Reasons for Refusal 6 and 7 will be addressed via a separate and bespoke Statement of Case on highway matters prepared by the Highway Authority. For the avoidance of doubt, the District Council will rely upon the evidence of the County Council in relation to these reasons for refusal.

No mechanism to secure appropriate policy compliance and/or necessary infrastructure

Reason for Refusal 8 – affordable, custom and self building housing

The Planning Statement confirms the intention to deliver a policy compliant scheme to secure affordable housing. Custom Built Housing is also detailed within the submissions. No mechanism exists to secure an appropriate package that would ensure delivery of these matters and as a result the proposed development is contrary to the provisions of Policy AFH1 of the Affordable Housing Delivery Local Plan 2016, Spatial Planning Objective SPO3 and Policy WCS14 of the Wealden Core Strategy Local Plan 2013 and paragraphs 60, 61, 62, 63 and 65 the National Planning Policy Framework 2021.

Reason for Refusal 9 – mitigation measure to avoid in combination impacts

The application site lies within 7km of the Ashdown Forest Special Protection Area, and is likely to have a significant adverse impact upon the SPA as result of

recreational impact caused by intensified residential occupation within a zone of influence of the SPA.

The application has not demonstrated through an appropriate mechanism that it can achieve the necessary mitigation measures in respect of the increased recreational pressures it is likely to bring on the Ashdown Forest Special Protection Area. In the absence of such committed measures to offset the impact of the development, the application conflicts with saved Policies EN1 and EN15 of the Wealden Local Plan 1998, Policy WCS12 of the Core Strategy Local Plan 2013; nor would it be compliant with regulation 63 of the Habitats Regulations 2018.

5.65 Reasons 8 and 9 are matters that can be secured through an appropriate legal agreement and SoCG. In the event that a suitable legal agreement is provided, those reasons would not be contested at the Inquiry. Reason 9 relates to the proximity of the site and in combination impacts on the Ashdown Forest, accepting that the part of the scheme includes an on site SANG. The SoCG will detail this issue and its background. In the scenario that the SANG is considered to be acceptable, there is no mechanism in place to secure that SANG and its access in perpetuity. A legal agreement could, in theory, resolve that and the issue would fall away. One issue that has emerged relates to on going management of the SANG and what Natural England insist are 'step in rights' in the event of management failure. The main parties are discussing this and the CMC will be updated accordingly.

Planning Balance

5.66 It is accepted that the decision making function is transferred to the SoS via the appointed Inspector. As part of that, the Inspector will undertake his or her own planning balance.

5.67 The starting point, under s38(6) Planning and Compulsory Purchase Act 2004 is the Development Plan. As set out under the reasons for refusal above, this application breaches a number of development plan policies. When considered as a whole the application is not in accordance with the development plan and this will be explained further in the Council's evidence.

5.68 The Council cannot demonstrate a 5 year housing land supply, the Inquiry will be advised the Council has a 3.92 year supply. Although the extent of the undersupply is not agreed by the appellant, it is evident that the Council cannot demonstrate a 5 year supply of deliverable housing sites. In such circumstances paragraph 11(d) NPPF is engaged. This provides that permission should be granted unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed7; or
ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

5.69 As has been set out above, the impact of the proposal upon ancient woodland and veteran trees means that paragraph 11(d)(i) applies in that paragraph 180 NPPF provides a clear reason for refusing this development.

5.70 Further, in this case paragraph 11(d)(ii) applies. With regards to the benefits, the proposal would provide up to 424 new homes, which would contribute to the government's target to significantly boost the supply of homes and the types of housing secured would address the needs of groups with specific housing requirements including affordable housing and people wishing to commission or build their own homes. Future occupants would be likely to contribute to the local economy and there would be temporary economic benefits of employment and investment during construction. Furthermore, the development would create new areas of public open space. These are positive aspects to the development and taken together, should be afforded substantial weight.

5.71 The Appellants case was that the SANG would create capacity for 848 homes (including a discount of 10% due to existing informal use of the Site by members of the public) see paragraph 4.38 of the determined Planning Statement). The planning application always advanced this aspect is a particular and weighty benefit. However, the capacity of the SANG is superseded and now incorrect. Due to ecological sensitivity of the site and Ancient Woodland, Natural England are clear that the SANG would offer mitigation for a much reduced quantum of growth. This is 468 dwellings (i.e., the to mitigate the appeal proposal and an additional SANG capacity for 44 dwellings elsewhere). As the SANG would primarily mitigate the effect of development proposed in the appeal scheme, it would not deliver much capacity for a much wider public benefit. Within the planning application this was described as a SANG and country park concept and afforded by the appellants as a 'significant benefit' in the planning balance. The Council consider the weight to be afforded to this is low. The SANG is essentially mitigation for the appeal development and the extra capacity is so reduced as to be no more than neutral in the balance, due to the effect on irreplaceable habitats.

5.72 However, any and all benefits are significantly and demonstrably outweighed by the adverse impacts of the proposal either individually or collectively. These are: the harm to the setting of listed buildings and the nearby Maresfield conservation area as set out above, the effect upon setting of non-designated heritage assets the failure to provide a safe access, the failure to demonstrate that a suitable access arrangement can be achieved for all users and to reduce dependence on the private car, the failure to demonstrate that a suitable impact upon the highway network, and the adverse impacts upon ancient woodland. The details of these adverse impacts are not repeated here.

6.0 Comments on Appellants' Statement of Case

6.1 It is confirmed that the Council will work with the Appellants to draw up a SoCG. At the time of writing the Council has commented in a draft and sent it back to the Appellants.

6.3 The areas in dispute are set out in the SoCG and need not be repeated here.

7.0 Conditions and Legal Agreement

7.1. At the time of writing, there is a suggestion in the SoCG that a list of conditions to be attached in the event of the appeal being allowed will be drawn up. These will include measures relating to issues upon which there is common ground that there is no objection subject to appropriate conditions. The main parties will also identify any difference between them on the conditions to be attached.

7.2. Prior to the Inquiry the Appellants have indicated they will submit a Legal Agreement to provide on-site and off-site infrastructure under the provisions of s106 of the 1990 Act in the event of the appeal being allowed. The Council lawyers are instructed and an update will be provided at the CMC.

8.0 Conclusion

8.1. In conclusion, the Council will contend that for the reasons set out above, planning permission should be refused and the appeal dismissed. It is considered that these grounds are sound and clear cut having given the matter full and proper consideration in the light of Government advice, the provisions of the development plan, and other material considerations. That includes a previous appeal, recovered by the SoS and which was dismissed. The Council says the proposal does not accord with the current development plan, the guidance within the National Planning Policy Framework (NPPF).