

The Inspector
c/o Robert Wordsworth
The Planning Inspectorate (England)
Temple Quay House,
2 The Square,
Temple Quay, Bristol, BS1 6PN

10 Throgmorton Avenue
London
EC2N 2DL

townlegal.com

T: 0203 893 0370
D: 07909 964015
E: mary.cook@townlegal.com

By email

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Dear Inspector,

Land at Bird in Eye Farm – Consultation Response to Application WD/2024/1799/MAO and Written Representations to Appeal APP/C1435/W/24/3356658

1. Introduction

- 1.1 This letter has been prepared on behalf of Kassie Smith KC (the “**Client**”) and forms her consultation response and written representations in respect of a planning appeal, reference APP/C1435/W/24/3356658, (the “**Appeal**”) lodged by Croudace Homes Ltd (the “**Appellant**”) for their proposed development of Bird In Eye Farm, Uckfield, (the “**Site**”) for residential development.
- 1.2 As you will be aware this Appeal follows submission of an outline planning application, reference WD/2024/1799/MAO, (the “**Application**”) submitted to Wealden District Council (the “**Council**”) in August 2024 for a scheme comprising 190 new homes with associated SANG and access from the B2102 Bird In Eye Hill (the “**Appeal Scheme**”). This submission followed a previous planning application, reference WD/2021/2198/MAO, (the “**First Application**”) made by the Appellant for a larger scheme comprising 290 new homes with associated SANG and new access with the B2102 Bird In Eye Hill (the “**First Appeal Scheme**”) which was submitted in 2021 and appealed, for non-determination by the Council, in 2022.
- 1.3 That planning appeal, reference APP/C1435/W/22/3307820, (the “**First Appeal**”) was heard by the Planning Inspectorate (“**PINS**”) in September 2023 and was dismissed on a number of grounds, principally relating to highway safety, flood risk, harm to ancient woodland and heritage impacts.
- 1.4 The current Appeal has arisen because the Council declined to determine the Application on the grounds that it was not materially different to the scheme subject to the First Appeal and was submitted within two years of the First Appeal decision, citing Section 70A of the Town and Country Planning Act 1990 (the “**1990 Act**”). The Application was not validated or consulted upon, and our client only became aware of the application after the appeal was lodged whereupon she contacted the case officer at PINS, Mr Robert Wordsworth who confirmed that she could have until 10th

Partners: Paul Arnett, Elizabeth Christie, Mary Cook, Duncan Field, Clare Fielding, Michael Gallimore, Raj Gupta, Martyn Jarvis, Meeta Kaur, Victoria McKeegan, Simon Ricketts, Louise Samuel, Spencer Tewis-Allen

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February to make her representations on the appeal. We confirm that she will attend the case management conference and the public inquiry.

- 1.5 This consultation response and written representation considers the Application and Appeal, its differences compared to the First Appeal scheme particularly, but not only with regard to, the main issues identified by the Inspector for the First Appeal, and identifies aspects that, in our view lead to the conclusion that the Appeal Scheme causes unacceptable effects such that the Inspector should dismiss the Appeal.
- 1.6 That conclusion is centred upon the fact that the Appeal Scheme is contrary to the development plan. We agree that National Planning Policy Framework (NPPF) 2024 paragraph 11d) is engaged because of the absence of a 5 year Housing Land Supply (HLS).
- 1.7 However, there are nevertheless two strong reasons for refusing development as per footnote 7 of the NPPF 2024, namely:
 - (a) Heritage harm is not outweighed by the scheme benefits; and
 - (b) There is an unacceptable impact on irreplaceable Ancient Woodland (AW).
- 1.8 In addition, as explained in more detail below, the highway proposals are unsafe and will cause significant permanent harm to the rural setting of Uckfield. Moreover, both the revised site layout & off-site flood risk are likely to lead to a less attractive and less accessible form of development for non-vehicular traffic. We question the Appellant's dismissal of so many small sites in a bid to secure compliance with the sequential test. Notwithstanding the fact that the proposed access design is unsafe, we also note the County Council has identified unregistered land that is required to deliver the access proposals in this location, which casts doubt over the deliverability of the scheme.
- 1.9 In our view, when weighing the harms that would be caused by the Appeal Scheme in the planning balance, against the admitted benefits new housing would bring, we conclude that the adverse impacts significantly and demonstrably outweigh the benefits.
- 1.10 Each of the main issues that lead us to this conclusion and recommendation to dismiss the Appeal are discussed in detail in the following sections.

2. Highways

- 2.1 The First Appeal considered highway safety as a main issue with the Inspector finding "*an unacceptable impact on highway safety as a result of the proposal*"¹. This conclusion arose from the following concerns:
 - (a) Manoeuvres of 12m rigid vehicles associated with the existing industrial use at Bird in Eye Farm needing to straddle both lanes at the proposed site access when turning left in, right in and right out of the site presenting a highway safety issue;
 - (b) A lack of assessment for heavy goods vehicles using the proposed access junction which would amount to more than infrequent refuse collection movements; and
 - (c) Inadequate provision for cyclists turning right into the proposed development, compounded by the movements of heavy goods vehicles using the right turn lane presenting a highway safety concern.
- 2.2 The proposed site access for the First Appeal took the form of a priority junction with ghost right turn, shown on Drawing 5330/021 Rev P, included at **Annex 1** to this report.

¹ APP/C1435/W/22/3307820 Appeal Decision (12 October 2023), para 39

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- 2.3 The Appeal Scheme now includes a re-worked access design in the form of a 36m ICD 3-arm roundabout, shown on Drawing 23138/001 Rev A, included at **Annex 2** this this report.

Form of Junction

- 2.4 The Statement of Common Ground between the Appellant and East Sussex County Council (the “**County Council**”) for the First Appeal, prepared by Bellamy Roberts, is clear that the “*form of site access junction*”² from the Site to the B2102 Bird In Eye Hill was agreed between the parties at the time of the inquiry opening for the First Appeal, and it took the form of a priority junction with ghost right turn into the site.
- 2.5 The Appeal Scheme now provides a lower quantum of development yet proposes a completely re-worked access design in the form of 3-arm roundabout junction with 36m Inscribed Circle Diameter (ICD), providing significant additional capacity (discussed at Section 8 of the Transport Assessment prepared by Milestone Transport Planning) compared to the previous priority junction with ghost right turn. The junction design therefore departs from the form previously agreed with the County Council.
- 2.6 The results shown at Table 8.1 of the submitted Transport Assessment demonstrate that the worst-case ratio of flow to capacity arising in the 2029 with development scenario i.e. once the scheme is built out and operational is experienced between 08:00 and 09:00 on the B2102 Bird In Eye Hill (West) arm of the roundabout which experiences a ratio of flow to capacity of 0.27. Expressed as a percentage where 100% represents theoretical capacity and 85% represents optimum capacity, the worst-case recorded for the proposed junction represents just 27% of capacity available. In short, the proposed junction design provides far more capacity than is required to serve both the existing traffic flows, future traffic flows including growth, the existing commercial development, the existing dwellings and a development of 190 new homes.
- 2.7 The Transport Assessment acknowledges this stating “*the roundabout junction does not prejudice the potential for land to the north of Bird in the Eye Hill to come forward for development in the future by others*”³. However, it is not the function of this Appeal scheme to provide future capacity for an unrelated scheme that may or may not come forward in the future. Provision of an access shown to work with little to no queuing in the peak hours is likely to encourage private car use from the Appeal Scheme and to undermine the package of sustainable transport measures set out within the Framework Travel Plan.
- 2.8 That is not to say a smaller roundabout with reduced capacity would work. It would not because of the need to accommodate *both* the residential traffic *and* the HGVs associated with the retained commercial operation. This is a topic which was considered by the Inspector at the First Appeal. It is the manoeuvres of these larger heavy goods vehicles that appear to be dictating the need for such a large roundabout, which is not in keeping with the characteristics of the highway network or the location. Moreover, as we explain below even with the 36m ICD, the proposals have not been shown to be adequate or safe.

Stage 1 Road Safety Audit

- 2.9 No Stage 1 Road Safety Audit for the proposed junction arrangement is included with the Application or the Appeal documentation available on the Council’s website.

² APP/C1435/W/22/3307820 Highways Statement of Common Ground (19 June 2023), para 5.1, p. 7

³ WD/2024/1799/MAO Transport Assessment (July 2024), para 1.10, p. 2

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- 2.10 The County Council's Road Safety Audit Policy for Developments (2017) is clear that all major planning applications that include alterations to an existing highway and/or formation of a new access required a Stage 1 Road Safety Audit *"when submitting a 'major' application"*⁴. This was a significant omission on the part of the Appellant which is particularly surprising given the history.
- 2.11 We note from the Wealden District Council (the "District Council") Statement of Case (SoC) available in respect of the Appeal that *"the required and necessary RSA was only undertaken on Monday 13 January 2025. The report was submitted to the highway authority on 20 January"*⁵. We also note that *"the RSA considered different, later, revisions to the proposed scheme drawings than were part of the submitted application or the appeal submission. The junction design drawing considered in the RSA was Drawing No. 23138/001 Revision B which differs from the submitted Revision A"*⁶.
- 2.12 We contacted the Appellants planning consultant on 28 January 2025 requesting a copy of the Stage 1 RSA and Drawing No. 23138/001 Revision B which were supplied to us by Milestone Transport Planning and are included in **Annex 3**.
- 2.13 The Stage 1 RSA undertaken is limited at just 5 pages, with only two pages of information regarding the actual audit undertaken. Judging from the RSA and the Designer's Response, the Brief to the auditor explained the extensive re-working of the proposed junction design, and the departure from the form of junction agreed previously with the County Council, to have arisen in response to the Inspector's reasoned conclusions of the First Appeal which related to highway safety concerns and particularly unsafe manoeuvres for heavy good vehicles and for cyclists. Thus, the Appellant has abandoned the previously agreed form of access junction in tandem with reducing the quantum of development. To make this application begin to work in terms of access the Applicant is driven to promoting a significant urban roundabout. We discuss the wider implications of this later in these representations.

Junction Design

- 2.14 The proposed junction design included in the Application and the Appeal is shown on Drawing 23138/001 Rev A, included at Appendix 7 to the Transport Assessment and Drawing 23138/001 Rev B included within the Stage 1 RSA. The key difference between the two drawings appears to be inclusion of the extent of adoptable highway proposed and the extent of public highway boundary in Drawing 23138/001 Rev B.
- 2.15 We have reviewed the proposed design and make the following observations:
- (a) There is a clear lack of deflection for the west to east movement from Bird In Eye Hill west to Bird In Eye Hill East raising a highway safety concern regarding the risk of vehicles failing to reduce speeds on the approach. This seems to be the result of a narrow highway verge and insufficient highway land to allow for proper deflection. In other words, drivers travelling east and west are less likely to be aware of the presence of the roundabout, and to slow down on the approach to it, especially in the dark. The Stage 1 RSA identifies this problem stating that *"Eastbound or westbound drivers on Framfield Road will have a clear view ahead and may, particularly at night, overshoot the junction"*⁷. However, it is most surprising that the RSA concludes that this issue can be dealt with later at the detailed design

⁴ ESCC Road Safety Audit Policy for Developments (October 2017), para 2, p. 3

⁵ APP/C1435/W/24/3356658 WDC SoC, para 5.7, p. 13

⁶ APP/C1435/W/24/3356658 WDC SoC, para 5.14, pp. 14-15

⁷ Gateway RSE Stage 1 RSA (January 2025), para 2.3, p. 4

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stage by inclusion of signage and road markings; this is no substitute for adequate deflection. We know currently that traffic in both directions is travelling in excess of 30 mph. We do not know if the speed limit will be reduced, and the County Council note in their response that such a speed limit reduction would not be supported. The designer's response is inadequate in our view and relies upon adequate deflection which is **not** provided.

- (b) There appears to be mixed provision for cyclists entering the roundabout from the east in carriageway, before exiting the circulatory carriageway on the eastern side and linking in to several convoluted informal crossings points with tactile paving to access the development via a shared footway/cycleway running along the western side of the access road. There is no demonstration that cycle provision for the proposed scheme and access junction is compliant with LTN 1/20, which is a Department for Transport (DfT) national guidance document that details standards expected of new cycle infrastructure. The Stage1 RSA identifies this issue identifying a risk of pedestrians/ cyclists "*inadvertently entering the carriageway*" and "*being struck by a passing vehicle*" ⁸. The designer's response is wholly inadequate. This issue needs to be addressed now.
- (c) The roundabout appears to rely on a change in speed limit to 30mph which is outside the control of the planning system and would require separate approval from both the County Council and the Police. No information is included with the Application or Appeal documentation to demonstrate that the proposed junction design works at alternative speed limits i.e. if the proposed speed limit change is not approved.
- (d) The junction design does not appear to offer street lighting as part of the proposals, and it is unclear how a street lighting scheme can be incorporated both in terms of land within the Appellants control and/or public highway and in terms of the potential impact that this street lighting would have on the heritage assets including the setting of the Grade II Listed Oast House. The Stage 1 RSA identifies the lack of street lighting and raises concern regarding a "*risk of collisions particularly at night*" ⁹. The designer's response accepts such a scheme is necessary, but no design is forthcoming. This should be addressed now so all the consequential environmental impacts can be assessed.
- (e) There appear to be significant earthworks required to deliver the proposed junction design, with embankments shown on some drawings. However, no detailed information on the required earthworks is provided within the Application or Appeal material and no detailed information on the levels/ carriageway gradients is provided.
- (f) There appears to be a significant retaining wall structure needed on the eastern side of the proposed roundabout in order to deliver the proposed junction design. However, there is little information in the Application or Appeal documentation, none that shows the structure in detail or that considers the impact of the structure, or its construction, on relevant ecology, the adjacent woodland or the setting of the Grade II Listed Oast House.
- (g) The swept path drawings included at Appendices 13 and 14 of the Transport Assessment show over-running of the centre line on a number of manoeuvres undertaken by heavy goods vehicles accessing the development. This was a main issue identified by the Inspector for the First Appeal, albeit for a different form of junction. Such over-running occurs in several locations and particularly at the access junction to the north-western units,

⁸ Gateway RSE Stage 1 RSA (January 2025), para 2.4, p. 5

⁹ Gateway RSE Stage 1 RSA (January 2025), para 2.5, p. 5

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referenced in the Stage 1 RSA as leading to a “*risk of turning collisions and non-motorised user strikes*”¹⁰. In the context of the commercial traffic to the retained Bird in the Eye commercial estate, waste vehicles and deliveries to the north-western units this needs to be addressed for safety reasons. We disagree with the designer’s response which dismisses this issue due to the low volume of vehicles accessing the north western units and the fact that two cars can pass. An access that is utilised by vehicles other than private cars should be shown to work safely with the types of vehicles that will be using the access, in this case a car passing a refuse vehicle.

- 2.16 In our view, a number of highway safety concerns remain, and it cannot be concluded on the information presented for the Application or Appeal that the proposed junction arrangement is either suitable to serve a development of this quantum in this location or is safe for all road users.
- 2.17 For highway safety concerns to be overcome and for the Inspector to have confidence that the proposed access is suitable in terms of its location, form, capacity, safety and ability to serve all road users in line with the requirements of the key transport tests of the NPPF, it is our view that further work is required including agreement with the County Council. Access is required to be agreed at the Appeal stage and cannot be pushed to the detailed design stage. The Application subject to the Appeal is made in Outline with all matters reserved except access, meaning that access design should be demonstrated to be achievable, be safe and meet the transport tests of the NPPF, as part of the application.

3. Sustainable Location - Accessibility

- 3.1 When considering the location of the proposed development the Inspector for the First Appeal concluded that “*the development is in a suitable location in terms of accessibility as it would limit the need to travel and offer a genuine choice of transport modes*”¹¹ in line with paragraph 105 of the NPPF (2021). This conclusion was attributable to:
- (a) Good choice of services and facilities within Uckfield which is “*walkable*”¹² from the site, albeit not within “easy” walking distance;
 - (b) Provision of a direct pedestrian/cycle link from the north-west corner of the site onto the B2102 Bird in Eye Hill, which links into Framfield Road and leads to the town centre improving the walk between the site and Uckfield town centre, albeit noting that this walk “*would be particularly difficult, for example, for people laden with shopping, accompanied by children, or with mobility issues*”¹³; and
 - (c) The proposed footpath would link to a bus stop proposed to be upgraded as part of the First Appeal Scheme, meaning that whilst the walk to Uckfield would be difficult for many, the bus provided a suitable alternative mode of travel to and from Uckfield town centre and further afield.
- 3.2 The Appeal Scheme includes similar provision to the First Appeal Scheme for a footpath and cycle link leading west from the proposed development and connecting into Bird In Eye Hill, shown on Drawing 23138/004 Rev A, included at **Annex 4** to this note. The Appeal Scheme also includes the same proposed upgrade to the bus stop on the B2102.

¹⁰ Gateway RSE Stage 1 RSA (January 2025), para 2.2, p. 4

¹¹ APP/C1435/W/22/3307820 Appeal Decision (12 October 2023), para 52

¹² APP/C1435/W/22/3307820 Appeal Decision (12 October 2023), Para 49

¹³ APP/C1435/W/22/3307820 Appeal Decision (12 October 2023), Para 50

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3.3 However, there are some key differences between the First Appeal Scheme and the Appeal Scheme now considered including:

- (a) Significant change in the form of access proposed from B2102 Bird In Eye Hill which offers limited facilities for non-motorised users and brings the risk of encouraging car use through provision of additional road capacity; and
- (b) Removal of residential development on the western parcel of land in response to the unacceptable impact on the Grade II Listed Oast House (the “LB”).

3.4 Together, these changes affect the ability of people seeking to access the proposed development by active modes of travel.

Remoteness of Footpath

3.5 The proposed western footpath/cycle link to B2102 Bird In Eye Hill and onward to Uckfield town centre via Framfield Road no longer passes through a residential area because development of the western parcel has been removed. As such, the proposed footpath/ cycleway now routes across open green space. This change in setting is likely to have an impact on desirability of the route, particularly regarding a lack of natural surveillance arising from the loss of overlooking from residential (or other) properties and to personal security. This is particularly likely to be the case in hours of darkness, when pedestrians and cyclists would need to traverse a 338m route across open space that, whilst lit, offers no natural surveillance.

3.6 In short, the route which the Inspector considered provided a much needed connection to the bus stops on the B2102 Bird In Eye Hill has changed significantly in terms of its character and setting. We submit that a different conclusion on the suitability of this path as the sole means of pedestrian access to and from the development is warranted because in our view, the path is not safe and suitable for all users (a key transport test of the NPPF) and presents issues in terms of its remoteness and lack of natural surveillance, particularly during hours of darkness. We therefore dispute whether the proposed development is, in fact, in a sustainable location.

Gradient of Footpath

3.7 Gradients for the proposed western footway/ cycleway link are shown in the long section on Drawing 23138/004 Rev A (Annex 4) and show that the gradient of the proposed route would vary between 1:20 and 1:12. This section indicates that gradients of 1:12 will be experienced over lengths of some 50m or more along the route, relaxing to 1:20 and then increasing again.

3.8 Guidance on inclusive mobility prepared by the Department for Transport is clear that “*Generally, pedestrian environments should be level, which means that there should be no gradient in excess of 1 in 60. Effort should be made to ensure that the route is smooth, since even small dips or gaps in paving joints might present a hazard such as to people who use a stick or a crutch. If a level route is not feasible, then gradients should not exceed 1 in 20*”¹⁴.

3.9 The guidance does offer some flexibility over short distances, defined as “1000mm or less”,¹⁵ where the absolute maximum gradient advised is 1:12. The Transport Assessment provides no demonstration of how the gradients along the proposed footpath are acceptable, particularly for those with mobility impairments, pushchairs or carrying heavy shopping bags.

¹⁴ Inclusive Mobility: A Guide to Best Practice on Access to Pedestrian Transport Infrastructure (2021), p.29

¹⁵ Inclusive Mobility: A Guide to Best Practice on Access to Pedestrian Transport Infrastructure (2021), p.29

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- 3.10 There do not appear to be any rest places provided along the 338m length of the footpath leading between Bird In Eye Hill and the residential development area.
- 3.11 The gradients of this route, combined with its remoteness and lack of overlooking, raise a further significant concern regarding the sustainability/ accessibility of the Appeal Scheme.

Suitability of Site

- 3.12 Suitability of the site at the First Appeal was confined to questions of accessibility and policy conflict because the Site lies outside of the defined settlement boundary. The Application and its parameters now place an even larger percentage of the housing beyond a mile/20-minute walk of the town and services and facilities on offer and fundamentally changes the character of the proposed western footpath/ cycle path route which is no longer overlooked for large sections. Instead, it is a single winding path, surfaced and albeit lit and in the form of a shared footpath & cycleway route, through a sloping landscaped area accommodating various SUDS ponds. Put simply, the route is not one that is likely to be suitable for users with mobility impairments or with heavy shopping bags or pushchairs and is not likely to be appealing to all users, particularly in hours of darkness, given its secluded setting.

Active Travel England

- 3.13 There is no reference within the Application or Appeal documentation to the requirements of Active Travel England (ATE) who became a Statutory Consultee to all planning applications exceeding 150 residential units in June 2023. Unlike the First Application, this Application would have been referable to ATE had it been determined and it is unclear how the pedestrian and cycle provision provided meets ATE's requirements. ATE are clear that *"walking and wheeling routes must be accessible to all legitimate users and separated from motor vehicles and cyclists. There should be regular opportunities for sheltering and resting along the route (ideally every 50 metres or less)"*.
- 3.14 Furthermore, ATE state that *"in order to discourage crime and anti-social behaviour, footways and pavements should be well lit, have good visibility and should be overlooked by nearby buildings to create natural surveillance"* ¹⁶.
- 3.15 In our view, the proposed path does not satisfy these requirements.

4. **Flood Risk - offsite**

- 4.1 This route continues to pass - albeit offsite - through flood zones 2&3 which are prone to surface water flooding. This issue was raised at the First Appeal but not specifically addressed by the inspector in her decision letter.
- 4.2 Paragraph 181 of the latest NPPF continues to require that flood risk is not increased elsewhere. This Appeal offers only one pedestrian access point to Uckfield, indeed only one pedestrian access point out of the site, which is at risk of surface water flooding. Flooding regularly occurs in this location as our evidence in respect of the First Appeal, set out at Appendix A.4 pages 36-38 of the Rule 6 Proof of Evidence for the First Appeal, shows (an extract of which is included at **Annex 5**).
- 4.3 An up to date check on the long term risk assessment that Government provides shows that Framfield Road is at high risk of surface water flooding today. Plainly more residents would be exposed to the risks of surface water flooding where development on the appeal site is permitted. Such an occurrence would mean that residents could not access any local services other than by car and, even then, by going a long way round to gain access to Uckfield at times of surface water

¹⁶ [Pavements and footpaths | Active Travel England](#)

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flooding. Whilst we recognise that much of the policy guidance is focused on flood risk on a development site, it would undermine the policy approach to flood risk to simply ignore the fact that this development relies entirely for pedestrian and cycle access on a route known to flood at times of heavy rainfall.

- 4.4 Climate change means such rainfall events are set to rise, yet the developer, and for all we know the LLFA, continues to ignore this. More people will be exposed to this risk if the proposed development proceeds. Yet there is no recognition of this in the FRA. The exception test is not met. To suggest this is entirely the responsibility of the LLFA to manage would be inconsistent with NPPF paragraphs 178 a) and b). The inspector did not adjudicate on this last time because of the failure of the Appellant to pass the sequential test to which we now turn.

5. Flood Risk - onsite and the Sequential Test (ST)

- 5.1 Recognising that within the redline of the site there are areas of land prone to flooding and in accordance with the Council's preapplication advice, the Appellants have submitted a Sequential Test (ST) exercise. This exercise needs to be done objectively in accordance with the PPG. In conducting the ST exercise the consultants have adopted an approach which is not borne out of the PPG, but out of a methodology that was adopted by other consultants promoting a mixed-use scheme including a school, built community facilities and a school. This involves adopting an approach of looking at sites that are only a fixed percentage- 25% higher or lower- than the application site. In fact, the inspector in the Mead case did not accept that the approach to the sequential test was flexible enough in accordance with the PPG. The challenge to that decision failed in the High Court; see *Mead Realisations Ltd V The Secretary of State for LU,H&C & Anor* [2024] EWHC 279 (Admin). The Court of Appeal has dismissed the appeal at [2025] EWCA Civ 32.
- 5.2 We do not believe that the simple dismissal of smaller sites which are otherwise available and suitable for development (they do not need to be available to the Appellant but simply to developers generally) is consistent with the objectives of the NPPF or the guidance in the PPG at para 028. This describes reasonably available sites as sites in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. The PPG says reasonably available sites may include "*a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development*". This is a matter of planning judgement. Moreover, in the context of a housing development which has also to provide SANG, we see no reason to exclude sites because they fall outside plus or minus 25% of the size of the Appeal Site or the numbers of housing.
- 5.3 The ST assessment conducted by RPS is also based on a proposal of 180 homes rather than 190 proposed in the Appeal Scheme. Simply because this approach was advocated to an inspector in the Redrow Appeal – which was for a mixed-use development including a school of a larger scale - and who dismissed that appeal because of a failure to accept compliance with the ST does not elevate taking a 25% threshold as equating with the PPG. The fact is, there are smaller sites identified in the HELAA with and without planning permission, which have simply been set to one side and not examined further. Accordingly, we do not accept that the Appellants have demonstrated compliance with the ST.
- 5.4 Even on their own artificially inflexible approach there are four sites which could accommodate 150 homes or more which are sequentially preferable to this Site. In an effort to ensure they are not to be regarded as reasonably available; the Appellant's consultants simply apply a generic Litchfield study to suggest these sites will not be reasonably available without descending into any further site specifics. Once again, this rigid application of a study, not designed to be used in the manner RPS

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utilise it, and not even disclosed so it can be scrutinised, is not in accordance with the flexible approach required to support the application of the ST.

- 5.5 For these two reasons we invite the decision maker, on the basis of the current evidence, to conclude once again that the Appellant has failed to demonstrate compliance with the sequential test.

6. Impact on Rural Character & Visual Impact on Landscape

- 6.1 As referenced earlier in Section 2 of this response, the Proposed Access Arrangement for the Application and Appeal Scheme is shown on Drawing No. 23138/001 Rev A included at Appendix 7 of the Milestone Transport Planning Transport Assessment.
- 6.2 The proposed roundabout is a new large significant urban intervention in the landscape and significant engineering works are required to accommodate it. Our client is concerned that the wider impacts of this new urban infrastructure on the landscape and entrance into Uckfield are wholly negative and this should be a factor which weighs against the new development in the overall planning balance. We are concerned that the impact on the landscape will not be properly assessed by WDC simply because in the past they have not resolved to refuse development on this ground. Their failure to recognise how different and significant in engineering terms the proposed new access is will also hinder them in this respect.
- 6.3 The LVIA at 3.2 even fails to acknowledge the listed Oast House building within the identified farm buildings (which hardly fills one with confidence in CSA's assessment). The Council have also commissioned LUC to undertake assessment work to inform the emerging local plan and CSA reference the assessment of SHELAA sites 127/1410 and 725/1410 which lie to the north of the B2102 and 002/1410 which lies to the south which largely mirrors the red line of the dismissed First Appeal site of which this land forms part. These sites were assessed as one. The reference to a strong rural character with a sense of tranquillity (albeit in the context of parcels to the north of the B2102) echoes the inspector's assessment of the fields [para 57] around the Oast House providing a rural historic scene with a degree of quiet and tranquillity.
- 6.4 LUC also refer to the strong settlement boundary features formed by the River. We would contend that the ordinary watercourse to the west of the Appeal Site and the sloping open fields below the plateau of farm buildings also forms a strong boundary and rural edge to Uckfield.
- 6.5 In short, this Appeal Scheme would result in the loss of this distinctively rural and relatively tranquil area on the edge of the settlement. Currently the Site and its adjoining landscape enjoys many of the characteristics described at 3.16 of CSA's LVIA - which sets out the key characteristics of the High Weald-Ouse Catchment LCA. We note the photos taken from within the hospital estate which illustrates, even in the summer, just how prominent the sloping fields area and how rural the settlement edge to Uckfield is in this location.
- 6.6 The land rises so that the roundabout just beyond its southern edge within the Site is set at 47.948 at least two metres higher than the levels of the road on the eastbound approach to the roundabout from Uckfield of 45.973. The levels of the road continue to rise eastbound well in excess of 46 metres. All this adds to the visual prominence of this unwelcome substantial urban feature. The drainage and lighting of this are not clear, albeit street lighting will be required, but this is not identified let alone assessed. The drawing shows a retaining wall feature which appears to both hold back the proposed earthworks to accommodate the roundabout as well as facilitate an adequate entry visibility splay based on a 30mph speed. To achieve the splay for westbound traffic approaching the roundabout the edge of the woodland fronting on to the road west of Lantern House needs removal.

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- 6.7 The retaining wall feature appears to conveniently stop right on the very edge of the delineated tree canopy area G4-A2. This is a grade A group of trees. None of these details are referenced in the LVIA. In assessing the visual effects from Bird in the Eye Hill (Photos 17,18 & 25) on page 59/64 of the Part 2 of 2 LVIA, the author acknowledges that there will be an increase in built highways infrastructure, but this is downplayed by reference to the existing farm buildings and houses. We refute the suggestion that its impact will be reduced by landscaping in new trees & hedgerow set behind a rural post and wire fence – this is not demonstrated or even notated on the Landscape Strategy.
- 6.8 There are no engineering details available which could be used to assess the impact of this proposal on existing trees & hedgerows. Plainly these engineering details need to be explained so that a proper assessment of the deliverability of the scheme as well as its impacts can be made. Delivery of the roundabout is, according to the Appellant's case, necessary to overcome the unsafe access arrangements previously proposed for the First Appeal. None of these impacts are discussed adequately in the AIA which is wholly silent about the proposed retaining wall feature. It is not identified on the Indicative Tree Retention/Removal plan BHA_741_02 Rev A. The failure to provide any Tree Protection Plan for the grade A tree canopy area G4-A2 is ominous. The appellant seeks approval for the access without showing how it can be constructed whilst protecting this distinctly rural approach to Uckfield.
- 6.9 The new field gate access into the land north will result in the loss of hedgerow at H8 offsite but this is not quantified. There is no room for replacement hedgerow within highway land.

7. Heritage Impacts

- 7.1 In the First Appeal the inspector judged the open fields around the LB to enable the listed building to be appreciated in broadly its historic rural scene. Because of its elevated position, the inspector judged the LB to have a local landmark quality. We support these findings. Although fewer houses are proposed nonetheless, they and their associated infrastructure will still intrude into the rural scene and result in a real loss of the rural character and sense of tranquillity to the setting of the LB. Added to this diminution in the rural character of the setting is the introduction of significant highway infrastructure, already discussed, which will further harm the setting of the LB. Indeed, our findings discussed earlier at paragraph 2.15(d), and the findings of the County Council in respect of the highway infrastructure proposals both conclude that a junction arrangement such as that proposed in a location such as this, will require provision of street lighting to satisfy highway safety concerns. Yet any such street lighting provision would cause further harm the setting of the LB.
- 7.2 We disagree with the assertion at paragraph 6.10 that the removal of parked vehicles from within the redline is a heritage benefit. These vehicles will simply park more closely around the LB itself within the retained commercial yard.
- 7.3 Overall, we invite you to conclude that the setting of the Grade II Listed Oast House would not be preserved by this proposal, on the contrary it will clearly be harmed and the introduction of the roundabout and other associated infrastructure, including the lighting required for reasons of highway safety, will continue to result in significant "less than substantial harm" being caused. This would be contrary to local policy SP02 and NPPF paragraph 215. We do not believe this harm when weighed against the public benefits of the proposal, which we turn to below, in fact outweighs the benefits. Rather it is a strong reason for refusing the development as per NPPF footnote 7.

8. Ancient Woodland (AW) and Ecology

- 8.1 There has been one walkover assessment on 24 June 2024 to inform the Preliminary Ecological Appraisal (PEA) which is recognised as having its own limitations. The PEA makes no reference to the

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inspector's concerns in the First Appeal about the added pressure to the AW that the development would bring. Specifically the inspector thought that notwithstanding the 15m buffer to the AW which could be enforced by condition, the long border of the AW facing the new housing made it *"more susceptible to increased opportunities for deleterious impacts from development such as noise and disturbance to wildlife from additional people and traffic, fly-tipping and the impacts of domestic pets from predation, even with the introduction of defensive planting and a post and rail fence."*¹⁷

- 8.2 These concerns are not addressed by the ecologists. This pressure does not go away simply because the walk through the AW is no longer part of the proposals. The fact is the AW will continue to be at this risk of deterioration and loss if permission is granted. The reduction in number of houses does not eliminate this risk. Consequently, we consider that the development would be contrary to the same policies identified by the inspector at para 29 of the First Appeal decision and paragraph 193 c) of the NPPF.
- 8.3 There has been no ecological, arboricultural or soil assessment survey of the Ancient Woodland (AW) which largely borders the south edge of the site and indeed intrudes into the redline as CSA. Ancient Woodland is about the protection of the trees and soils and the onus is on the Appellant to prove no deterioration and/or loss. Here there is no baseline survey that would reveal the accuracy or otherwise of the edge of the AW as depicted and so the accuracy of the 15m buffer. There has been no assessment as to whether the proposed planting in the 15m buffer, of thorny species to counteract the natural inclination of residents, walkers and their pets, will complement rather than disturb the soils and AW ecology. The effect of this thicket mix planting, which is plainly not found within the AW, on the protected species within the AW is unassessed.
- 8.4 The inspector noted in the First Appeal that there are protected species in the AW. The location of the SANG recreational path so close to the AW, the natural tendency of the residents, walkers and their pets to want to explore the AW and the impacts on the protected species are simply unaddressed but they will still exist and their effect will lead to deterioration of the AW.
- 8.5 Beyond the 15m buffer is a further 35m buffer in which swales, SUDS ponds, further planting and access to the SUDS for maintenance will need to be maintained.
- 8.6 We invite you to conclude that this proposal will lead to the deterioration of an irreplaceable habitat. There are no wholly exceptional reasons why this should be allowed and so the proposal should be refused in accordance with NPPF paragraph 193 c).

9. Biodiversity Net Gain (BNG)

- 9.1 The baseline assessment is incomplete, ignores the AW within the redline site and the on and offsite losses due to the development of the large roundabout access. There is no draft BNG plan which shows how the BNG required can be achieved in a way which is compatible with the SANG walking routes, the value of the AW and the setting of the heritage asset. The Application, and Appeal, information is deficient in respect of BNG.

10. Overall Planning Assessment

- 10.1 We do not dispute the age of the Core Strategy which is more than 5 years old or the application of the presumption in favour of sustainable development as a result of the HLS shortfall in Wealden District. We accept that settlement boundary policies are out of date and the weight to be given to them can be reduced - that is a matter for the decision maker. Footnote 8 of the NPPF 2024 is engaged. We address the weight to be given to the benefits shortly.

¹⁷ APP/C1435/W/22/3307820 Appeal Decision (12 October 2023), Para 25

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- 10.2 The new roundabout has not been demonstrated to provide a safe access, and we do not believe it can be in its current configuration. NPPF paragraphs 115 c) and 116 are engaged and, as presented, we consider the proposals will have an unacceptable impact on highway safety.
- 10.3 The new access creates significant adverse impacts on the rural character on this approach to Uckfield as well as adding to the urbanisation and so harming further the setting of the Grade II Listed Oast House. This would be further worsened by the introduction of street lighting, itself required in respect of highway safety.
- 10.4 In addition, the loss of land for commercial parking/storage to the east of the building complex adds to potential pressure for parking outside the redline but within the immediate curtilage of the retained former farm buildings. This risks further harming the setting of the Grade II Listed Oast House so that this Appeal Scheme still causes yet further additional less than substantial harm to the setting of the Designated Heritage Asset. This land appears at one stage to have been considered for inclusion within the redline, perhaps to create improvements to the immediate setting as envisaged in the heritage assessment, but in the end it has been excluded. Nowhere does the Application or Appeal explain if the vehicles/storage containers occupying this land will be brought back into the more immediate setting.
- 10.5 The new layout places additional recreational opportunities right next to the AW; a few thorny species being planted but we doubt this will arrest deterioration from increased recreational pressure as the inspector recognised in the last appeal. Planting such species in unsurveyed soils in a location right next to AW is unlikely to impede access in reality. Nor are its implications on the soil of the AW explored.
- 10.6 The claimed benefits of the scheme will only come about if and when the scheme is delivered. The highway authority in their written response suggest that unregistered land is required to deliver the scheme as proposed. This throws considerable doubt over whether, and if so when, the Appellant would be able to actually deliver the scheme. Additionally, whilst there are benefits of 190 dwellings, the occupation of these 190 dwellings will be delayed until upgrades to the foul network are in place, and for these two reasons the scheme may not come forward or at best be delayed. Thus, the benefits of the scheme should be given only moderate weight.
- 10.7 Overall footnote 7 of the NPPF 2024 is still engaged for two reasons. Firstly, heritage harm is not outweighed by the scheme benefits. Secondly, footnote 7 is also engaged because of the impacts on AW, an irreplaceable woodland.

11. Conclusion

- 11.1 The scheme is contrary to the development plan. NPPF 11 d) is engaged because of the absence of the 5 year HLS. There are two strong reasons for refusing development as per footnote 7:
- (a) heritage harm is not outweighed by the scheme benefits; and
 - (b) unacceptable impacts on irreplaceable Ancient Woodland.
- 11.2 In addition, the highway proposals are unsafe and will cause significant permanent harm to the rural setting of Uckfield. When weighing the harms that would be caused by the Appeal Scheme in the planning balance, against the admitted benefits new housing would bring, we conclude that the adverse impacts significantly and demonstrably outweigh the benefits. For these reasons, the Appeal Scheme, should be dismissed.

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Yours faithfully

Town Legal LLP

Town Legal LLP

Enc:

Annex 1 – First Appeal Access Design Drawing No. Drawing 5330/021 Rev P

Annex 2 – Appeal Access Drawing No. 23138 001 Rev A

Annex 3 – Appeal Revised Access Drawing No. 23138 001 Rev B

Annex 4 – Appeal Footpath/ Cycle Path Route and Longsection Drawing No. 23138 004 Rev A

Annex 5 – First Appeal Extract of Appendix A.4 Rule 6 Party Proof of Evidence

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ANNEX 1 – FIRST APPEAL ACCESS DESIGN DRAWING NO. DRAWING 5330/021 REV P



Notes

Do not scale this drawing

Highway Boundary

Suggested location for side road ahead sign, to diagram 505.1 of the Traffic Signs Manual Chapter 4. Precise location to be agreed at the detailed design stage.

Diagram 505.1

Northern kerb line to be a minimum of 450mm from highway boundary.



P	Centreline updated. Side road ahead location added.	DE
N	Northern kerbline amended to be a minimum of 450mm from Highway boundary.	MS
M	Design Revised, running lanes increased to 3m wide	MS
L	Design Revised	MS
K	Design Revised	MS
J	Design Revised	MS
H	Design Revised	MS
G	Taper revised to 1:25 on RTL	MS
F	AMENDMENT NOTE	MS
E	AMENDMENT NOTE	MS
D	AMENDMENT NOTE	MS
C	AMENDMENT NOTE	MS
B	AMENDMENT NOTE	MS
A	AMENDMENT NOTE	MS
AMENDMENT	AMENDMENT	MS

Bellamy Roberts
Clover House
Western Lane
Odiham
Hampshire, RG29 1TU
Tel: 01256 703355
Email: info@bellamyroberts.co.uk

CLIENT

Croudance Homes Ltd.

PROJECT

Bird in Eye, Uckfield

TITLE

Proposed Access - Right Turn Lane

DRAWN BY	ARM	DESIGNED BY	ARM	CHECKED BY	MT
DATE	02/02/22	DRAWING No.	5330 / 021	REV No.	P
SCALE	1:500 @ A1				

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ANNEX 2 – APPEAL ACCESS DRAWING NO. 23138 001 REV A



70-metre forward visibility splay in line with 30-mph design speed and DMRB's one step below desirable minimum SSD.

Please note: Existing building footprint and proposed access arrangement are illustrative only. All dimensions shown are in metres unless noted otherwise.

See Drawing No. 23138 / 002.



- Notes**
1. Do not scale from this drawing. All dimensions shown are in metres unless noted otherwise.
 2. This drawing has been based upon topographical survey information produced by others and Milestone Transport Planning cannot be held responsible for any discrepancies which may arise because of it.
- Key**
- Proposed Carriageway
 - Proposed Footway / Cycleway
 - Proposed Grassed Verge
 - Proposed Earthworks
 - Highway Boundary
 - Proposed Indicative Retaining Feature
 - DMRB 30-mph Roundabout Entry Visibility Splay
 - MIS 30-mph Visibility Splay (2.4 x 43-metres)
 - MIS 20-mph Visibility Splay (2.4 x 25-metres)
 - Centreline Level

NOT FOR CONSTRUCTION

Ordnance Survey Licence number: 100057360				
Drawing Revisions				
Rev	Dim	Date	Details	C/C
1	231	18/07/2024	Initial Issue	M/S
A	231	23/07/2024	Revised layout	M/S
Client				
Croudace Homes Limited				
Project				
Land at Bird In Eye, Uckfield				
Title				
Proposed Access Arrangement				
MILESTONE				
7 Ancells Court, Rye Close, Fleet, Hampshire, GU51 2UY				
Tel: 01483 397888				
Gateshead IBC, Mulgrave Terrace, Gateshead, NE8 1AN				
Tel: 0191 338 7220				
web: www.milestonetp.co.uk				
Drawing Number				Scale
23138/001				1:250 @ A1
				Revision
				A

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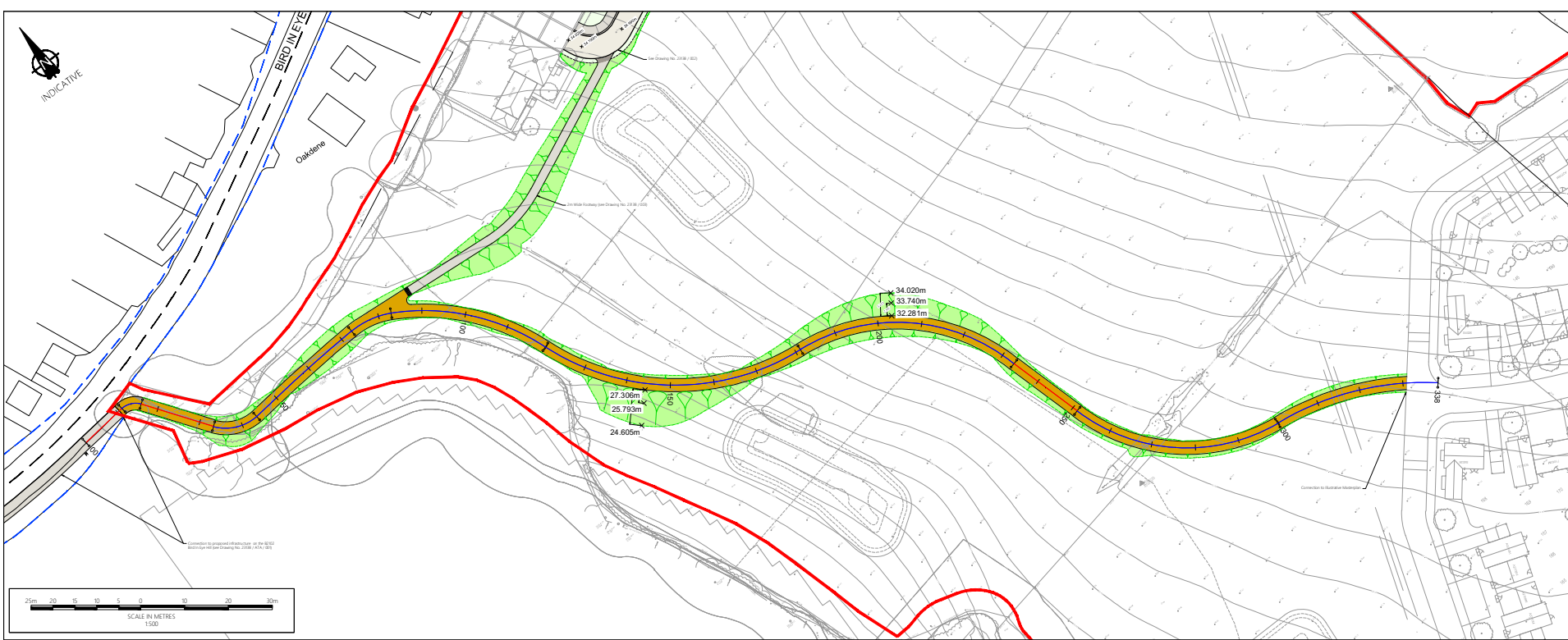
ANNEX 3 – APPEAL REVISED ACCESS DRAWING NO. 23138 001 REV B



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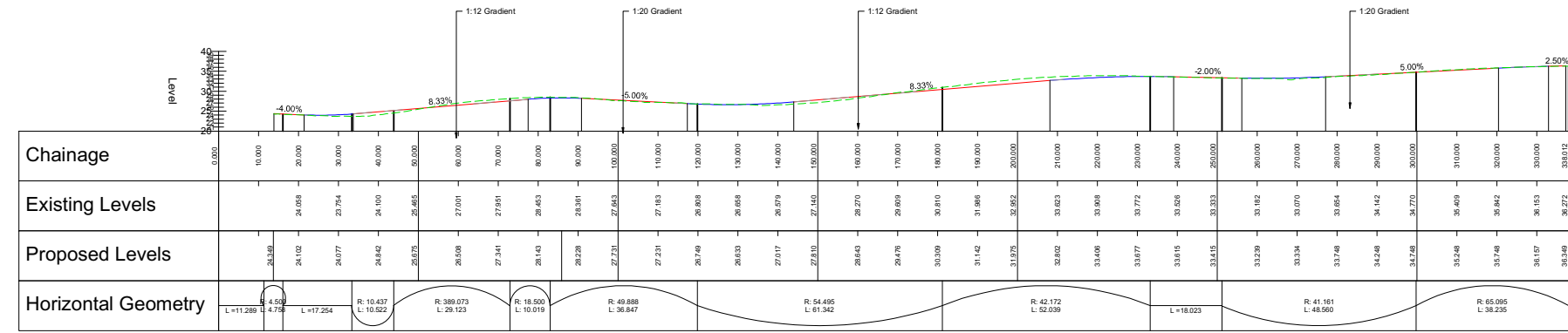
10 February 2025

ANNEX 4 – APPEAL FOOTPATH/ CYCLE PATH ROUTE AND LONGSECTION DRAWING NO. 23138 004 REV A



- Notes**
- Do not scale from this drawing. All dimensions shown are in metres unless noted otherwise.
 - This drawing has been based upon topographical survey information produced by others and Milestone Transport Planning cannot be held responsible for any discrepancies which may arise because of it.
- Key**
- Proposed Carriageway
 - Proposed Footway / Cycleway
 - Proposed Grassed Verge
 - Proposed Shared Area
 - Proposed Bound Gravel (i.e. heritage surfacing)
 - Proposed Earthworks
 - Centreline Level

SHARED LINK - LONGSECTION
SCALE: H 1:500,V 1:500. DATUM: 20.000



NOT FOR CONSTRUCTION

Ordnance Survey Licence number: 100057360

Drawing Revisions

Rev	Dim	Date	Details	Chk
1		23/07/2024	First issue	2M
2	A	23/07/2024	Revised layout	2M

Client

Croudace Homes Limited

Project

Land at Bird In Eye, Uckfield

Title

Shared Footway / Cycleway - Indicative Vertical Design

MILESTONE
7 Ancells Court, Rye Close, Fleet, Hampshire, GU51 2UY
Tel: 01483 397898
Gateshead IBC, Mulgrave Terrace, Gateshead, NE8 1AN
Tel: 0191 338 7220
web: www.milestonetp.co.uk

Drawing Number

23138/004

Scale

1:500 @ A1

Revision

A

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ANNEX 5 – FIRST APPEAL EXTRACT OF APPENDIX A.4 RULE 6 PARTY PROOF OF EVIDENCE

Appendix A.4 – Photographs of B2102/Framfield Road flooding in November 2022



