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

PROOF OF EVIDENCE

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Appendices

1 Comments on Housing Land Supply and Affordable Housing

1 Introduction

1.1. My name is Stacey Robins (Mr). I hold a BA Honours degree in Urban Studies and Rural Planning and a post Graduate Diploma in Town Planning, both awarded by the University of Sheffield. I am a Chartered Town Planner and have been since 2002. I have just under 25 years of town and country planning experience, which for the most part, has been at Wealden District Council. I have worked predominantly in the development management team but have had periods seconded to the planning policy section. I am currently the Head of Planning and Environmental Services at Wealden and have been since early 2020.

1.2. The evidence which I have prepared and provided within this proof is true and is given in accordance with the Code of Conduct of my membership of the Royal Town Planning Institute. I can confirm that the views expressed are my true and professional opinions.

1.3. This appeal is against the Council's refusal of the hybrid application relating to Land at Downlands Farm. The elements of the refusal (full and outline) are set out in the respective Statements of Case ('SoC') and need not be repeated in full for this Proof of Evidence, but are summarised below:

- Conflict with the development plan;
- The adverse impact of the development on Ancient Woodland and veteran trees;
- Impact upon designated and non-designated heritage assets
- Whether the appeal scheme is in an accessible location so as to offer a genuine choice of transport modes;
- Whether the appeal scheme can provide safe access;
- The impact on the safety and operation of traffic on the local highway network and town centre; and
- No mechanism to secure affordable housing, custom built housing and other key infrastructure mitigation measures (including securing the SANG in perpetuity).

1.5 My Proof of Evidence relates to planning issues and the overall planning balance is set out as follows:

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

1.6 My evidence should be read alongside that of:

- Gabrielle Graham / Mr David Massheder in relation to the impact on the Ancient Woodland and how the appeal proposals would lead to direct and indirect impacts upon veteran trees and ancient woodland, leading to deterioration and loss of irreplaceable habitat; (**CD1/44** and **CD1/47**)
- Ms Heather Hall in relation to heritage matters (**CD1/21**)
- Mr Roger New in relation to accessibility, transport and highways (**CD1/22**)
- Drainage (to be prepared by Graham Keane, though this is dependent upon the Drainage SoCG, not yet concluded at time of concluding this Proof)

And in the context of the following agreed Statement(s) of Common Ground ('SoCG')

- Planning SoCG (**CD1/10)**
- Heritage SoCG (**CD1/12**)
- Housing Land Supply SoCG (**CD1/11)**
- Ancient Woodland (still in progress at time of completing this Proof)
- Drainage (still in progress at time of completing this Proof)

Planning History

1.7 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 a 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 scheme was refused by the Council on 22 February 2007.

1.8 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**.

1.9 The significance of this appeal and the planning history of the site is drawn upon variously in evidence and dependent upon topic. I accept it was for different scheme but some aspects of the Secretary of State's findings are clearly material to this appeal.

2 SITE & SURROUNDING AREA

2.1 A description of the site is within the Planning SoCG (**CD1/10**) but can also be found at Chapter 3 Site & Development Description of the submitted Environmental Statement (ES) (**CD2/36**).

2.2 Extensive description of the site is unnecessary. For the purposes of my Proof, the salient points to note are as follows.

- The Site comprises several parcels of land which combine to provide a total area of circa. 46 hectares (ha) to the north-west of Uckfield. It comprises a mixture of woodland and agricultural land, alongside the residential property of Chicory Cottage and its associated curtilage.

- The Site is bound to the west by the A22, the principal road within the District which connects Uckfield to Crowborough (via the A26) to the north and then Hailsham to the South. The A22 provides a physical barrier to the settlement of Uckfield, which is located to the east of the Site.

- The majority of the woodland on the Site, with the exception of the woodland within the north and southeast, is classed as Ancient and Semi-Natural Woodland.

- Two wooded ghylls provide natural divisions in the land here. Longwood Gill is a narrow woodland strip with a stream, while Shermanreed Wood is slightly broader in width. There is a woodland belt along the A22 bypass to the west of an old carriage driveway. This is also Ancient Woodland here (Thirty Acre Shaw) but the inventory shows boundaries to this woodland that do not exist on the ground. All of this woodland, on the western side of the site abutting the A22, is priority habitat.

- Part of the site adjoins Paygate Wood and lower parts around Budletts Wood were laid out as parkland in the nineteenth century, when the land was part of the Rocks Estate.

- The agricultural land is largely confined to the south of the Site. With reference to the Department for Environment, Food and Rural Affairs (DEFRA) online Magic Map tool, the agricultural land on the Site comprises a mixture of Grade 3b and Grade 4 (i.e. not Best and Most Versatile (BMV) agricultural land).

- The land slopes generally from east to west, from about 60 m. AOD at Snatts Road to about 25 m. AOD at the A22 bypass. Owing to the ghylls, the land has a rather complex and detailed topography. With the exception of Chicory Cottage, there is no significant built development anywhere within the site boundary, although there are a few scattered, old established dwellings on the north side of Snatts Road. There others further north towards the area of Budletts Common (but that is outside the current site area and denoted as within the applicant control blue land).

- There are no public rights of way within the Site itself, albeit one adjoins the eastern boundary of the Site with Snatts Road and bisecting Budletts and Paygate Wood, linking to Budletts Common to the north, and the village of Maresfield beyond. This matter is contentious with many representations commenting that public access into and across the site is long established and lawful. Using the County Council right of way map, then at the time of determination of this application, there are no public access rights across the Site, just path Uck 1 (as described above, to the eastern side of site).

- The A22, where the principal access is proposed, represents a significant physical feature on the western side of Uckfield. West of the A22 is the Shortridge Stream, a tributary of the Sussex Ouse, which in turn is partly fed by the smaller streams within the site. North if it, and about 1km. from northern parts of the site, is the village of Maresfield. East of that is the small scattered settlement of Five Ash Down. Both are separated from Uckfield by countryside.

- The site contains several small ponds, some dug originally for sporting purposes.

- Immediately adjoining it to the south is Lake Wood, a SNCI (county site of nature conservation importance) with public access, which is managed by The Woodland Trust (an objector to the scheme). Other nearby SNCIs are west of the A22.

- There are designated and non-designated heritage assets close by. The Council's position with regards to these is set out in the Heritage SoCG and the proof of evidence of Ms. Hall (**CD1/12**).

3 PLANNING POLICY OVERVIEW

THE DEVELOPMENT PLAN

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in planning decisions.

3.2 The adopted development plan documents relevant to the application proposals are:

- the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan (2013) ('CSLP') (**CD6/4**),
- the Affordable Housing Delivery Local Plan (2016) ('AHDLP') **(CD6/7)** and
- the 'saved' policies of the Wealden Local Plan (1998) ('WLP') (**CD6/3**).

Local Plan 1998

3.3 The WLP was adopted in December 1998. A number of the policies have been 'saved' by approval of the Secretary of State under paragraph 1(3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004 (**CD6/2**). The policies of particular relevance to the proposed development are set out below:

- **GD2 Development outside development boundaries:** advises that development will be resisted unless in accordance with specific policies of the plan.
- **EN1 Sustainable Development:** states that the Council will pursue sustainable development, having regard to the principles contained in Government guidance and in considering development makes specific reference to the location of development and assessing the effects of proposals on the environment.
- **EN2 Development Pattern:** seeks to maintain settlement patterns and ensure that major new development generating significant traffic movements is located efficiently in relating to existing development and to public transport.

- **EN12 Protection of Trees and Woodlands:** seeks to retain and enhance the contributions of trees and woodland areas to the landscape character of the District.

- **EN13 Ancient Semi-Natural Woodland**: seeks to resist development that would prejudice the ecology of Ancient Semi-Natural Woodlands.

- **DC17 Housing Development in the Countryside**: states that development will not be allowed outside development boundaries unless it complies with other policies of the plan.

- **TR3 Traffic impact of new development:** states that planning applications for new development will be permitted provided the proposed development does not create or perpetuate unacceptable traffic conditions, it provides a satisfactory means of access to meet the Local Highways Authority standards and, where appropriate provides suitable public transport facilities.

- **TR13 Footpaths and Bridleways:** seeks to ensure the provision of safe and convenient pedestrian routes and appropriate linkages to the existing networks.

- **LR1 Provision of outdoor playing space, LR3 Children's play space in developments of 30+ dwellings, LR5 Informal amenity space in new residential developments:** Policies LR1, LR3 and LR5 of the Wealden's Local Plan set out the requirements for open space. Policies LR3 and LR5 set specific policy expectations for open space provision in new developments. In summary, these policies require:

  (i) The seeking of adequate outdoor playing space to be provided in towns and villages in the District in line with National Playing Field Association's standards (LR1);
  (ii) New residential development of 30+ homes must provide 0.6-0.8 hectares of children's play space per 1000 population (0.2-0.3 hectares should be equipped). The play space should well designed and located within the site. Contributions towards future maintenance are also required (LR3); and
  (iii) All new large residential development must provide informal amenity space in addition to the required children's play space (LR5).

- **CS1 Provision of Capital Works and Services:** seeks to ensure that the capital works directly required to service the development are provided at the time the development takes place or will be provided at an appropriate time.

Core Strategy Local Plan

3.4 The CSLP was adopted on 19th February 2013 (**CD6/4**) and is the overarching planning policy document for the Wealden District area, setting out the Council's vision for the future development of the area over the period to 2027. It sets down a number of strategic objectives, and key planning policies for the area together with the broad locations, amounts and types of development that will take place within Wealden over this period. The strategic planning objectives (SPO) and policies (WCS) of particular relevance to the proposed development are set out below:

- **SPO1 Management of Countryside Resources:** sets out the overarching vision of management of the countryside as a resource to be protected and enhanced including recognising biodiversity and geodiversity. This includes in particular internationally important sites including the Ashdown Forest;

- **SPO3 Need for Homes:** sets out the quantum and distribution of development that the Core Strategy seeks to deliver;

- **SPO7 Reduction in Need to Travel by Car**: seeks to encourage greater use of sustainable modes of transport;

- **SPO12 Safety:** makes reference to working towards improving safety records on the district's roads;

- **SPO13 High Quality and Sustainable Development:** encourages the creation of high quality sustainable developments; and

- **SPO15 Infrastructure Requirements:** emphasises the importance of securing the necessary infrastructure improvements both on site facilities contributions for off-site works.

- **WCS6 Rural Areas Strategy:** identifies where development boundaries have been retained and those settlements where additional housing would be allocated up to 2027

- **WCS7 Effective Provision of Infrastructure**: sets out that the release of land for development will be conditional upon there being sufficient capacity in the existing local infrastructure to meet the requirements generated by the proposed development;

- **WCS12 Biodiversity**: seeks to prevent a net loss of biodiversity, ensure a comprehensive network of habitats, and work with partners to maximise opportunities to ensure habitats, biodiversity features and ecological networks are maintained, restored, enhanced and where possible created to achieve a net gain in biodiversity and sustain wildlife in both rural and urban areas. The policy also seeks to avoid adverse impacts to the Ashdown Forest Special Protection Area and Special Area of Conservation.

- **WCS13 Green Infrastructure:** states that development proposals will not be permitted which would result in the loss of existing open space or harm to Wealden's network of green spaces unless measures are incorporated within the development that will either mitigate the effects of development or alternative and suitable provision is made that is accessible, of good quality and value to its users, in an appropriate location, at an appropriate scale and nature and would positively contribute to the overall network of green space**.**

- **WCS14 Presumption in Favour of Sustainable** Development notes a positive approach reflecting the presumption in favour of sustainable development contained within the NPPF. Where there are no relevant policies or such policies are out of date, the Council will grant planning permission unless material considerations indicate otherwise.

Affordable Housing Delivery Local Plan 2016

3.5 The AHDLP was adopted on 18th May 2016 and supersedes Policy WCS8 in the adopted Core Strategy Local Plan and associated text in paragraphs 7.10 to 7.14 concerning affordable housing. Policy AFH1 sets out the Council's requirements for the provision of affordable housing in new housing developments. (**CD6/7**)

3.6 Policy AFH1 sets out the requirement for a provision of 35% affordable housing provision.

The National Planning Policy Framework (NPPF)

3.7 The latest iteration of the NPPF was issued September 2023 (**CD6/16**). I will draw attention to specific references within the NPPF as applicable.

National Planning Policy Guidance (NPPG)

3.8 The NPPG provides key guidance for the implementation of the NPPF. It is hosted on the .Gov website and will be referred to where relevant.

4 THE COUNCIL'S CASE

4.1 Below I set out the Council's case on each Reason for Refusal. Before doing so, it is important to note that some reasons have, in part, been resolved by subsequent submissions and work on the highway based SoCG. As a direct result, and subject to completion of a s106 legal agreement, part of Reason for Refusal 7 would be addressed. I comment upon below in numerical order of the reasons.

Reason for Refusal 1: Conflict with Development Plan

4.2 The spatial strategy for the District is set out in the WLP 1998 (**CD6/3**) and the CSLP 2013 (**CD6/4**)

4.3 The site is beyond the defined built-up area boundary of Uckfield and is in the countryside. The explanatory text at Paragraph 17.17 of the WLP relates to the Uckfield development boundary with specific regard to considerations on the eastern side of the Town (**CD6/3**)

> *"17.17 In the northern part of the town, the development boundary follows Snatts Road and the edge of Manor Park but excludes land and buildings beyond where there is a distinct change to a more rural character, emphasised by Views Wood, Paygate Wood and other areas of attractive woodland which are prominent in the landscape. Properties at Ringles Cross have been excluded in order to prevent an intensification of development which would be detrimental to the more loose-knit rural character. Furthermore, it is considered particularly important to resist inappropriate development within the area between Uckfield and the villages of Maresfield and Five Ash Down in order to prevent a possible coalescence of the settlements. A policy to protect the gaps between the development boundaries of these settlements is contained in Chapter 4.."*

4.4 Saved Policies GD2 and DC17 of the WLP resist new housing development in the countryside which is not essential for agriculture or forestry needs or has some other similar justification for a rural location (such as rural affordable housing exception sites) as set out in saved Policies GD2 and DC17 of the WLP 1998 but also in national guidance through the NPPF, paragraph 80 (a). The supporting text of Paragraph 5.91 to Policy DC17 sets out the range of special justifications for allowing development outside development boundaries. The proposed application does not comply with any

of these exceptions, nor does the site qualify as a Rural Exceptions site under Policy WCS9 of the CSLP.

4.5 The CSLP confirms that development boundaries are used to define built up areas (within the development boundary) and the countryside (outside the development boundary) and that in principle development in the countryside is subject to greater restrictions, to preserve the character of the rural area. The CSLP has retained the development boundary for Uckfield as the town has been categorised as a District Centre. Paragraph 3.6 of the CSLP indicates that development boundaries may be moved where housing growth indicates that it will be required which would be undertaken as part of the Site Allocations DPD. This is formalised by Policy WCS6 which advises that retained or new development boundaries will be reviewed as part of the Delivery and Site Allocations DPD as appropriate.

4.6 The adopted CSLP accepts that the development boundaries contained within the 1998 WLP would have to be breached to deliver the level of housing required. It also identified Uckfield as a suitable location for development. Indeed, under Policy WCS2 Uckfield is allocated for an additional 1000 dwellings. This quantum of development and its general location was formalised under Policy WCS4 through the Strategic Development Area SD1 Land at West Uckfield. Planning permission for this strategic allocation of 1000 homes at Ridgewood has been granted, under application WD/2015/0219/MEA. This was on the 24 March 2016. Subsequent Reserved Matters have been approved for the first two phases of development, coupled with key infrastructure such as drainage works (adjacent to A22), land level adjustment, two new roundabouts and a cross site linking road (of sufficient scale to facilitate bus link between A22 and the Lewes Road, which will pass land secured for a new school on this site). Policy WCS4 postdates the WLP 1998 and has clearly identified the southern sector of Uckfield as the direction of growth for the town. This is part of a spatial strategy that recognised the need to breach the 1998 settlement boundaries in order to deliver ongoing housing and community needs of the town. The proximity of the Strategic Development Area SD1 on this side of Uckfield provides direct access to the A22 (and the wider district) and avoids the need for traffic (whose destination is not Uckfield town centre) having to go through the town, creating unnecessary additional pressure on the capacity of the town centre junctions.

4.7 In their Grounds of Appeal ('GoA'), the Appellant relies on three main points, with qualification, as justification for the current appeal scheme beyond the development boundaries (see Section 6.0 of the GoA, **CD1/5**):

- Compliance with the development plan (amounting to a 'minor' breach and not contrary to the spatial strategy when read as a whole)
- The extent to which the development plan is out of date (including housing land supply position)
- Other material considerations and the 'titled balance' (this includes series of benefits as set out in paragraph 6.21 of the GoA)

4.8 I comment on each of these points in turn:

Compliance with the development plan when read as a whole

4.9 It is correct the Council has approved residential development outside the development boundaries in the WLP. Indeed, this has occurred for Uckfield at the Ridgewood Farm site as already referenced, (application WD/2015/0219/MEA) for which there remains c.750 units of dwellings to be built, plus the school and a commercial site).

4.10 There are other examples further afield, including the example listed at Appendix B of the GoA (**CD1/5**).

4.11 I note the Appellant had cited the case in *R (On the Application of Corbett) v Cornwall Council [2020]* **(CD4/4)**. The Court of Appeal held that the Council in that case had to consider the weight to be given to contradictory policies and, in that case, policies which encouraged proposals for development that generate employment or promote tourism were given more weight than a Policy 14 in the relevant Plan. Even though the wording in the subject Policy 14 was unqualified, this did not mean that it had to operate to the exclusion of other policies.

4.12 It is correct that the development plan should be considered as a whole. Here, the breach of policies which address the location of development is sufficiently important so as to amount (in and of itself) to a breach of the development plan as a whole. This is particularly the case in relation to this appeal site which is poorly related to the settlement of Uckfield. This was recognised by the Inspector in the previous appeal decision:

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

4.13 I also note that same issue (locational conflict) has been accepted in other recent appeals as a breach of the development plan as a whole (see **CD5/1** and **5/2**). It can be noted that the NPPF does not seek to undermine the primacy of the development plan (see paragraph 2 and footnote 3). In any event, the appeal proposal breaches a number of other development plan policies (as addressed below in my proof).

4.14 Evidently, simply because development has been approved outside of the development boundary locations elsewhere in the District, does not mean that all development outside of settlement boundaries is necessarily acceptable. All applications are assessed on their individual merits against the development plan policies and the NPPF.

4.15 The Council acknowledges that it does not have a five-year supply of housing land and has not done so for some time. It accepts that development is required outside of settlement boundaries to address this need. Indeed, it has granted planning permissions on this basis, i.e. that despite a breach of the development plan material considerations indicate that permission should be granted. I have personally been involved in recommending permission for multiple sites in greenfield locations outside established development boundaries. Clearly, each proposal and site must be addressed against the development plan and all material considerations, including paragraph 11(d) NPPF on its own merits.

4.16 As I expand upon below, the application of 11(d) NPPF in this Appeal leads to the conclusion that permission should not be granted, that provision to the current Appeal Scheme it is my firm and considered view that planning permission had to be withheld. It is my evidence that it was correct to refuse planning permission in this case. First, the loss or deterioration of Ancient Woodland and Veteran Trees provides a clear reason for refusing the proposed development (paragraph 11(d)(i)). Second, the adverse impacts of this proposal significantly and demonstrably outweigh its benefits, when assessed against the policies of the NPPF taken as a whole.

The extent to which the development plan is out of date (including housing land supply position)

4.17 There is no dispute that, under the standard method set out in the NPPF, the Council cannot demonstrate a five-year housing land supply (as agreed in the Housing Land Supply SoCG **CD1/11**). There has been no five-year supply for some time now and I fully accept there is a clear need for housing within the housing market area, including a need for affordable housing together with custom and self-build housing. I comment upon that in the Planning Balance section of my Proof.

4.18 For the record though, there is disagreement as to the deliverability of a number of sites included in the Council's five year housing land supply. The Appellants are of the view that the Council's five-year housing land supply is actually less than the 3.92 years figure. I do not agree, but having now reviewed the Proof of Mr Veasey, lodged after the SoCG on Land Supply, (**CD1/11)**. That figure is 3.8 years. The Council accepts that significant weight should be given to the delivery of market and affordable housing whether the supply figure is 3.8 years or the 3.29 years argued for by the Appellant (paragraph 4.4 to **CD1/11**). The Council considers that there is little to be gained by arguing the difference. However, as the Inquiry is due to consider this issue via a round-table an annex to my proof sets out a summary of the Council's position with regards to the disputed sites.

4.19 The GoA refer to footnote 8 of the NPPF and advice that where policies most important for determining applications are deemed to be out-of-date and the LPA cannot demonstrate a five-year supply of deliverable housing sites, this triggers Paragraph 11 d) of the NPPF and the application of the "tilted balance" (paragraph 6.18 of GoA, **CD1/5**).

Other Material Considerations and the 'Tilted Balance'

4.20 Before commenting on this matter, it will be obvious there is a fundamental disagreement between the parties on the application of paragraph 11 of the NPPF.

4.21 The effect of the appeal scheme on the Ancient Woodland and Veteran Trees, which is the subject of policies to protect irreplaceable habitats, provides a clear reason for refusing the proposed development under Paragraph 11(d)(i) and footnote 7. Therefore, in my view, the 'tilted balance' of the NPPF does not apply and the direction is for refusal under cross referenced paragraph 180(c) of the NPPF. This is addressed

further under RfR2 below. Even if the Inspector disagrees on this matter and considers the 'tilted balance' does apply, the harm identified, means that the proposals would not be sustainable development, as the scheme's impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole.

4.22 I address this in more detail under the Planning Balance below (section 5). However, in short, I agree that the proposed development would bring accepted and significant benefits in terms of housing supply and the provision of market, affordable housing and custom and self-build housing (assuming a legally compliant s106 agreement is forthcoming) in the context of the Council's shortfall in housing land supply and the Government imperative to boost the supply of housing (these and other benefits of the scheme as submitted by the Appellant are addressed later in Section 5 of this Proof).

4.23 However, as expanded upon under the specific reasons for refusal below the adverse impacts include:

- Harm to the Ancient Woodland and Veteran Trees and therefore contrary to development plan policies EN1, EN12, EN13 of the WLP, Policies WCS12 and WCS14 of the CSLP and NPPF paragraphs 180(c);

- Unsustainable location of the site and the inability of the proposals to offer a real choice of sustainable transport modes and therefore contrary to development plan policies GD2, EN1, EN2, TR3, TR13 of the WLP, Spatial Planning Objective SPO3 SPO7, SPO15 and Policies WCS7 and WCS14 of the CSLP and NPPF paragraphs 104, 105, 110, 112 and 113;

- Adverse impact on the setting on designated and non designated heritage assets contrary to policies EN1 and EN27 of the WLP; CSLP SP02; as well as Chapter 12 of the Wealden Design Guide and NPPF paragraphs 197, 199, 200, 201, 202, 203, 204 and 205.

- Failure to provide a safe access, contrary to development plan policies TR3 and TR13, Spatial Planning Objective SPO12, Policy WCS14 of the CSLP and NPPF paragraphs. 104, 110 and 112; and

- Failure to mitigate traffic impact (contrary to development plan policies TR3 and CS1 of the WLP, Policy WCS7 and WCS14 of the CSLP and NPPF paragraphs 111).

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

4.24 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). There are associated engineering operations to facilitate this, including access and drainage works. The Appeal Scheme also comprises a SANG with circular route to be covered in boardwalk, plus a car park for visitors. There is also a new a boardwalk for pedestrian and cyclists. Where development is sited in close proximity, or in the subject Appeal Scheme, within, Ancient Woodland there is the potential for the woodland and its wildlife to be adversely affected by works and the associated impacts arising. The Council considers that the following areas of Ancient Woodland would be subject to loss and/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)

4.25 It is worth noting that it would not be correct to simply consider each individual woodland listed above entirely separately from one another. 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.

4.26 Ancient Woodland is a valuable biodiversity resource both for its biodiversity of species and for its longevity as woodland. Local and national policy and guidance is clear that Ancient Woodland is an irreplaceable habitat and proposals should not result in its loss or deterioration. Saved Policy EN13 of the WLP states that the Council will resist development proposals that involve the clear felling or otherwise prejudice the ecology of Ancient Semi-Natural Woodlands. SPO1 of the CSLP indicates that the Council will seek to protect and enhance recognised biodiversity assets and seek to ensure that the distinct landscapes of the District, including those not nationally designated, are managed and enhanced. Policy WCS12 of the CSLP seeks to prevent a net loss of

biodiversity, ensure a comprehensive network of habitats, and ensure habitats, biodiversity features and ecological networks are maintained, restored, enhanced and where possible created to achieve a net gain in biodiversity and sustain wildlife in both rural and urban areas. Whilst the WLP predates the NPPF, Paragraph 219 of the NPPF is in play. In my view the objective of these policies, despite being dated, are consistent with those of the NPPF.

4.27 Paragraph 180(c) of the NPPF clearly advises that development resulting in the loss or deterioration of irreplaceable habitats such as Ancient Woodland and Ancient or Veteran Trees should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. Footnote 63 explains wholly exceptional reasons which are identified as being infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills) where the public benefit would clearly outweigh the loss or deterioration of habitat. The appeal proposals do not include those exceptional works/circumstances and the Appellant has made no case that it does.

4.28 I would refer to the Woodland Trust's Planning for Ancient Woodland: Planners' Manual for Ancient Woodland and Veteran Trees (July 2019) **(CD9/4).** Principle 2 at page 11 states *"If development is likely to harm ancient woodland or veteran trees, unequivocoal and credible evidence should be prepared to justify the exceptional need and benefits. Simply restating a national drive for housing, or need for new transport infrastructure, does not constitute exceptional circumstances."*

4.29 Natural England ('NE') and Forestry Commission ('FC') 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.

4.30 The Standing Advice (**CD9/3**) maintains that where a proposal involves the loss or deterioration 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.

4.31 It is material that NE has set out concerns (in the context of their limited consultation response which does not give bespoke advice on ancient woodland impacts), the FC have pointed to major concerns as has the Woodland Trust (I address these consultation responses in further detail below). Locally, the District Council ecologist Mr. Ben Rainbow (within **CD1/1**), and arboriculturist (Mr Massheder, Proofs at **CD1/47**) object and the Sussex Wildlife Trust (**CD12/3**). There is also the Downlands Action Group who appeared at the CMC and intend to present evidence to the current Inquiry **CD12/6 and 12/7**. These concerns all air concerns about effects of the Appeal Scheme on Ancient Woodland on and adjacent to the site.

4.32 The Council's evidence with regards to the adverse effects of the appeal proposals upon Ancient Woodland will be addressed in the proofs of Gabrielle Graham / David Massheder at CD1/44 and 1/47). It may also be the case that drainage evidence is required but as already noted, at the time of writing this Proof the parties were trying to narrow issues on drainage. An update in that matter will be provided. I rely upon the expert judgment of those witnesses with regards to the impact of the proposals upon ancient woodland. In particular that the appeal proposals will lead to a range of direct and indirect impacts which will cause both loss and deterioration of ancient woodland both individually and in combination. This is the case whether one considers the appeal scheme as existed at the time of the Council's determination, or the amendments to the appeal scheme which have now been consulted upon by the Appellant. Those amendments, presented in an addendum to the determined Environmental Statement (see **CD1/13 and then CD1/14)**, essentially relate to the SANG, how it would be provided and consideration of the effects arising from doing so in the Ancient Woodland (specifically Paygate Wood and Budletts Wood). Both proposals involve development within Ancient Woodland and introducing significant numbers of people into that woodland which will give rise to a number of direct and indirect impacts.

4.33 Further, and for the avoidance of doubt, the Council considers that the adverse impacts of the appeal scheme upon ancient woodland are not simply limited to development and the use of footpaths within ancient woodland. As set out in the proofs of Mr Massheder and Ms Graham, the direct and indirect effects of development within the immediate vicinity of the ancient woodland will also lead to its deterioration.

Consultation Responses

4.34 The impact of the Appeal Scheme upon ancient woodland has been addressed in a number of consultation responses which I consider here. The Forestry Commission

and Woodland Trust have raised significant concerns with regards to the impact of the appeal proposals on Ancient Woodland. Both of these organisations have provided focussed consultation responses in relation to this appeal on Ancient Woodland which is clearly a matter which falls squarely within their expertise. I consider that their views should be given significant weight. The respective consultation responses are at **CD12/3 and 12/4**. The Forestry Commission and the Woodland Trust raise the following matters:

- Intensification of human activity and recreational disturbance on ancient woodland, veteran trees and Lake Wood, particularly the inclusion of ancient woodland with designated SANG.
- Fragmentation of ancient woodland sites from adjacent semi-natural habitats.
- Noise, light and dust pollution affecting habitats and important flora and fauna.
- Threats to long-term retention of notable and veteran trees from increased safety concerns, and removal of important habitat features
- Adverse hydrological impacts across the site.
- Wider impacts on ecological connectivity and functioning of site, and concerns regarding the overall suitability of the site for development purposes.
- Cumulative effect of the above impacts resulting in long-term deterioration of the natural landscape.

4.35 Many of these are concerns which the Council shares and which are addressed in the evidence of Ms Graham and Mr Massheder (**CD1/44** and **CD1/47**).

4.36 Natural England has also made consultation responses in relation to the Appeal Scheme. It commented at the application stage (27 September 2022 **CD12/1**) and raised areas of concern. Following revisions to the scheme, the LPA re consulted NE 1 December 2022 and 1 March 2023, but NE did not comment. There were some informal comments on SANG iteration (February 2023 – see Appendix 5 of the letter from Aspect Ecology to Wealden District Council dated 21 February 2023, **CD2/105**). Following the refusal of planning permission, NE commented at the appeal dated 13 July 2023 (**CD12/1**).

4.37 It is important to note that NE's consultation response is 'focussed on its impact on designated nature conservation sites'. The consultation response goes on to state 'The absence of detailed advice on other natural environment matters should not be taken to mean that impacts are acceptable, simply that these are matters for Wealden

District Council (and now the Inspector) to determine'. At section 5 of its consultation response Natural England makes clear that it is not providing bespoke advice upon ancient woodland and states:

'Beyond the proposed creation of the SANG Natural England is aware that the development as a whole has the potential for other direct and indirect impacts on ancient woodland. Natural England has fully supported Wealden District Council (and now the Inspector through this appeal process) in using both our standing advice for ancient woodland and ancient and veteran trees along with advice from other environmental consultees to form a view on whether the overall impact of the development on the woodland complex as whole is acceptable when considered against paragraph 180(c) of the National Planning Policy Framework (NPPF, 2021)…'

4.38 NE's advice therefore focusses solely upon the SANG. Albeit it has made some comments which are relevant to ancient woodland in this context. NE has raised some concern with regards to the SANG pathway through the ancient woodland. It has recommended that the pathway takes the form of a boardwalk and it has also recommended that the SANG capacity be reduced so as to limit the amount that it will be used recreationally. Natural England has also sought clarity over the long term management of the SANG.

4.39 NE has provided very limited detail behind its comments. It has not provided any detailed analysis of the impacts of the pathway (both direct and indirect). However, its request for boardwalks and that the level of SANG access should be limited does indicate that it has some concerns over direct and indirect impacts which may potentially arise as a result of the SANG pathway.

4.40 I wanted to understand the position that NE has taken in its latest consultation response and therefore spoke to the author of the 13 July 2023 letter. The core of that conversation was that as there were paths in lots of Ancient Woodland(s), including on nature reserves, NE were going to struggle to object to this SANG proposal. I fully accept that's a precis of a private conversation I am relaying, but believe it important to bring to the attention of the Inquiry.

4.41 I accept that the views of a Statutory Consultees must not be challenged lightly[1] Decision makers are entitled, and can be expected, to give significant weight to the

[1] Visao Ltd v The Secretary of State for Housing, Communities and Local Government [2019] EWHC 276 (Admin) (copy at **CD4/15**)

advice of an *"expert national agency"* with relevant expertise in the sphere of nature conservation, such as NE[2]. Decision makers may lawfully disagree with, and depart from, such advice. But if it does, it must have cogent reasons for doing so[3] And when there are challenges to such assessments, the Court for its part will give appropriate deference to the views of expert regulatory bodies[4].

4.42 I consider that the NE approach to the SANG proposals, simply makes no practical nor common sense. The existence of other paths in Ancient Woodland on other sites (be it within Wealden or beyond) cannot be good reason to allow the current development in the Ancient Woodland on the appeal site. The circumstances will be different on other sites and will not be comparable. Even if that's wrong, the law[5] requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration (paragraph 2 of the NPPF, **CD6/1**) and it is common ground that the NPPF advice on irreplaceable habitats and the Standing Avice (**CD9/3**) changed in 2022. The effect of these changes is to reduce the ability of schemes to mitigate their impacts on Ancient Woodlands, the effect of which is to make it more difficult still to deliver schemes which would lead to loss and deterioration of Ancient Woodland. These changes, in broad terms were as follows:

- There is now an increased emphasis on the mitigation hierarchy (avoid, mitigate, compensate), despite this sitting within NPPF 180a, i.e. within a different policy to that for ancient woodland (180c)
- The inclusion of 'deterioration' (rather than just 'loss' as per the withdrawn 2018 Standing Advice) in the advice that: "Where a proposal involves the loss or deterioration of Ancient Woodland, or Ancient or Veteran Trees you should not take account of the existing condition of the Ancient Woodland or Ancient or

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[2] see the judgment of Sales L.J. in Smyth, at paragraph 84, and the first instance judgment in R. (on the application of Preston) v Cumbria County Council [2019] EWHC 1362 (Admin), at paragraph 69 – copy at **CD4/16**)

[3] see the judgment of Baroness Hale in R. (on the application of Morge) v Hampshire County Council [2011] 1 W.L.R. 268, at paragraph 45, **CD/4/17** the judgment of Sales L.J. in Smyth, at paragraph 85, and the first instance judgment in R. (on the application of Prideaux) v Buckinghamshire County Council [2013] Env. L.R. 32, at paragraph 116) Copy at **CD4/18**.

[4] see, for example, the judgment of Lord Justice Beatson in R. (on the application of Mott) v Environment Agency [2016] 1 W.L.R. 4338, at paragraphs 69 to 77) Copy at **CD4/19**)

[5] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

Veteran Tree when you assess the merits of the development proposal. Its existing condition is not a reason to give permission for development. A woodland or tree in poor condition can be improved with good management".

- The assessment guide has removed 'significant' before deterioration, which in 2018 sat in box 11. 'Significant' is the threshold set for engagement of the mitigation hierarchy at 180a.
- The 15m buffer remains (and did not increase in size), albeit emphasis increased on the 'potential need for larger buffers'
- 'Improving the condition of the woodland' has been removed as a mitigation measure. Instead, this is now reserved for compensation
- 'Removing invasive species' was been omitted as a mitigation measure. Instead, this is now reserved for compensation
- Within the list of 'mitigation measures', there is now included specific advice on the purpose of rerouting footpaths, namely "rerouting footpaths and managing vegetation to deflect trampling pressure away from sensitive locations"
- The Standing Advice sets out that new woodland creation options now include through 'natural regeneration'
- Where compensation includes translocating ancient woodland soils, the Standing Advice also now acknowledges the value in translocating other elements of the ancient woodland including tree hulks, coppice stools and saplings

4.43 There are clear and material changes to policy and guidance since 2018. It is fair to suggest that the development permitted on the basis of earlier and now superseded advice, or indeed more historic or immune forms of development, cannot be good reason for allowing harmful development now.

4.44 As I have stated above, NE has not provided any detailed analysis of what the impact of the path/boardwalk would be for ancient woodland (both in terms of its direct and indirect effects). Further, NE has recommended reducing the capacity of the SANG. Clearly, NE recognises that introducing recreational pressure into the ancient woodland has the potential to lead to loss and/or deterioration. However, there is no analysis of why reducing the SANG capacity would avoid this. In particular, I note that reducing SANG capacity would not necessarily reduce the use of the circular walk in the SANG.

4.45 Ultimately, it seems highly irregular to me to create a SANG the objective of which is to avoid disturbance of an irreplaceable habitat (the Ashdown Forest), but which is within an

irreplaceable habitat (the Ancient Woodland on and abutting the appeal site) which would suffer loss/deterioration as a result. This stance is supported by wording within the 'Guidelines for creation of SANGS' document produced by NE (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."* (emphasis added).

4.46 Very nearly 500m of the SANG is within Ancient Woodland. As will be set out in the evidence of Mr Massheder and Ms Graham this would lead to direct and indirect impacts upon the ancient woodland leading to its loss and deterioration. If Natural England considers that the provision of a footpath as a boardwalk used by residents of the Appeal Scheme would not lead to loss and/or deterioration of the Ancient Woodland then it has failed to justify its position. In light of all of the above, I consider that the position of Natural England should be given little weight and the views of the Forestry Commission and the Woodland Trust which have provided bespoke consultation responses on Ancient Woodland should be preferred.

Conclusion on Ancient Woodland and Veteran Trees

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

4.48 The previous appeal, although for a different scheme, included concerns about impact on ecology/ancient woodland. Since then, policy has changed and the tests more stringent. Even so:

- the previous appeal scheme proposed a country park and managed public access to the site. The controls were not persuasive and the Secretary of State said so
- the current appeal proposal not only provides access through and within the Ancient Woodland but the impacts would amplified by virtue of the focused use on the SANG but also due to development within Fir Tree Grove.

- The policy bar for protection for ancient woodland was considerably lower under PPS9 paragraph 10 which only advised that permission should not be granted for any development that would result in the loss or deterioration of Ancient Woodland unless the need for, and benefits of the development in that location outweigh the loss of woodland habitat.

4.49 There can be little doubt that the Ancient Woodland will be subject to loss and/or deterioration both directly and indirectly from the Appeal Scheme as set out in the Proof of the Council's expert witness, Gabrielle Graham and David Massheder (**CD1/44 and CD1/47**). The proposals include works within irreplaceable habitat, acknowledge there will be direct loss (Fir Tree Grove), but also contravene the Standing Advice (for example in treatment of buffers).

4.50 Elsewhere, some aspects will cause harm to irreplaceable habitat but the mitigation advanced seems highly theoretical (how people will apparently use the SANG) and stretch technical possibility to the very extreme (for example the steel needle supports to the SANG boardwalk). My fear is that the development will cause more extensive damage to irreplaceable habitats than is envisaged in the scheme. That cannot be in the public interest, but I return to that in the planning balance.

4.51 The scheme is contrary to National Planning Policy Framework 2023, section 180c, NE Standing Advice, ancient woodland & veteran trees and saved policies EN1, EN12 and EN13 of the Wealden Local Plan 1998 and Wealden District Core Strategy Local Plan 2013, policy WCS12 Biodiversity and WCS14 sustainable development. Further, the breach of paragraph 180(c), which is a 'footnote 7' policy provides a clear reason for refusing this development (in accordance with paragraph 11(d)(ii) NPPF.

Reason for Refusal 3 – heritage assets

4.52 The Heritage SoCG sets out matters and need not be repeated in much detail (**CD1/12**).

4.53 I ought to record that the decision notice (**CD4/1**) includes an unfortunate error in regard to the listing grade on an adjacent listed building. This comes from an earlier consultation response in the application cycle but I did not pick this up prior to determination. However, the Appellants knew of this issue and it has been addressed in the Heritage SoCG.

4.54 Decision makers have a 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 Buckswood Grange (NHLE 1194277). Section 72(1) of The Act relates to conservation areas and requires that decision makers 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 and provides the most up-to-date considerations of the character of the Conservation Area as designated in March 2017 (see **CD11/1**)

4.55 The requirements of the statute 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.

4.56 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 LPAs 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).

4.57 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 common ground that Spring Cottage and Partridges Oast are considered to be non-designated heritage assets. Lake Wood is identified as a non-designated asset. The Council, via my colleague Mrs. Heather Hall (Poof at **CD1/21**) identifies an unlisted historic building — Chicory Cottage — which should be considered a non-designated heritage asset by virtue of its historic association to Buckswood Grange. There are further unlisted historic buildings at Downlands Farm Cottages (historically known as Bridge Farm) are also considered non-designated heritage assets.

4.58 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' WLP Policies EN1 and EN27; Core Strategy Policy SP02; as well as Chapter 12 of the Wealden Design Guide.

Considering the Effect of the Proposals

4.59 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) (copy at **CD11/2**) gives general advice on understanding setting.

4.60 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 has long considered that the Archaeological and Heritage Assessment (AHA) is not 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 Buckswood 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.

4.61 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. Mrs. Hall expands upon this in her proof (**CD1/21**) she explains that there is no awareness that the proposal will introduce public accessibility from the land itself and open up views from and within the landscape 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 Buckswood Grange and Lake Wood at the southern extents of the site, and to the 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.

4.62 I rely upon the detailed and expert evidence of Ms Hall **CD1/21** in relation to the impacts upon the various designated and non-desiganted heritage assets, which I do not repeat here. In summary:

a. Buckswood Grange (Grade II listed) would be subject to less than substantial harm at a moderate level;

b. Lake Wood, a non-designated heritage asset, would be subject to a moderate level of harm

c. Chicory Cottage, a non designated heritage asset, would be subject to total loss of significance

d. Oast Cottage (Grade II listed) would be subject to less than substantial harm at the lower end of the scale

e. Partridges Oast, a non-designated heritage asset, would be subject to a low level of harm

f. Swallow Barn (Grade II listed) would be subject to less than substantial harm at the moderate level.

4.63 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 **CD2/42 and CD/2/83** and now in the Heritage SoCG **CD1/12)**. That impact does, however, weigh in the balance.

4.64 As is clear from the discussion above, the assessment of impact on heritage assets is , the Council says, 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.

4.65 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.

4.66 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.

4.67 I deal with overall Planning Balance matters later in my Proof. Paragraph 202 NPPF states that '[W]here a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The Evidence of Ms Hall demonstrates that the appeal proposals will lead to moderate levels of less than substantial harm to two grade II listed buildings and less than substantial harm at a lower level to one grade II listed building.

4.68 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. There are some other benefits such as job creation during construction of the scheme, though these would be temporary.

4.69 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 in my view be insufficient to outweigh the harm identified. Put another way, there are far less sensitive sites that have been advanced for development (or consideration of development) and can equally deliver benefits to housing supply and other forms of specialist accommodation.

4.70 I note that the effect on heritage asset was not a matter before the previous Inspector (see Inspectors Report paragraph 792 at **CD4/3**). That decision pre dates the Court of Appeal judgement in *Steer*[6] where the Court of Appeal confirmed that the setting of heritage assets *"is not necessarily confined to visual or physical impact"* but that other considerations are potentially relevant. It also predates the guidance issued by Historic England 'Good Practice In Planning Note 3 – The setting of heritage assets' (Copy at **CD11/2**). This clearly explains the broad approach to assessing the role of setting, to be undertaken as a series of 5 steps. For these reasons I give the conclusion of the previous Inspector – on heritage assets - limited weight.

4.71 The Appeal Site and its open fields an important element of the rural hinterland of this part of Uckfield. They illustrate the historic relationship between the adjacent heritage assets and the part parkland, part woodland activities of the surrounding open fields. 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. It would also result in the total loss of Chicory Cottage, which adds value due to historical association with the wider parkland setting and harm to Partridges Oast and Lake Wood which are non designated heritage assets.

4.72 Collectively these adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the NPPF and permission should be refused in accordance with paragraph 11(d)(i) NPPF.. Locally there is

[6] Catesby Estates Ltd and SSCLG v Steer [2018] EWCA Civ 1697, copy at **CD4/11**

breach of policies EN1 and EN27 of the WLP; CSLP SP02; as well as Chapter 12 of the Wealden Design Guide and NPPF paragraphs 197, 199, 200, 201, 202, 203, 204 and 205.

Reason for Refusal 4 – Surface Water

4.73 The parties are working on a drainage SoCG. 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 as agreed in the drainage SoCG, there are high-risk flow paths associated with the watercourses on site. These are in the Ancient Woodland at Budletts and Shermanreed Wood. The site specific Flood Risk Assessment (**CD2/82**) shows a bespoke flood zone 3 around the confluence of two watercourses in the north-western part of the site. The SANG route crosses this high risk flood area. Whilst the SANG is water compatible development, the location in this part of the Ancient Woodland goes to all year round use of the SANG here and associated, perhaps unintended, consequences of wider use of the Ancient Woodland.

4.74 Groundwater levels are stated to be typically greater than 1.9 metres below ground level. There are ordinary watercourse systems 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.

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

4.76 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.

4.77 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 says this is not a viable solution for this site. The drainage SoCG reflects this.

4.78 The site drainage proposals are illustrative at present and comprise a series of swales and a number SuDS attenuation basins, all directing water to the existing ordinary watercourses. The Appellant points out that drainage is indicative at this stage and that details are to be presented at Reserved Matters stage. However, it is appropriate at this stage to consider whether in principle the development proposal can accommodate a workable drainage strategy.

4.79 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.

4.80 There are concerns about the technical feasibility of directional drilling and impacts upon hydrology arising from the concept drainage strategy. As this Proof is being complete ahead of other topics, and bearing in mind the drainage SoCG is not yet concluded, it is unknown if specific drainage evidence will be presented on this matter. An update will be provided.

4.81 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 and naturally 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. Ms Graham's Proof **CD1/44** refers to overall deterioration of the Ancient Woodland, including that arising from the drainage scheme,

4.82 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.

4.83 I have already commented that the decision maker must be confident that the maximum quantum of growth can be accommodated on an application site before it supports development. I cannot see that up to 424 dwellings, its access, roads, open space etc, together with a SANG, car park and space on site for just over 9,000m3 of attenuation storage (see ES Tables 8.5 and 8.6, **CD2/41**) can be delivered <u>without</u> causing deterioration or loss or irreplaceable habitat.

4.84 Overall, the Council considers that the drainage proposals will cause loss and deterioration of ancient woodland habitats. This is both individually and cumulatively with the impacts addressed under reason for refusal 2 above. The drainage proposals are contrary to National Planning Policy Framework 2023, section 180c, Natural England Standing Advice, ancient woodland & veteran trees and saved policies EN1, EN12 and EN13 of the Wealden Local Plan 1998 and Wealden District Core Strategy Local Plan 2013, policy WCS12 Biodiversity and WCS14 sustainable development. Further, the breach of paragraph 180(c), which is a 'footnote 7' policy provides a clear reason for refusing this development (in accordance with paragraph 11(d)(ii) NPPF.

Reason for Refusal 5 – Great Crested Newts ('GCN')

4.85 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 Appeal Scheme and either a NE licence is required to secure GCN mitigation. Or, there is the option of a District Level Licence with Nature Space.

4.86 The Appellants appear to favour the NE license as set out in their email on the matter to the Council (**CD3/51**). Providing either is secured then Reason 5 will not be contested in the appeal.

Reason for Refusal 6 Suitability of Location and Accessibility and Reason 7 Safe Access, Effect on the Local Road Network and Town Centre

4.87 ESCC Highways is an expert statutory consultee which has been closely involved in the access proposals and has provided detailed responses to a number of different proposals. Their views have been informed by site visits and clear and detailed knowledge of the site and its location. They are also effectively the "overseeing organisation" for the purposes of assessing the suitability of Safety Audits under the Design Manual for Roads and Bridges. It is therefore appropriate to give significant weight to their views.

4.88 Mr Roger New, Project Manager at GTA Civils and Transport, will present detailed evidence on behalf of the Council and County Council in relation to refusal reasons 6 and 7.

4.89 The appeal scheme is in outline for all matters apart from access. Access is defined in the Town and Country Planning (Development Management Procedure) Order 2015 **(CD6/22)** as *" the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.*" Therefore, the issue is not only whether it is in principle possible for the access to be provided but also whether the scheme designs are safe and suitable in relation to the volume of persons using them and also wider issues on the road network.

4.90 I consider reasons for refusal 6 and 7 below.

Reason 6: Suitability of Location and Accessibility

4.91 NPPF paragraph 105 confirms that significant development should be focused on locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes. This makes clear that providing development in sustainable locations 'can help to reduce congestion and emissions, and improve air quality and public health'. Paragraph 104 requires opportunities to promote walking, cycling and public transport use are identified and pursued. Paragraph 110 (a) seeks to ensure that appropriate opportunities for sustainable development can be or have been taken up. 112 (c) is clear that development should create places that are safe, secure and attractive – which minimise the scope for

conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards

4.92 The principle that development should be provided in sustainable locations runs through each of the three strands of sustainability in paragraph 8 of the NPPF. The economic objective provides that land of the right types should be provided in the right places. The social objective makes clear that accessible services and open spaces should be provided and 'support communities' health, social and cultural well-being'. The environmental objective includes mitigating climate change and moving to a low carbon economy.

4.93 CSLP Strategic Planning Objective SPO7 reflects the NPPF by recognising that development will need to be concentrated where it can most closely relate to public transport opportunities.

4.94 The site lies at the very edge of Uckfield, but outside its development boundary. Mr New's evidence (**CD1/22**) addresses the distances to key facilities. In brief summary, even by the shortest route these facilities are by no means close to the Appeal Site (key facilities ranging between c.1100m and 2200m from the Appeal Site).

4.95 As Mr New highlights, at these distances the quality of the route is crucial at these distances. Mr New has considered each of the three potential routes which pedestrians and cyclists may be expected to take. These are: the A22 Route, the Snatts Road Route and the Rocks Road/Church Street Route.

4.96 It is beyond doubt that the A22 route will not provide a viable walking or cycling route into the town centre. The total distance to the town centre will be 2318m from the nearest dwelling and 2809m from the furthest dwelling. The route was appraised damningly by Inspector Dobson at paragraph 7.48 of his report (**CD4/3**):

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

4.97 As far as I am aware, there is no real change in circumstances since the conclusion of Inspector Dobson. Some of the path shown to be connected is now surfaced following the approval of the medical centre off the B2102, but there was always a right of way in that location (the section coloured grey and green on drawing 2001061-110). It isn't a new feature since the earlier appeal. Mr. New for ESCC explains that the A22 Route would serve few cyclists and no pedestrians travelling between the site and key destinations in the town and would not contribute in any meaningful way to encouraging, and effectively providing for, pedestrian and cycle transit between the site and those key destinations (paragraph 3.25 of his Proof **CD1/22**) .

4.98 Turning to the Snatts Road route. Here the distance to the town centre is between 1355m (nearest dwelling) and 1883m (furthest dwelling). The route is narrow, unlit in some sections and not overlooked. It also involves negotiating steps and significant gradients with areas of poor surfacing. As Mr New highlights, the improvements which the appellant has proposed are not sufficient to overcome many of the fundamental issues. Further, it cannot serve cyclists, pedestrians with pushchairs/ buggies or the mobility impaired.

4.99 Finally, the Rocks Road/Church Street route (referred to the as the Fir Tree Grove Route in the Transport SoCG) is between 1133m (nearest dwelling nad 1853m (furthest dwelling) from the town centre. As highlighted by ESCC, the channelling of pedestrians and cyclists by this route gives rise to 'major safety concerns' as a result of a substandard visibility splay. Given this would be the most important of all accesses for pedestrians and cyclists this is of particular concern.

4.100 Further, the route is, in any event unsustainable. As Mr New highlights, the part of the route which is onsite involves a lengthy and convoluted climb for cyclists (approx. 265m with a maximum gradient of 8% and an average gradient of 6%) and an average gradient for pedestrians of more than 15%. Offsite, Rocks Road and Church Street are narrow with inadequate footways. Although the appellant has proposed some footpath widening ESCC has concerns about whether this can be practically achieved given the constrained nature of the route. Further, ESCC has raised safety concerns regarding the proposals for alternate one-way working on a section of Rocks Road and a section of Church Street (proposed by the Appellant) due to a lack of adequate forward visibility and risk of driver confusion. The traffic conditions on both Rocks Road and Church street would represent a substantial disincentive to cyclists.

4.101 The Appeal Site is not on or near a bus route. To provide access to buses for incoming residents, the Appellant proposes a diversion into and out of the site, via the new A22 Uckfield Bypass roundabout, of service 31 which currently uses London Road. Mr New explains that given the distance of the site from the main town centre destinations, and taking account of waiting time and travel cost, unless access to routes is very convenient and services are frequent and cheap to use, buses are unlikely to constitute an attractive alternative to the use of the car or cycle for such journeys or to comprise a significant component of overall sustainable transport usage by site residents.

4.102 The previous appeal looked at the location of the site in relation to Uckfield Town Centre and facilities. The town centre clearly, hasn't changed not has the location of the site.

4.103 Inspector Dobson commented at 7.46-753 of his report to the SoS (**CD4/2**) and concluded that:

"..Downlands would not be nearly so well connected with Uckfield town centre for pedestrians and cyclists, as its proponents claim. I think it self-evident that this would only tend to increase car-use at the expense of these other modes, whose use is in general strongly encouraged by relevant national and local policies. That tends to undermine Downlands' claim of not being excessively car-dependent"

Also that

"The other main factor which, to my mind, tends to increase the likelihood of car-dependency at Downlands is its considerable ease of access by car onto the A22 Uckfield by-pass, and thence on to the wider road network, or into Uckfield town centre".

4.104 These are issues which are simply unresolved in the current Appeal Scheme. Further, I note that the previous Appeal Scheme included a number of community and employment facilities on site. The current proposal does not do so. Therefore, its sustainability credentials would be even worse than those which were the subject of the 2009 Decision.

4.105 Whilst all appeal decisions turn on the merits of the particular development proposed and its particular location, I note that a number of appeals have been refused on the basis that the failure to provide a genuine choice of transport modes significantly and demonstrably outweighs the benefits of housing delivery. One of these is the Inspector's decision at Land east of North Wallington Road, Wallington, Fareham Appeal (Ref APP/A1720/W/22/3297544) **(CD4/22)** in relation to whether the appeal site was an appropriate location for the proposed dwellings having regard to the Council's spatial strategy and access to services and facilities on foot. Paragraphs17-19 of the decision are particularly relevant to this appeal whereby the Inspector considers that the route was not safe, secure or attractive and did not minimise the scope for conflict between users with the result that occupiers of the proposed development would therefore be more likely to opt for the convenience of the private motor car.

4.106 At paragraph 18 and 19. The Inspector concludes that:

> *"..the site represents an inappropriate location for the proposed dwellings, having regard to access to services and facilities on foot and conflicts with the council's spatial strategy..*
>
> *Paragraph 110 of the National Planning Policy Framework (the Framework) sets out that safe and suitable access to the site should be achieved for all users and paragraph 112 sets out that development should create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. The identified conflict with both the Development Plan and the Framework is a matter which attracts significant weight."*

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

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

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

4.109 The importance of reducing the need to travel by car has been an issue within appeals elsewhere in the District. Within the decision at the Hop Garden Nursery, Eastbourne Road Halland under APP/C/1435/W/19/3226973 **(CD4/23)** under Paragraph 16 where the Inspector states:

"However the proposed development would not provide a suitable location for housing having regard to local and national policies, the accessibility of services and facilities and policies concerned with rural housing. Therefore, it would not accord with Saved Policies GD2 and DC17 of the LP, and Policies WCS4, WCS6 and SPO7 of the CS. Amongst other things, these seek to preclude residential development outside development boundaries and in the countryside unless in accordance with specific policies in the plan and seek a reduction in the need to travel by car. These policies generally accord with the Framework and therefore I attach significant weight to them both."

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

4.111 The Inspector's decision under APP/C/1435/W/19/3229579 at The Forge, Eastbourne Road, Halland **(CD4/24)** similarly concluded in Paragraph 13 that:

"The location of the proposed development would not be appropriate, conflicting with the policies of the Framework and with saved LP policies EN1, EN2, GD2 and DC17 which promote sustainable development, which seek to ensure that new developments generating significant travel movements are located efficiently in relation to public transport and which resist housing development outside development boundaries unless it accords with other polices in the Plan."

4.112 The decision of the Inspector under APP/C1435/W/21/3275234 at Bramblebank, Lewes Road, Halland **(CD4/25)** at paragraph 13 was of the view there was a considerable degree of social harm in respect of providing new homes in a location which does not provide suitably for the day to day needs of its residents, nor give ready access to them by sustainable means and so would encourage unsustainable patterns

of travel. The appeal was dismissed on the basis that it would not be sustainable development.

My conclusion on Reason 6: Suitability of Location and Accessibility

4.113 Saved Policies EN1 and EN2 of the WLP and Policies SPO7 and WCS14 of the CSLP reflect the presumption in favour of sustainable development which is set out in the NPPF and indicate that the Council will seek to locate major developments generating significant travel movements efficiently in relation to existing development and public transport and to reduce the need to travel by private vehicle. Paragraph 105 of the NPPF states that the planning system should actively manage patterns of growth to support the objectives of sustainable travel. Significant development should be focussed in locations which are or can be made sustainable through limiting the need to travel and offering a genuine choice of transport modes.

4.114 Therefore in relation to the sustainability of the Appeal Site, I consider that Downlands is poorly located and disconnected from Uckfield. It always has been. As Inspector Dobson commented in the earlier appeal *"Downlands suffers from a major disadvantage, in terms of the landscape setting and urban morphology of Uckfield, [compared with BIEN and BIES]. I think this is readily apparent from even the most cursory look at a 1:50,000 or 1:25,000 OS map, especially when imagined in 3 dimensions. It is that the Downlands scheme would "spill out" into a new and relatively pristine area of countryside, over the long topographical ridge which follows approximately the line of Snatts Road, thereby breaching an important natural (and defensible) boundary to Uckfield. Instead of facing the town, it would look towards the adjacent countryside and the more distant AONB"* (paragraph 678 of **CD4/2**). He went onto comment that *"Indeed, because of its scale it would appear as a separate and self-contained new settlement which, because of its location and topography, would be ill related - indeed, almost unrelated - to the existing town. This in turn is why it would not be visible from most parts of Uckfield. In my opinion, no amount of tree screening or high quality design would compensate for that"* (paragraph 679 of **CD4/2**).

4.115 The Appeal Scheme has not overcome the difficulties of its poor connectivity to Uckfield by sustainable transport modes. Therefore, I consider that the location of the Appeal Site is not appropriate, conflicting with policies EN1, EN2, GD2 and TR3 of the WLP and SPO7 and WCS14 of the CSLP and Paragraphs 104, 105 and paragraph 8 of the NPPF which promote sustainable development and travel patterns. Further, I

consider that this is an issue which significantly and demonstrably outweighs the benefits of the proposal which I address under the planning balance below.

Reason 7 - Safe Access, Effect on the Local Road Network and Town Centre

Safe Access

4.116 In his Proof, Mr New explains the deficiencies of the access arrangements such that these are deemed unsafe. These are, plainly, technical matters and I rely on that evidence on behalf of the ESCC as Highway Authority.

4.117 The Summary at Section 5 of Mr New's Proof is clear:

a) ESCC object to the proposals for the proposed A22 roundabout access on highway safety grounds, being contrary to the requirements of NPPF para 110b.

b) ESCC object to the proposals for the proposed Rocks Road access on highway safety grounds, being contrary to the requirements of NPPF para 110b.

c) ESCC objects to the proposed alternate one-way working for sites on Rocks Road and Church Street on highway safety grounds, being contrary to the requirements of NPPF para 110b.

d) Whereas there is no objection on highway safety grounds to the proposed SANGS access, the proposed Snatts Road access, or the proposed Emergency Access onto the A22.

4.118 The failure to provide safe access to the site should be afforded very significant weight. The potential impact on highway safety would be "unacceptable" in the terms of paragraph 111, and contrary to 110(b) and saved WLP policy TR3 and I give this harm very significant weight in my decision. In my view, it is sufficient to significantly and demonstrably outweigh benefits of the proposal even when considered on its own. Plainly, it is not in the public interest to allow development with unsafe access points.

Impact on Town Centre Highway Network

4.119 Section 4.0 of Mr New's Proof explains the issue and there is further detail in the Highway SoCG (**CD1/9**).

4.120 ESCC consider that the Appellant's modelling does not reflect the true likely impact of the proposed development which would be severe and require mitigation. It is common

ground that the impacts of the proposed development could be sufficiently mitigated through the implementation of an enhanced control system, but that system would have to cover a more extensive area within the Town Centre than the junctions assessed by the Appellant. There is currently no such area wide scheme. Appropriate financial contributions towards the introduction and on-going maintenance of that system, and appropriate occupation restrictions, have been agreed with the Appellant in the event that the Appeal Scheme is allowed. As such, this part of reason for refusal 7 can be addressed through a suitably worded s106 agreement.

Reason for Refusal 8 : Lack of Necessary Mechanism to Secure Affordable and other Housing

4.121 The Planning Statement (**CD2/24**) 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.

4.122 At the time of compiling this Proof, no detailed s106/unilateral agreement has been agreed between the parties. Thus without such a legal agreement, refusal 8 has not yet been overcome.

4.123 Consequently, as submitted, it is considered that the proposals would not be sustainable development and would be contrary to is contrary to the provisions of Policy AFH1 of the AHDLP 2016, SPO3 and Policy WCS14 of the CSLP 2013 and paragraphs 60, 61, 62, 63 and 65 the NPPF. Without a legal agreement in place, there would therefore be a breach of the development plan as a whole and the guidance given in the NPPF regarding planning obligations and the provision of sustainable development which mitigates its impacts. In the event that the tilted balance applies to this application the failure of the scheme to mitigate its impacts significantly and demonstrably outweighs the benefits of the proposal when considered against the NPPF read as a whole. Reason for refusal 8 remains justified. However, it would fall away if the Appellant produces a s106 agreement which covers affordable housing and other measures which are required to mitigate the impact of the development.

Reason for Refusal 9: Impact on Ashdown Forest.

4.124 This issue is set out in detail within the Officer Report (**CD5/2**) and NE refer to in within the 13 July 2023 submissions to the appeal (**CD12/1**)

Habitat Regulations Assessment

4.125 The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 requires that where a plan or project is likely to result in a significant effect on a European site, and where the plan or project is not directly connected with or necessary to the management of the European site, as is the case here, a competent authority is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. In so doing, an assessment is required as to whether the development proposed is likely to have a significant effect upon a European site, either individually or in combination with other plans and projects.

Assessment of likely significant effects on the SPA

4.126 The qualifying feature underpinning the SPA designation is the concentration of Dartford warbler and European nightjar. The conservation objectives for the SPA can be summarised as ensuring that the integrity of the site is maintained or restored as appropriate so that it continues to support the population and distribution of its qualifying features.

4.127 NEs supplementary advice on conserving and restoring site features for the Ashdown Forest SPA (See Planning Practice Guide (PPG) Paragraph: 002 Reference ID: 65-002-20190722) identifies recreational disturbance as one of the principal threats to ground nesting birds. Research and assessment undertaken by the Council supports this by demonstrating that increased recreation can result in damage to the bird's habitat through trampling and erosion (**CD9/1)**. Moreover, the presence of people can disturb ground nesting birds during their breeding season (Feb - Aug). Dog walking can be particularly problematic in this regard, especially if dogs are let off their lead (**CD9/18**).

4.128 The application proposal would facilitate a permanent increase in the number of people living within a short drive of the SPA. The Ashdown Forest is an attractive semi-natural area which is close to the application site. It is somewhere future residents of the home(s) proposed would likely wish to visit for recreation. Evidence in the form of visitor surveys carried out for the Council demonstrates that residents living within 7km of the Ashdown Forest are likely to visit it (**CDs9/12 - 9/15**). This would provide a pathway of effect for recreational disturbance.

4.129 Given the above analysis, an Appropriate Assessment, in accordance with Regulation 63 of the Habitats and Species Regulations, is required to consider the implications of the proposal for the integrity of the SPA in view of the conservation objectives.

4.130 Central to the Appeal Scheme is an on site SANG as mitigation for the impacts on the SPA. NE also refer to this in their 13 July 2023 submissions. Whilst there are objections to the use of irreplaceable habitat as a location for a SANG, there are covered elsewhere in my Proof. If the Appeal Scheme is to be allowed, then the SANG on site must be secured to ensure it secures in perpetuity the mitigation that enables a Habitats Regulations Assessment to be positively concluded. There is also the requirements for a SAMMs payment.

4.131 At the time of writing this Proof, no such mechanism or agreement is in place to capture the on site SANG though I do know that solicitors for the Council and Appellant are working on the matter. An update on the Inquiry will be provided.

4.132 At the time of writing this Proof and in the absence of an agreement to secure the matter in perpetuity, it is not possible to positively conclude a Habitats Regulation Assessment on this issue. In the alternative and subject to a legal agreement securing the SANG land in perpetuity, this will be sufficient mitigation and the Appeal Scheme would not – on this issue alone - adversely affect the integrity of the SPA in view of the site's conservation objectives. Accordingly, the proposal would not be at odds with Policy WCS12 of the Wealden District Council's Core Strategy and saved Policies EN1, EN7 and EN15 of the Wealden Local Plan (1998).

5 THE OVERALL PLANNING BALANCE

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

THE DEVELOPMENT PLAN

5.2 The adopted development plan documents relevant to the appeal site are the "saved policies" of the Wealden Local Plan (1998), The Wealden District Core Strategy Local Plan (2013) and the Affordable Housing Delivery Local Plan (2016).

5.3 Spatial Planning Objective SPO7 and Policy WCS6 (Rural Areas Strategy) of the CSLP are in accordance with the NPPF's approach to locate development according to the range of facilities within settlements and the need to encourage the use of sustainable modes of transport to access them. There are no policies in the development plan that support the Appeal Scheme in this location. As has been set out in this Proof of evidence and the Proofs of evidence of Heather Hall, Roger New, David Massheder and Gabrielle Graham, the proposals would be in conflict with a significant number of other relevant development plan policies including Policy GD2, DC17, EN1, EN2, EN12, EN13, TR3, TR13, CS1 of the WLP and Strategic Planning Objectives SPO3, SPO7, SPO12, SPO13 and SPO15 and Policies WCS7, WCS12 and WCS14 of the CSLP which promotes sustainable development.

5.4 The Council cannot demonstrate a five year supply of deliverable housing land and therefore the restrictive policies Saved Policies GD2 and DC17 that apply to new housing are accepted to be out of date.

5.5 Paragraph 11(d) of the NPPF states that where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, that planning permission should be granted unless either of the tests under Parts (i) or (ii) are triggered. With regard to Part (i) I have referred to earlier in my Proof that the Appeal Scheme will lead to the deterioration and/or loss of Ancient Woodland, an irreplaceable habitat as defined under Footnote 7 of the NPPF. Therefore, in accordance with Paragraph 11(d)(i) the Appeal Scheme should be refused. Again, should it be considered that the Appeal Scheme does not merit refusal on this ground, Paragraph 11(d)(ii) is clear that planning permission should not be

granted if any adverse impacts of doing so would demonstrably outweigh the benefits when assessed against the policies in the NPPF as a whole.

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

THE BENEFITS

5.7 Section 6.0 the Appellant's GoA (**CD1/5**) sets out the key benefits they consider are delivered by the appeal scheme:

- The delivery of a significant number of much needed new homes.
- The housing provision will include 35% of much needed Affordable Housing (for which there is a further acknowledged shortfall).
- The provision of a range of Economic benefits during construction and post - construction;
- The provision of a range of Environmental benefits including biodiversity net gain and woodland management; and
- The provision of a range of Social benefits including new areas of open space and SANG.

5.8 I address each of these benefits sequentially below:

Provision of up to 424 new dwellings or "much needed new homes", including 35% affordable housing

5.9 It is acknowledged that the Government seeks to significantly boost the supply of housing. It is not disputed that the existing housing land supply and delivery position within the Wealden is below five years. If the appeal site was approved, then it would clearly contribute to housing land supply. Thus the provision of new housing should be given significant weight.

5.10 Table 4 of the Five Year Housing Land Supply Statement **(CD7/2)** sets out Housing Requirement and Supply for the period between 1 April 2022 and 31 March 2027. Paragraph 2.41 highlights that "*the Council does have a total housing land supply of 7,697 (net) dwellings, but can only demonstrate that it can deliver 5,693 (net) dwellings over the next five year period between 2022/23 and 2026/27. This stresses the*

importance of both delivery rates and lead-in times for housing development and the requirement to have a rolling supply of new homes on a yearly basis".

5.11 There is no certainty that the Appeal Scheme would be able to deliver housing in the first five years. I say this having regard to:

- the time required to submit and secure approval of a Reserved Matters application and discharge any pre-commencement conditions that are attached to any permission;

- the need to fully design complex drainage arrangement, involving irreplaceable habitat and a site subject to complex geology. There is also the requirement to ensure down stream water quality measures are robust;

- the need to implement off-site highway works to mitigate impacts on local highway and ensure that the necessary provision for sustainable transport modes identified are implemented prior to occupation of the development. This includes but is not limited to complex 'cut and fill' proposals at the Chicory Cottage, a site which involves hundreds of cubic metres of material being placed here and retained, to secure levels change. It is common ground that site has irreplaceable habitat and a veteran tree as a constraint. To be clear, I do not say the work cannot be done (though I do say there will be harm and deterioration), the point is they would have to be very carefully done and handled otherwise the extent of harm would be worsened. On any measure, these works will not be quick.

- the implementation of the necessary works to mitigate impact on Uckfield Town Centre on the basis that occupation should be restricted pending the completion of these works; and

- the need to ensure that the SANGS is completed and available before first occupation of the development to ensure the impacts of the development on Ashdown Forest SPA are mitigated from the outset. .

5.12 Table 3 of the Five Year Housing Land Supply Statement (**CD7/2**) sets out the delivery rates and lead in times for large sites within Wealden for those sites with extant planning permission for 200 dwellings and above. Whilst the data demonstrates that all ten housing sites were able to deliver new homes within the first five years following an outline consent, the timescale varied. Three sites delivering new homes on the third year, three sites delivering new homes on the fourth year and four sites delivering new

homes on the fifth year. The two sites that had SANGS associated with the outline approval: Land West of Uckfield and Land at Walshes Manor Farm, Crowborough only delivered three and five units respectively in the fourth year. In the case of Land West of Uckfield, a significant delay related to the roundabout construction on the A22. The s278 design work and ultimate time to 'book and secure road space' to allow construction also affected development timetable. There is a clear parallel with the current Appeal Scheme and its main access. To be clear, am not saying it is insurmountable and will prevent delivery, but it affects the timescales for delivery. This goes to how much housing would actually be secured, on the ground, and delivered in the five year period.

5.13 I accept that the provision of housing in all forms can be a benefit which is capable of being given very substantial or very significant weight under normal circumstances, particularly in the context of the Council's housing land supply deficit for both market, affordable homes and other specialist accommodation. However, in assessing the weight to be applied to the benefit of the Appeal Scheme in providing much needed housing and meeting identified housing needs, regard should also be given to the likelihood of this Appeal Scheme contributing to the Council's five year supply. Relevant to that issue is the delivery and uptake of housing within the local housing market of Uckfield.

5.14 The Land West of Uckfield site, as already noted, granted outline planning permission in March 2016 has been slow on delivering completions as shown in Table 3 Delivery Rates and Lead in Times for Large Sites within Wealden District as set out in the Five Year Housing Land Supply Statement as of 1st April 2022 (**CD7/22**). There are some site specific factors at that site (for example delivery of major infrastructure) which have affected delivery rates. There maybe some parallels with the Appeal Site and the overall amount of units that might be delivered in the five period could be questioned. Even so, having regard to the amount of housing proposed (up to 424 units), the mix of market (65%) and affordable housing (35%) and the shortfall of affordable housing supply across the District, I consider the housing benefits may be afforded "very substantial weight".

5.15 Provided there is a legal obligation in place to ensure delivery of the 35% requirement for affordable housing (as set out under Policy AFH1 of the Affordable Housing Delivery Plan) this would be a very substantial benefit in favour of approving the scheme.

Provision of a SANG

5.16 Within the submitted Planning Statement **(CD2/24)** the version of the SANG advanced in the planning application is set out. At that stage, the SANG offered was of 'strategic' scale, it was larger in area and its capacity was greater. Post refusal and in light of the 13 July 2023 NE comments (**CD12/1**), the Appellants are seeking to adjust the scheme. The SANG is now smaller and its capacity is greatly reduced. The detail of this is set out at paragraph 7.2.71 of the ES addendum (**CD1/14**). The changes are not minor and justify repeating here:

	Application Stage	**Amendments at Appeal**
Size of SANG	18.1 ha	13.2 ha
Capacity of SANG people	2036 people	1125 people
Capacity of SANG dwellings	942 dwellings	468 dwellings

5.17 Of the 468 dwelling capacity that remains it is assumed that up to 424 will be 'ringfenced' for the Appeal Scheme. The residual amount is 40 dwellings additional capacity that otherwise acceptable development might seek to rely upon within a Habitats Regulation Assessment. Whether one is considering that part of the SANG which is proposed to mitigate the effect of the appeal scheme (the 424 houses) or an additional 40 homes which may or may not be approved at a later date, the SANG should attract neutral weight in the planning balance.

5.18 The SANG is mitigation to avoid an adverse impact to the SPA. This is the case whether it is provided for the dwellings at the appeal site or any other dwellings.

5.19 This mitigation is to off-set the potential of development to have an adverse effect upon the integrity of a European Site Ashdown Forest SPA, either individually or in combination with other plans and projects.

5.20 The qualifying features underpinning the Ashdown Forest SPA designation is the concentration of Dartford warbler and European nightjar. The conservation objectives for the SPA can be summarised as ensuring that the integrity of the site is maintained or restored as appropriate so that it continues to support the population and distribution of its qualifying features.

5.21 NE's supplementary advice on conserving and restoring site features for the Ashdown Forest SPA (Planning Practice Guide (PPG) Paragraph: 002 Reference ID: 65-002-20190722) identifies recreational disturbance as one of the principal threats to ground nesting birds. Research and assessment undertaken by the Council supports this by demonstrating that increased recreation can result in damage to the bird's habitat through trampling and erosion. Moreover, the presence of people can disturb ground nesting birds during their breeding season (Feb - Aug). Dog walking can be particularly problematic in this regard, especially if dogs are let off their lead.

5.22 The Appeal Scheme would facilitate a permanent increase in the number of people living within a short drive of the SPA. The Ashdown Forest is an attractive semi-natural area which is close to the application site. It is somewhere future residents of the home(s) proposed would likely wish to visit for recreation. Evidence in the form of visitor surveys carried out for the Council demonstrates that residents living within 7km of the Ashdown Forest are likely to visit it. This would provide a pathway of effect for recreational disturbance and that conclusion is supported by NE in their 13 July 2023 letter (**CD12/1**).

5.23 For developments where there is no scope to provide on-site mitigation for the impacts on the SPA, it is necessary to secure a financial contribution towards Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) in line with the tariffs in the Council's Ashdown Forest Mitigation Zone Background Paper. This is an approach supported by Natural England (NE) copy at **CD12/1**.

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

5.25 The Appellant's Planning Statement **(CD2/24)** specifically highlights as one of the key benefits of the scheme the provision of a SANG with greater capacity or headroom

(see for example 4.38, *ibid*) but the scale of this has now dramatically reduced due to concerns about damage from over use.

5.26 Having regard to the above I do not consider the additional headroom capacity in the proposed SANG (whether as originally claimed or as is now proposed) as providing a material benefit. Whether or not this SANG is serving the Appeal Scheme alone or the appeal site together with other sites, it remains mitigation to avoid an adverse impact to the integrity of the SPA. It is neutral in the planning balance.

5.27 I also note the provisions of regulation 122 Community Infrastructure Levy Regulations 2010 which make it unlawful for a planning obligation to constitute a reason for granting planning permission unless it is (a) necessary to make the development acceptable in planning terms, (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. As such, I consider that additional SANG capacity could not weigh in favour of the Appeal Scheme in any event.

5.28 Further, the Appellant has not provided any evidence as to what development it claims would be 'unlocked' by the provision of additional SANG. Nor has the Appellant presented any evidence that existing SANGs are at capacity.

Ecological enhancements and BNG in excess of 10%

5.29 The environmental benefits and biodiversity net gain resulting from the Appeal Scheme can effectively be separated into two constituent parts: (i) those directly related to the developable area as an integral part of the 424 dwellings; and (ii) those arising from the provision of SANG.

5.30 With regard to (i) informal open space, SUDs basins with associated marginal planting, swales, structural tree planting, thicket planting, LEAP and vegetated gardens are nothing over and beyond the benefits that would be secured from any development of this size in any location. With regard to (ii) there will be biodiversity net gains inevitably from modified grassland to provide the enhanced habitats and recreational environment necessary for a suitable SANG. However, the provision of a SANG is a mitigation measure to offset the impact on the Ashdown Forest SPA. The detrimental impact that would arise from the need to provide the SANG route in the Ancient Woodland and the protective buffer irreplaceable habitat is a major issue between the parties. It affects the overall planning balance. The Biodiversity Net Gain calculations

do not factor in the loss and deterioration that would occur to the Ancient Woodland.. I therefore give this benefit no weight.

5.31 I note that since the application was refused and appeal lodged, DEFRA has confirmed that the initial list of irreplaceable habitats for BNG purposes will broadly mirror the list of examples already within the NPPF. This will be followed by a consultation in 2024, however, for BNG purposes, the 10% net gain requirement is not applied to irreplaceable habitats, as they are so valuable, they cannot be easily recreated. The DEFRA guide states "Irreplaceable habitats must still be recorded in the biodiversity metric, but any impacts to these habitats will flag as unacceptable and requiring bespoke compensation to be agreed with the planning authority. If there are no impacts, enhancement of irreplaceable habitats can contribute to towards a developments BNG requirement". This would appear to be at odds with the BNG Assessment, in particular 5.5 – 5.8 of **CD2/86** As such, the weight to be afforded to this claimed benefit has to be questioned.

Appropriate landscaping strategy throughout the site and proposed SANG;

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

5.33 With regard to the provision of the SANG and by virtue of the impacts arising from its deterioration of Ancient Woodland, I give this alleged benefit no weight and indeed consider it as a harm in relation to the direct impact, deterioration and loss of irreplaceable habitats. As explained, I there is a likelihood that the Appeal Scheme will also increase recreational pressure on the Ancient Woodland.

Job opportunities and increased economic activity.

5.34 It is acknowledged that during construction there are the opportunities for employment but these are only temporary and there is no guarantee that these jobs will be available to local communities. Wealden has no policy basis for requiring that a proportion of the jobs generated by the construction phase be set aside for local labour, or that a certain number of apprenticeships be provided. Having regard to this I consider that the weight to be afforded to job creation must take account of the fact that there is no direct correlation that these jobs will be available to local residents and the fact that

the construction jobs are only temporary. Furthermore, the economic benefits derived from the appeal proposal would be forthcoming from any development of this scale. I therefore give this benefit limited weight in favour of the proposal.

Increased local expenditure to support local services

5.35 Uckfield is a District Centre which is an accessible settlement by road and public transport containing a range of shops, employment opportunities and facilities including secondary school. Uckfield is not reliant upon other centres within the District to meet day to day needs, but it does require support from other secondary (East Grinstead, Lewes and Haywards Heath) and primary centres (Tunbridge Wells/Tonbridge and Eastbourne), all of which are outside the District. As a District settlement Uckfield has a wide draw of visitors from the rural hinterland to use the centre and for employment. The railway station is a key component of that draw.

5.36 Appendix C of the Settlement Hierarchy Background Paper January 2019 (**CD6/21**) states that:

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

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

attracts a reasonable number of workers from elsewhere in the District and beyond including Crowborough, Heathfield and Brighton and Hove."

5.37 Having regard to the above, I consider that the argument advanced by the Appellant relating to the level of benefits to Uckfield arising from increased local expenditure to sustain and support local services in the town is very over-rated. Indeed, the Appellants Economic Benefits Statement concedes at paragraph 2.15 (**CD2/26**) that *"household expenditure will be spent within the local area* ***and beyond****."* (my emphasis). I think reference to beyond the local area is in recognition that the site as has immediate access to the A22 and that incoming residents will have ease of access out onto the main spine road through the District. There is nothing to stop them getting to other centres and settlements. I am not suggesting here would be no benefit on this issue, but the benefit to Uckfield is in my view overstated and I afford this benefit limited weight in the balance.

Open amenity space (excluding SANGS)

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

5.39 I am of the opinion that no weight should be given to this benefit as it is essentially mitigation directly related to the development and serves the specific needs of the development. This is in accordance with the recent appeal decision in the South of the District (Land at Mornings Mill Farm (**CD4/21** paragraph 51) whereby the Inspector in considering the benefits of public open space was of the view that *"such commitments are to be expected of a scheme of the scale proposed and they thus represent neutral factors".*

THE HARM

5.40 To complete the balancing exercise, I will address the adverse impacts arising from the development proposals as already set out earlier in my Proof of evidence and the Proofs of evidence by Mrs Heather Hall (**CD1/21**), David Massheder (**CD1/47**), Mr Roger New (**CD1/22**) and Gabreille Graham (**CD1/44**).

Impact on Ancient Woodland

5.41 The evidence of Gabreille Graham and David Massheder will set out the full extent of the direct and indirect impacts which will lead to loss and deterioration of Ancient Woodland. Paragraph 180(c) of the NPPF is clear that development resulting in the loss or deterioration of irreplaceable habitat (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. I have already commented that the types of project that might qualify as wholly exceptional reasons. These are not applicable to the Appeal Scheme.

5.42 In the event that the Inspector considers that the tilted balance does apply then permission should still be refused as the adverse impacts of the proposals on Ancient Woodland and Veteran Tree significantly and demonstrably outweigh the benefits.

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

Suitability of Location and Accessibility

5.44 ESCC's position (which is adopted by the Council) remains that the site is dependent on Rocks Road and Church Street for sustainable connectivity between the site and important town centre and other facilities; those links currently provide very poorly for its necessary use as a major sustainable transport corridor serving the site and that the Appellant's proposals are not sufficient to overcome those deficiencies.

5.45 The Appeal Scheme does not propose any community facilities or employment on site. The reality is that residents wanting to access day to day facilities will be highly likely to do so by car.

5.46 The importance of locational sustainability runs right through the NPPF. It is obviously a key part of paragraph 105 which makes the point that it helps 'reduce congestion and emissions, and improve air quality and public health'. I further note that it is relevant to each strand of sustainability in paragraph 8 NPPF. It relates to the

economic objective because it concerns ensuring 'sufficient land of the right types is available in the right places', it relates to the social objective because it concerns 'accessible services' which 'support communities' health, social and cultural well-being'. It also relates to the environmental objective in terms of the mitigation of climate change and the movement to a low carbon economy.

5.47 I give the unsustainable location of the Appeal Site very significant weight in the planning balance against the scheme.

Access Not Suitable and Safe for All Users

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

5.49 ESCC Highways have concerns regarding the proposed design of the site access and the junction with the A22. There also safety issues with the pedestrian and cycle access point from Chicory Cottage, onto Rocks Road (at the junction with Snatts Road). .

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

Impact on Local Highway Network and Uckfield Town Centre

5.51 Paragraph 110 (d) seeks to ensure that any significant impacts from the development on the transport network (in terms of capacity and congestion) or on highways safety can be cost effectively mitigated to an acceptable degree.

5.52 There would be an impact on the safe and efficient operation of junctions within the town centre that would need mitigating and such a scheme would need to cover a more extensive area within the town centre. The Appellants and the ESCC have reached agreement over the costs of implementation of such an area-wide scheme and appropriate financial contributions towards the introduction and on-going maintenance of that system, have been agreed with the Appellant. Providing this is included with the s106 agreement and the necessary improvements are implemented

prior to any occupation of the Appeal Scheme, then the harm arising from this aspect of the development would be neutral. However, if occupation of the development is permitted prior to completion of these works, then the harm would be significant.

Impact upon designated and non designated Heritage Assets

5.53 The harm to heritage assets has already been considered and not found to be outweighed by the public benefits. The failure to preserve the setting of listed buildings is a matter of considerable weight and importance and counts against the scheme. The proposal would also harm various non-designated heritage assets. The introduction of an extensive major residential estate would harmfully intensify built development in this semi-rural area which forms part of the setting to designated and non-designated heritage assets. It would erode the woodland in its parkland setting, causing permanent harm to the local environment, conflicting with the NPPF's objectives of promoting good design and ensuring that development respects its context.

THE BALANCED APPROACH TO DETERMINATION

5.54 In this section I set out the various issues relating to the Appeal Scheme set against the three strands of sustainability as set out in the NPPF – economic, social and environmental.

5.55 With regard to the matters which weigh in favour of the appeal proposal:

(i) **Housing Land Supply:** The proposed development would bring substantial benefits in terms of contributions to housing supply and the provision of market, and custom and self build housing. In the context of the Council's shortfall in housing land supply and the Government imperative to boost the supply of housing. This carries **significant social weight** and is a **positive impact** in the balancing exercise;

(ii) **Affordable Housing:** The provision of affordable housing is also of **very significant social weight** towards meeting affordable housing needs within the district and therefore again is a **positive impact** in the balancing exercise;

(iii) **Construction Jobs:** There would be some contribution to economic growth through the provision of construction jobs which can have acknowledged economic benefits along the supply chain. At a national level the Government

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

(iv) **Improved Local Spending:** With regard to the weight afforded to the economic benefits of supporting the facilities and services within Uckfield Town Centre, it is agreed that the proposals will increase the population in the area with an associated spending profile. At a local level, the Corporate Strategy includes creating a strong local economy which this would assist with. This is not unique as any similar development site has the potential to generate an increased workforce/trip generation with associated spend. Furthermore, for an established District Centre these benefits are not likely to make much difference to the viability of the services within the town. I afford these benefits **limited economic weight** and **neutral impact** in the balancing exercise.

(v) **Creation of Open Amenity Areas and Public Open Space**: The provision of open amenity space, play areas and landscaping are positive social and environmental benefits but they are directly and proportionately related to the quantum of development proposed in order to meet the spatial needs of the development, which would in any case be expected on any new residential development. I afford these **social and environmental benefits no weight** and consider this to be a **neutral impact** in the balancing exercise.

(vi) **Bio-Diversity and Ecological Enhancements:** Biodiversity and ecological enhancements within the development, excluding SANG, are no different to the those secured on any new residential development. The biodiversity and ecological enhancements that are proposed within the SANG needs to be assessed against the loss and deterioration of the Ancient Woodland and impact on the Veteran Trees. I afford these **environmental benefits no weight** in the balancing exercise.

(vii) **Provision of SANGS**: The provision of the SANGS is **mitigation** to prevent unlawful impacts upon the Ashdown Forest SPA and therefore in meeting the **environmental role is of no weight** and is **neutral in the planning balance**.

(viii) **Provision of extra SANG capacity**: I do not see this as a benefit of the scheme as there is no evidence that otherwise acceptable development is being thwarted due to SANG capacity restrictions. In any event, SANG is mitigation and I afford it **no weight** and **its neutral in the planning balance**.

5.56 Turning to the opposite side of the balance:

(i) **Ancient Woodland and Veteran Tree:** The Appeal Scheme would result in the loss and deterioration of Ancient Woodland and would have direct impact on Veteran Trees. This carries **very significant environmental weight against** the scheme and is a **negative impact in the planning balance**;

(ii) **Location and Accessibility**: The Appeal Scheme would not encourage the use of sustainable travel modes by residents and those accessing other site uses. The appeal site is in a location which would be reliant on the use of private cars. This is afforded both **very significant economic social and environmental weight against** the proposal and is a **negative impact in the planning balance**;

(iii) **Safe Means of Access:** The Appeal Scheme is unable to demonstrate that it can achieve a safe means of access for all users of the junction, particularly vulnerable users. This carries **very significant social weight against** the proposal and is a **negative impact in the planning balance**;

(iv) **Impact on Local Highway and Town Centre**: The Appeal Scheme would impact on the safe and efficient operation of junctions within the town centre that would need mitigating. If there is no restriction on the occupation of any part of the development until the Town Centre works have been completed then this would carry **significant environmental weight against** the proposal and is a **negative impact in the planning balance**.

(v) **Impact on Heritage Assets :** The Appeal Scheme will erode the parkland setting to heritage assets. It will result in the total loss of a non designated heritage asset. This carries **significant weight** and is a **negative social and environmental impact in the planning balance**.

5.57 Overall, I consider that the proposed development does not achieve the three objectives of sustainable development set out in paragraph 8 of the NPPF.

5.58 In summary, the balancing of competing interests is judgement based. The benefits which would result from the Appeal Scheme in particular the housing would be substantial and I have given significant weight in the balancing decision. However, despite the acknowledged benefits of the Appeal Scheme, the disbenefits either individually or in combination, are of greater weight.

5.59 I have long known the Downlands site. I attended the previous Inquiry (as was case officer for one of the other conjoined sites at Bird in Eye north). I distinctly recall the day long site inspection with Inspector Dobson and others. Since then, I have often pondered the possibility of development here. The simple truth is that the site is not in a sustainable location having regard to the inability to meet the needs for sustainable modes of transport to reduce reliance on cars and the inability to provide a safe access for all users. There are major and seemingly unresolvable effects on irreplaceable habitat and an adverse impact on heritage assets and a total loss of non-designated heritage asset. The Appeal Scheme will result in the loss and deterioration of Ancient Woodland and Veteran Trees. To my mind, the amalgamation of Chicory Cottage as an expansion of the Downlands site has added to, not resolved, constraints. Without the ability to overcome the very significant harms identified above and the conflict with the development plan (even allowing for the reduced weight to the conflict with Policy GD2 and DC17 as a result of the position of the Council's housing land supply) and having regard to the assessment above, I consider that the adverse impacts of this proposal significantly and demonstrably outweigh the benefits of the proposal and that in the context of the NPPF Paragraph 11, the presumption in favour of sustainable development is not applicable and therefore the appeal should be refused.

6 SUMMARY AND CONCLUSION

6.1 The starting point for determining planning applications is the Development Plan. Section 38(6) of the Town and Country Planning Act (TCPA) 1990 provides that planning applications must be determined in accordance with the Development Plan unless other material considerations indicate otherwise.

6.2 Framework Paragraph 11 c) provides that there is a policy presumption in favour of development that accords with an up-to-date Development Plan. In this respect, the Framework thus makes clear that it does not change the statutory position which makes the development plan the starting point in any determination. This application is clearly not in accordance with the development plan. It breaches a number of important policies: Policy GD2, DC17, EN1, EN2, EN12, EN13, TR3, TR13, CS1 of the WLP and Strategic Planning Objectives SPO3, SPO7, SPO12, SPO13 and SPO15 and Policies WCS6, WCS7, WCS12 and WCS14 of the CSLP.

6.3 It is acknowledged that, by reason of the failure of the LPA to demonstrate a 5-year supply of deliverable housing land, those Local Plan policies relating to housing need and supply are deemed to be out of date (Saved Policies GD2 (Development outside the development boundaries) and DC17 (Housing development)). This brings paragraph 11(d) of the NPPF into play.

6.4 Limb (i) of Paragraph 11 d) refers to policies in the Framework that protect areas or assets as defined in footnote 7. These include the Framework's policies relating irreplaceable habitats. Decision makers must then look at paragraph 180 of the Framework which is clear that :

c) 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 (emphasis added).

6.5 Paragraph 180(c) has its own footnote, number 63, which identifies the type of project that might present wholly exceptional reasons. None are in play in this case.

6.6 It is beyond any doubt the scheme when viewed as a whole will lead to loss or deterioration of the Ancient Woodland. As such, the scheme cannot comply with paragraph 180 (c) NPPF it is therefore considered that the proposals should be refused in accordance with NPPF Paragraph 11 part d) limb i) and the tilted balance in favour of sustainable development does not apply (Paragraph 11 d) ii).

6.7 Turning to the tilted balance under paragraph 11(d)(ii) it is clear that the adverse impacts of granting planning permission for the Appeal Scheme would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.

6.8 The delivery of 424 houses, open market, affordable and other forms of housing need (custom and self build) are afforded significant weight when viewed against the five year housing land supply shortfall. I further consider that the provision of 35% affordable housing should attract very significant weight (so long as this is secured through a legal agreement). There are other more limited benefits which I have addressed above.

6.9 The harms which the Appeal Scheme would bring significantly and demonstrably outweigh those benefits whether considered individually or as a whole.

- First, the location of the site is wholly unsustainable, an issue which has attracted objection from the statutory highway authority. This is contrary to local plan policies and also key paragraphs of the NPPF EN1, EN2, TR3 and SPO7 and WCS14 and paragraphs 104, 105 and 8 NPPF. As set out above, this is an issue which in and of itself significantly and demonstrably outweighs the benefits of the proposal.

- Second, the appeal proposal has failed to provide safe access for all users. This clearly breaches local policy TR3 and 110(b) of the NPPF. Again, this is an issue which in and of itself significantly and demonstrably outweighs the benefits of the proposal.

- Third, the appeal proposal will lead to harm to designated and non-designated heritage assets. This breaches local policy EN1 and EN25 and paragraphs 199, 200, 202 and 203 of the NPPF. The harm to the significance of designated heritage assets is an issue which should be given considerable importance and weight.

Again, this is an issue which in and of itself significantly and demonstrably outweighs the benefits of the proposal.

- Fourth, the adverse impact of the Appeal Proposal upon ancient woodland which is an irreplaceable habitat breaches local policy EN12, EN13, WCS14 and 180 of the NPPF]. Again, this is an issue which in and of itself significantly and demonstrably outweighs the benefits of the appeal proposal.

6.10 Overall, therefore, this Appeal Scheme leads to a breach of the development plan when considered as a whole and material considerations do not indicate that a decision should be taken other than in accordance with the development plan. As such, it is my opinion that permission should be refused.